



RESPONSES TO INFORMATION REQUESTS (RIRs)

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Peru: Rights and obligations of permanent residents; specifically, how permanent status is lost and, if possible, reacquired; the type of identification document provided to permanent residents; limitations on the length of time permanent residents can remain outside the country without losing their residency status; whether permanent residents would lose their status if they failed to pay the annual permanent residency fee; if so, the procedure for having their status reinstated (2002-July 2005)

Research Directorate, Immigration and Refugee Board, Ottawa

Please note that terms and phrases used below in reference to the text of Legislative Decree No. 703 are derived from the Spanish-language text and do not necessarily have equivalents in Canadian legal terminology. The English text of the Political Constitution of Peru, found on the Website of the United Nations High Commissioner for Refugees' (UNHCR's) Country of Origin and Legal Information database, is the version used in this Response. The information provided below does not preclude the existence of other legislation, norms, court rulings or legal instruments that could be in effect and relate to the subject in question.

Article 3 of Legislative Decree No. 703, Approving the Law on the Status of Foreigners (Aprueba la Ley de Extranjería), of 5 November 1991 defines a foreigner (extranjero) as any person who does not possess Peruvian nationality (Peru 5 Nov. 1991b). Article 11 defines foreigners as falling into the categories of diplomats, political asylees and refugees, tourists, students, workers, and immigrants, among others (ibid.). An immigrant is one who has entered the country with the intention to reside permanently in Peru (ibid.).

Chapter 11, Article 55 of this decree states that foreigners within the Republic of Peru have the same rights and obligations as Peruvians except in those cases established by the Constitution, the legislative decree itself and other laws of the Republic (ibid.). The Political Constitution of Peru sets out the rights and responsibilities exclusive to citizens of Peru, including the right to elect and be elected (29 Dec. 1993, Article 31). Further, the office of President, Minister of State and Congressman can be held only by individuals who are Peruvian by birth rather than naturalized Peruvians (Articles 110, 124 and 90 respectively) (ibid.). A foreigner's right to own land can also be circumscribed; Article 71 of the Constitution states:

As far as ownership is concerned, aliens [UNHCR's translation of los extranjeros], whether persons or juridical entities, fall in the same category as Peruvians without, in any instance, their being able to invoke an exception or

claim diplomatic protection.

However, within 50 kilometers of the borders, aliens may not acquire or possess under any title mines, land, woods, water bodies, fuel or other sources of energy, directly or indirectly, individually or collectively, subject to losing to the State the right thus acquired. Excepted are cases of public necessity specifically determined by Supreme Decree approved by the Council of Ministers in accordance to the law (ibid.).

Chapters 5 and 6, Articles 22-31, of Legislative Decree No. 703 set out the requirements and impediments for the entry of a foreigner; these range from identity documentation requirements to exclusion based on criminal activity (ibid.). Article 33 sets out the residence or stay period allowed for each migratory category; most are renewable, except for the immigrant category which allows residence indefinitely (plazo de residencia indefinido) (ibid.).

According to Legislative Decree No. 703, foreign residents may exit and re-enter Peru and retain their migratory status and visa as long as they comply with the requirements and deadlines set out by the legislative decree and its regulations (5 Nov. 1991b, Article 42). If a foreign resident requests permanent exit, they lose their residency status; for readmission, they have to comply with the requirements for foreigners defined by the Legislative Decree No. 703 and its regulations (ibid., Article 41).

If a foreigner violates the terms of the decree, Article 60 provides for the application of fines, forced exit, the cancellation of status as a resident and/or expulsion (ibid.). Article 63 states that residency can be cancelled if the foreigner: (1) commits actions contrary to state security, public order or national defence; (2) does not have the economic means to support his or her residency and (3) has been sentenced by a Peruvian court for a crime (ibid.). Article 66 states that the cancellation of residence status and expulsion of a foreigner requires a ministerial resolution (resolucion ministerial) following a recommendation of the Commission on the Status of Foreigners (Comision de Extranjeria) based on a police report issued by the Foreigner's Division (Division de Extranjeria) of the National Police (ibid.).

According to Legislative Decree No. 703, obligations of foreign residents are further defined by the terms and conditions established by its regulations (el Reglamento de Extranjeria) (Chapter 11, Article 59). Copies of, or references to, regulations in effect for Legislative Decree No. 703 could not be found among the sources consulted by the Research Directorate.

The First Secretary, Consular Affairs, of the Embassy of the Republic of Peru in Ottawa confirmed that, in general, a permanent resident of Peru enjoys the rights of a Peruvian national but noted that they do not have the right to vote in any elections (29 May 2002). A permanent resident may access health care and educational services and is obliged to pay taxes (ibid.).

The First Secretary stated that there are residency obligations that must be fulfilled to maintain permanent residence status; however he was unsure of the exact amount of time an individual would have to remain outside of Peru for their status as a permanent resident to lapse (ibid.). The First Secretary stated that, once his or her status was lapsed, the individual could reapply to the competent authorities to reinstate his or her status as a permanent resident (ibid.).

In a 29 May 2002 interview, the First Secretary, Consular Affairs, of the Embassy of the Republic of Peru in Ottawa stated that an "immigrant identity card" can be roughly translated as a "carnet de extranjeria." The bearer of such a card is a permanent resident and has all the rights and obligations that that status confers (Peru 29 May 2002).

Under the terms of the Legislative Decree No. 703, immigrant-class residence visa holders may remain in the country indefinitely, although they must renew their visa every 12 months (Peru 5 Nov. 1991a, Art. 13). The law also stipulates that such individuals may enter and leave the country freely during the visa's period of validity (*ibid.*, Art. 18). This information was corroborated by a counsellor at the Embassy of Peru in Ottawa, who added that the annual renewal of such visas is merely an administrative formality (Peru 22 Oct. 2004). However, he noted that individuals must be physically present in Peru in order to renew their visa (*ibid.*).

While the counsellor did not know whether or not non-payment of the visa renewal fee would lead automatically to an individual's loss of permanent residency status, he claimed that anyone who had lost such status while out of the country could easily reacquire it upon returning to Peru, by following certain administrative steps (*ibid.*). However, he was unable to provide information on the precise nature of these steps.

Information from 2005 about the rights and obligations of permanent residents, specifically, about how permanent status is lost and, if possible, reacquired, limitations of the length of time permanent residents can remain outside the country without losing their residency status, whether permanent residents would lose their status if they failed to pay the annual permanent residency fee, and if so, the procedure for having their status reinstated could not be found among the sources consulted by the Research Directorate.

However, the following provides some information on the type of identification document provided to permanent residents (Peru 25 Feb. 2005; ACAP Nov. 2004) and on an amendment to the permanent residency law (Peru 13 July 2005; *ibid.* 3 Sept. 2003).

According to a November 2004 article published in the Expatriate Journal of The American & Canadian Association of Peru (ACAP), the government of Peru announced that the "old" resident immigration visa booklet (*carné de extranjeria*) would be replaced by a "new" resident immigration identification card (*carné de extranjeria mecanizado*) (ACAP Nov. 2004; see also Peru 25 Feb. 2005). While the Expatriate Journal reported that those holding the old booklet would be required to exchange it for the new card by 28 February 2005 (ACAP Nov. 2004), a news update published on the same day by the government's General Directorate of Immigration and Naturalization (*Dirección General de Migraciones y Naturalización*, DIGEMIN) noted that applicants would have until 30 September 2005 to get a new card (Peru 25 Feb. 2005).

General requirements to change the old booklet for the new card include the completion of "Form F-007-A" and payment of 41 soles [CAN\$14.82 (Bank of Canada 12 July 2005)] as well as the annual immigration fee of "[US]\$15 for residents and [US]\$20 for immigrants" (ACAP Nov. 2004). Moreover, the Expatriate Journal noted that "[p]ersons who fall within the scope of Article 3 of the Supreme Decree No. 206-83-EFC are exonerated from paying this annual fee" (*ibid.*). In addition, before applicants can acquire a new card, they must

demonstrate that their annual immigration fees have been paid in full, "and the old carné must show their current address" (ibid.). If the individual's old booklet "has been lost or stolen, a copy of the official police report must be presented" (ibid.).

In July 2005, the government introduced a new law that would modify article 34 of Legislative Decree No. 703 by adding financially independent migrants (rentistas) to the class of migrants requiring residency visas (Peru 13 July 2005; ibid. 3 Sept. 2003). According to information about this new law posted on the Toronto General Consulate for Peru, other migrants that fall under the residency visa category include, but are not limited to, religious workers, students, and workers (ibid.).

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of additional sources consulted in researching this Information Request.

References

The American & Canadian Association of Peru (ACAP). November 2004. Newsletter: Expatriate Journal. "Old Resident Immigration Visa Booklet (Carne de Extranjeria) is Valid Only until February 28, 2005." <http://www.acap-peru.org/newsletter/november_2004/november2004_2a.htm> [Accessed 5 July 2005]

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[Accessed 29 May 2002]

Additional Sources Consulted

The Embassy of Peru in Ottawa was unable to provide the requested information.

The Consulate of Peru in Toronto could not provide the requested information within time constraints.

Internet sites, including: Embassy of Peru in Ottawa, General Consulate of Peru in Montreal, Peru - Congreso de la Republica, Peru - Ministerio de Relaciones Exteriores, Peru - Portal del Estado de Peru, United States - Reciprocity Schedule and Consular Information Sheet.

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