

Submitted via email to: USCISPolicyManual@uscis.dhs.gov

May 7, 2020

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director
20 Massachusetts Avenue, N.W.
Washington, D.C. 20529

RE: Policy Guidance Revisions: Volume 7, Part P, Chapter 5, Liberian Refugee Immigration Fairness

To Whom It May Concern:

The undersigned organizations respectfully submit this comment in connection with USCIS' policy and procedures found in the recently released USCIS Policy Manual at Volume 7, Part P, Chapter 5, Liberian Refugee Immigration Fairness (LRIF).

These comments are based upon the expertise and contributions of organizations that advocate for fair and just immigration laws and policies, community-based organizations that serve the Liberian community, and direct legal services providers. The organizations have a vested interest in ensuring LRIF is implemented fairly and in a way that is consistent with the intent of the law.

Background and Intent of the Liberian Refugee Immigration Fairness Law

Enacted on December 20, 2019, Liberian Refugee Immigration Fairness (hereinafter LRIF) is found at Section 7611 of the National Defense Authorization Act for Fiscal Year 2020 (NDAA). LRIF was needed because civil strife in Liberia beginning in 1989 caused thousands of Liberians to flee to the United States. While the United States provided temporary measures of protection such as Temporary Protected Status (TPS) and Deferred Enforced Departure (DED), those programs only provided protection for a few years at a time and were eventually terminated, leaving people in a state of limbo and uncertainty about their lives and status in the United States.

As noted by the President in a recent Memorandum to the Secretaries of State and Department of Homeland Security extending the wind-down period for DED, the relationship between Liberia and the United States is unique.¹ Many Liberians have relatives in the United States, and they are English-speaking. Some Liberians are Americo-Liberians, that is, emancipated slaves who

¹ Memorandum on Extending the Wind-Down Period for Deferred Enforced Departure for Liberians 2020, Daily Comp Pres. Doc. 212 (Mar. 30, 2020) www.govinfo.gov/content/pkg/DCPD-202000212/pdf/DCPD-202000212.pdf.

immigrated to Liberia, while others are members of ethnic and language groups that are native to Liberia.

While eligible Liberians were protected from deportation under TPS or DED for decades, they have not had a pathway to adjust or change their status to become lawful permanent residents until recently. LRIF allows Liberians who have been continuously present in the United States since November 2014 and certain close family members to apply for lawful permanent residency. The LRIF provision of the NDAA was based on S. 456, the Liberian Refugee Immigration Fairness Act, which Senator Reed introduced in the U.S. Senate. Congressman David Cicilline introduced companion legislation (H.R.1169) in the U.S. House of Representatives. The President signed the NDAA into law on December 20, 2019. The legislation is estimated to impact about 4,000 Liberians who have been legally living in the United States.

In a statement of December 12, 2019, Senator Reed stated, “These individuals came to America seeking safety from devastating wars and disaster. They’ve made a home here, built their lives, and strengthened our communities. America is their home and they shouldn’t be evicted. Forcing them back to Liberia now would create real hardships both here and in Liberia. By extending their legal status, we are providing much needed certainty and a measure of security for individuals while helping foster Liberia’s post-war recovery.”²

Congress Specifically Disallowed Agency Discretion in Interpreting LRIF: USCIS “Shall Adjust” Eligible Individuals is Mandatory Language

Section 7611 of the NDAA lays out the clear and plain language of LRIF, including an intended deference toward eligible LRIF applicants. The language of the law is markedly different from other provisions for adjustment of status under the Immigration and Nationality Act, which provide USCIS with discretion on adjudication by way of using the term “may adjust.”³ For LRIF, the language is a directive indicating the “Secretary *shall* adjust the status of” the applicant.

This mandatory language is rarely used by Congress, but is found in INA 204(l), the surviving relative provision which mandates adjustment for certain family members when a qualified foreign citizen in enumerated categories dies. The use of “shall” versus the use of “may” is significant because Congress has removed agency discretion. That foundational principle should be kept in mind in reviewing LRIF and comparing it to what USCIS has developed in the Policy Manual, because the agency does not have discretion to stray beyond the LRIF statutory language.

²Press Release, Jack Reed, U.S. Sen. For R.I., Reed Includes NDAA Provision to Extend Permanent Residency Status for Eligible Liberians and Open a Pathway to U.S. Citizenship (Dec. 12, 2019), www.reed.senate.gov/news/releases/reed-includes-ndaa-provision-to-extend-permanent-residency-status-for-eligible-liberians-and-open-a-pathway-to-us-citizenship [hereinafter Press Release, Sen. Reed].

³ INA 245(a) is the most commonly employed adjustment section of the INA, and it specifically grants the agency discretion in adjustment by stating that the Attorney General “may” adjust the enumerated classes of individuals. In addition, 245(a) specifically states that this adjustment by the Attorney General “is “in his discretion, and under such regulations as he may prescribe.” There is no such qualifying language in LRIF.

In particular, the Policy Manual has exceeded the statute by imposing new requirements on family members for LRIF, and in the onerous documentation requirements for both Liberian applicants and their spouses and children.

A. USCIS Contradicts the Statute by Imposing New Restrictions on LRIF Family Members and by Requiring Excessive Supporting Documentation

1. Eligibility of Family Members

The Policy Manual adds substantive requirements for family members that don't exist in the statute, treating them as a derivative when the statute describes them as a qualified family member that should be able to apply without the restrictions imposed.

The statute requires the family relationship to a Liberian spouse or parent, but specifically exempts the family member from continuous presence and nationality requirements. In addition, because Congress did not use the "accompanying or follow to join" language that indicates a derivative, there is no reason that a family member should have to apply with or after the spouse or parent.

Also, the family member should not lose the ability to adjust if the Liberian national loses LPR or naturalizes, because they are not a derivative. The section of 7611 that describes the family member is straightforward.⁴

USCIS may not change the statutory provision by virtue of administrative guidance, especially because LRIF does not grant them discretion in adjusting eligible LRIF applicants. This language creates an independently eligible family member who also "shall" be adjusted, and without accompanying or following to join, they are not derivative. The family member should be able to apply by showing their relationship to a Liberian citizen with the required continuous presence, but need not do so simultaneously or after the Liberian spouse or parent.

If Congress had wanted to create a derivative category, they would have used the accompanying or follow to join language, but they did not. For example, see INA 203(d) describing the derivatives in the family preferences, and the definitions section of the INA which describes derivatives for special immigrants. Both contain the language accompanying or following to join in designating derivatives.⁵

⁴ The adjustment provision of LRIF for family members reads:

ALIENS ELIGIBLE FOR ADJUSTMENT OF STATUS.—(1) IN GENERAL.—The benefits provided under subsection (b) shall apply to any alien who— (A)(i) is a national of Liberia; and (ii) has been continuously present in the United States during the period beginning on November 20, 2014, and ending on the date on which the alien submits an application under subsection (b); or (B) *is the spouse, child, or unmarried son or daughter of an alien described in subparagraph (A).* (emphasis added).

⁵ INA 203 (d) Treatment of family members - A spouse or child as defined in subparagraph (A), (B), (C), (D), or (E) of section 1101(b)(1) of this title shall, if not otherwise entitled to an immigrant status and the immediate issuance of a visa under subsection (a), (b), or (c), be entitled to the same status, and the same order of consideration provided in the respective subsection, *if accompanying or following to join, the spouse or parent.* (emphasis added).

The LRIF language covering family members creates an independently eligible family member who also “shall” be adjusted, and without accompanying or following to join, they are not derivative. The family member should be able to apply by showing their relationship to a LRIF qualified Liberian citizen, but need not do so simultaneously or after the Liberian spouse or parent. Neither should the family member lose the ability to apply if the Liberian spouse or parent does not adjust or naturalizes.

If Congress had wanted to create a derivative category, they would have used the accompanying or follow to join language, but they did not. USCIS does not have discretion under LRIF to create extra statutory hurdles for family members by treating them as derivatives.

2. The Policy Manual Imposes Excessive Documentation Requirements Which Will Disqualify Eligible LRIF Applicants

The Policy Manual requires difficult or impossible to obtain documents that will prevent eligible applicants from qualifying for LRIF, in contravention to Congress’ mandatory “shall adjust” language.

The Policy Manual has listed dozens of supporting documents that LRIF applicants and their family members should provide. The burdensome documentation requirements frustrate the Congressional intent in making adjustment mandatory for qualified individuals who can show the necessary nationality and continuous presence, or for the spouse or child, the qualifying relationship.

Liberia went through decades of civil war from 1990 on, which destroyed the country’s infrastructure and left record-keeping institutions in ruin. USCIS fails to acknowledge that reality and instead requests reams of documents, many of them only obtainable from abroad.

The documentation provisions of the Policy Manual listed below state that an applicant should submit an unexpired Liberian passport. This requirement is unreasonable, where an expired Liberian passport would serve the same purpose, and time to obtain a renewed passport is rapidly expiring as the December 20, 2020 application deadline approaches. In addition, alternative proofs of citizenship should be allowed as not all Liberians will have passports.

Also, In the definitions in 101 of the INA, several categories of visas also have derivatives described, and in each instance, accompanying or following to join language is used. See the description of derivatives for special immigrants, for example:

INA 101 (a) (27) The term "special immigrant" means-

- (A) an immigrant, lawfully admitted for permanent residence, who is returning from a temporary visit abroad;
- (B) an immigrant who was a citizen of the United States and may, under section 1435(a) or 1438 of this title, apply for reacquisition of citizenship;
- (C) an immigrant, and the *immigrant's spouse and children if accompanying or following to join* the immigrant, ...(*emphasis added*).

The documentation required of family members is overly restrictive, again treating them as derivatives by mandating that they show the parent or spouse has a pending or already approved LRIF application before they can apply.

3. The Policy Manual Incorrectly Truncates the Amount of Time LRIF Applicants Have to File Applications

Under the interpretation of the date in the Policy Manual at USCIS-PM P.5 at FN 17, “The applicant’s adjustment application must be received by a USCIS Lockbox on or before December 20, 2020.” The interpretation truncates the amount of time LRIF applicants have to file applications. In other contexts, USCIS has considered applications properly filed as of the postmark date. Most recently, for applications submitted prior to USCIS’ February 24, 2020, implementation of the new public charge guidance, the agency stated the following: “For applications and petitions that are sent by commercial courier (for example, UPS, FedEx, or DHL), the postmark date is the date reflected on the courier receipt. USCIS will reject any affected application or petition that does not adhere to the final rule, including those submitted by or on behalf of aliens living in Illinois, if postmarked on or after Feb. 24, 2020.” To allow eligible applicants the maximum amount of time to submit LRIF applications, we urge USCIS to follow filing procedures consistently used for prior applications, by utilizing the postmark date to indicate receipt prior to December 20, 2020.

B. USCIS Should Adopt Flexible Measures with Respect to Documentary Requirements and Filing Procedures in Light of the Global COVID-19 Pandemic

On March 11, 2020, the World Health Organization declared the COVID-19 virus to be a global pandemic. The guidance to all is that everyone should social distance by remaining home under self-quarantine.⁶ On March 13, 2020, President Donald Trump declared a national emergency.⁷ As of April 18, 2020, COVID-19 has infected more than 720,630 people in the United States.⁸ As of May 6, 2020, 44,016 Americans have died from COVID-19.⁹

Shelter-in-place orders across the United States have created significant limitations for applicants seeking documentary evidence to support LRIF adjustment of status applications and legal guidance. The policy manual at USCIS-PM P.5(D)(1) requires Liberian principal applicants to prove Liberian nationality with only two acceptable forms of evidence, an unexpired Liberian passport or a Liberian certificate of naturalization. As of May 7, 2020, the Liberian consulates have been closed since March 17, 2020, with all consular services provided by mail only and all

⁶ WHO Director-General’s Opening Remarks at the Media Briefing on COVID-19, March 11 2020, *available at* <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>.

⁷ Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak, March 13, 2020, *available at* www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/

⁸ Coronavirus Disease 2019 (COVID-19) Cases in the U.S., Centers for Disease Control and Prevention, *available at* www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html

⁹ Provisional Death Counts for Coronavirus Disease (COVID-19), Centers for Disease Control and Prevention, *available at* www.cdc.gov/nchs/nvss/vsrr/covid19/index.htm

communication via email.¹⁰ The limited availability of consular services makes the documentary requirement of an unexpired passport a de facto prohibition on applications. Notwithstanding the arguments above, we urge USCIS to consider accepting alternative documents including expired passports, current or expired EADs, birth certificates, and other documents as evidence of nationality. Further, this information should be disseminated to the public and made clear as the current language has a chilling effect. Many LRIF applicants may have filed applications with USCIS previously, such as TPS and DED, that required that they prove Liberian nationality. They should be able to rely on documentation that they have already submitted to USCIS to prove nationality.

C. Recommendations Regarding the Successful Implementation of LRIF

Robust Outreach and Education

While implementing LRIF, we urge DHS and USCIS to conduct extensive outreach and engagement to inform potential beneficiaries of LRIF. We urge USCIS to mail physical letters to current Liberian DED holders and former Liberian TPS holders containing information regarding LRIF. We also encourage DHS and USCIS to establish a stakeholder meeting and regularly engage with legal services experts and advocates to solicit guidance and recommendations for LRIF's implementation.

Release of LRIF Data and Processing Time Information

USCIS should commit to releasing regular monthly data regarding LRIF application approvals, denials, and pending applications on its online Immigration and Citizenship Data tool. The data set should track or mirror similar data reports released by USCIS regarding adjustment of status applications. The data set should separate information on Forms I-485 by principal or family members, and include information regarding associated filings such as fee waiver requests, Forms I-765 and I-131 applications.

¹⁰ See announcement at <https://liberiaconsulate-ny.com/>

Conclusion

The new Chapter of the Policy Manual has exceeded the LRIF statute by imposing new requirements on family members for LRIF. We urge USCIS to reconsider the policy guidance on LRIF and to adopt measures that promote accessibility of applications under LRIF, including ensuring that the evidentiary requirements and collection processes are as flexible as possible as was intended under the law.

Sincerely,

African Communities Together
Black Alliance for Just Immigration (BAJI)
Catholic Charities of the Archdiocese of Washington
Church World Service
Immigrant Law Center of Minnesota
Immigrant Legal Resource Center (ILRC)
Legal Services NYC (LSNYC)
National Immigrant Justice Center (NIJC)

attachment

Attachment: USCIS Policy Manual Relevant Sections

Eligibility of Family Members

The spouse, child,^[13] and unmarried son or daughter of a Liberian principal applicant who is LRIF-eligible may also seek adjustment based on LRIF regardless of their nationality.^[14]

To adjust based on LRIF, eligible family members must:

- Properly file an Application to Register Permanent Residence or Adjust Status ([Form I-485](#)) which is received on or by December 20, 2020; and
- Be admissible to the United States for lawful permanent residence or eligible for a waiver of inadmissibility or other form of relief.

The same ineligibility criteria and inadmissibility grounds that apply to Liberian principal applicants apply to eligible family members seeking adjustment based on LRIF.

However, the continuous physical presence requirement that applies to Liberian principal applicants does not apply to those seeking to adjust based on LRIF as an eligible family member.

When Eligible Family Members May File the Adjustment Application

Each applicant must properly file his or her own adjustment application on or by December 20, 2020.

Eligible family members may file their adjustment application:

- Together with the Liberian principal applicant's LRIF-based adjustment application; or
- After the Liberian principal applicant filed an LRIF-based adjustment application that remains pending a final decision or was approved by USCIS.

An eligible family member may not adjust status before the qualifying Liberian principal applicant. Adjustment of family members must be concurrent with or subsequent to the Liberian principal applicant's adjustment to LPR status.^[15]

The qualifying relationship may have been created before or after the Liberian principal applicant's adjustment. Provided that the applicant meets the burden of proof to demonstrate a bona fide family relationship, USCIS may adjust the spouse (or child or unmarried son or daughter) of a Liberian principal applicant to that of an LPR regardless of the duration of the relationship; however, **the relationship must exist on the date of filing and the date of adjudication of the family member's adjustment application.**

The spouse, child, or unmarried son or daughter remains eligible for LRIF-based adjustment only so long as the qualifying Liberian national remains an LPR. If the Liberian national loses LPR status or naturalizes, the family members' eligibility to adjust to LPR status under LRIF also ends.^[16]

. Documentation and Evidence

A Liberian national applicant should submit the following documentation to seek adjustment of status based on LRIF:

- A properly filed Application to Register Permanent Residence or Adjust Status ([Form I-485](#)), with the correct fee;
- Two identical color photographs of the applicant taken recently;^[22]
- A copy of a government-issued identity document with photograph;
- A copy of the birth certificate;
- A copy of the passport page with admission or parole stamp (if applicable);
- A copy of the Arrival/Departure Record (Form I-94) or copy of U.S. Customs and Border Protection (CBP) admission or parole stamp on the travel document (if applicable);^[23]
- A properly completed Report of Medical Examination and Vaccination Record ([Form I-693](#));^[24]
- Evidence of being a Liberian national;
- A list and any evidence of all arrivals to and departures from the United States;
- Evidence of continuous physical presence in the United States beginning on November 20, 2014, and ending on the date the applicant properly files an LRIF-based adjustment application; and
- A completed Application for Waiver of Grounds of Inadmissibility ([Form I-601](#)), if applicable.

1. Liberian Nationality

A Liberian principal applicant must provide evidence to prove he or she is a Liberian national.^[25] Examples of evidence that may demonstrate Liberian nationality include, but are not limited to:

- Unexpired Liberian passport; or

- Liberian certificate of naturalization.

2. Continuous Physical Presence

A Liberian principal applicant must submit evidence that he or she was physically present in the United States for a continuous period beginning on November 20, 2014, and ending on the date he or she properly files the LRIF-based adjustment application. For purposes of LRIF, USCIS considers an applicant who left the United States for one or more periods amounting to more than 180 days in the aggregate (total) to have failed to have maintained continuous physical presence.

An applicant must submit probative evidence to establish continuous physical presence since November 20, 2014. Examples of the types of evidence may include, but are not limited to:

- Copy of passport pages with nonimmigrant visa, admission, or parole stamps;
- Arrival/Departure Record (Form I-94);
- Income tax records;
- Utility bills;
- Mortgage deeds or leases;
- Insurance premiums and policies;
- Birth, marriage, and death certificates for immediate family members;
- Medical records;
- Bank records;
- School records;
- All types of receipts that contain identifying information about the applicant;
- Census records;
- Social Security records;
- Employment records;
- Military records;
- Draft records;
- Car registrations; and
- Union membership records.

3. Evidence of Arrivals to and Departures from the United States

Liberian principal applicants must provide a list of all arrivals to and departures from the United States. All applicants also should submit any evidence of all arrivals to and departures from the United States. Applicants should also submit any evidence showing residence from the date of his or her first arrival where residence was established until the filing of the applicant's LRIF-based adjustment application. USCIS uses this information to determine the date of lawful permanent residence for approved LRIF-based adjustment applicants.^[26]

Residence means the applicant's place of general abode; the place of general abode means his or her principal, actual dwelling place in fact, without regard to intent.^[27]

4. Family Members

In addition to the documentation listed above, an eligible family member applying to adjust based on LRIF must submit:

- Evidence of his or her relationship to a Liberian principal applicant (for example, marriage certificate or birth certificate);
- Evidence of termination of any prior marriages, and any prior marriages of the Liberian principal applicant, if applying as the eligible spouse of a Liberian principal applicant; and
- Evidence that the Liberian principal applicant obtained LPR status or has a pending application for adjustment of status under LRIF (for example, an Approval or Receipt Notice (Form I-797) for the Liberian national's adjustment application), if the eligible family member is not filing concurrently with the Liberian principal applicant.

Only the Liberian principal applicant must show Liberian nationality and continuous physical presence in the United States to be eligible to adjust based on LRIF.

Evidence of Arrivals to and Departures from the United States

LRIF applicants applying as family members must provide a list of all arrivals to and departures from the United States. Applicants should submit evidence of all arrivals to and departures from the United States. Applicants should also submit any evidence showing residence from the date of his or her first arrival where residence was established until the filing of the applicant's LRIF-based adjustment application. USCIS uses this information to determine the date of lawful permanent residence for approved LRIF-based adjustment applicants.^[28]

