



**AFRICAN
COMMUNITIES
TOGETHER**



MEMORANDUM

TO:

The United States Citizenship and Immigration Services (USCIS)

FROM:

African Communities Together (ACT)
The UndocuBlack Network (UBN)
The Immigrant Legal Resource Center (ILRC)

DATE: July 2, 2021

RE: Liberian Nationality Law and USCIS LRIF Evidentiary Requirements

This memorandum summarizes the authors-stakeholders' legal understanding of the Liberian Refugee Immigration Fairness (LRIF) provisions of the National Defense Authorization Act (NDAA) of 2019, relevant Liberian nationality laws, and USCIS's current policy interpretations and implementation of LRIF.¹ Specifically, this memorandum posits that USCIS can and should accept expired Liberian passports as one form of primary evidence of valid Liberian nationality, for the reasons outlined below.

I. Introduction and Context

Liberia suffered through two civil wars, from 1989 – 1997, and again from 1999 – 2003 in which an estimated 250,000 people died, and 1.5 million fled the country.² The extremely brutal nature of the conflict made Liberia “a byword for savagery.”³ Civilians were targeted, children were used as soldiers, women and children were raped and tortured, and inhumane treatment of detainees were common.⁴ Because of the widespread warfare and destruction of the country, government offices that maintained civil documents had to operate in chaos and instability. Given the political and social instability of the Liberian civil wars, the U.S. government extended humanitarian aid to Liberians present in the U.S. in the form of Temporary Protected Status and Deferred Enforced Departure. The intertwining grants of these temporary forms of relief from deportation culminated in the creation of Liberian Refugee Immigration

¹ This memorandum acknowledges that, in order for a principal applicant to be eligible for LRIF, they must be a national of Liberia. See Section 7611 of the National Defense Authorization Act for Fiscal Year 2020, Pub. L. 116-92 (December 20, 2019).

² Sarah Left, *The Guardian*, *War in Liberia* (Aug. 4, 2003)

<https://www.theguardian.com/world/2003/aug/04/westafrika.qanda>; Reuters Staff, *Timeline: Liberia from Civil War Chaos to Fragile Hope* (Nov. 7, 2011).
<https://www.reuters.com/article/us-liberia-election-events/timeline-liberia-from-civil-war-chaos-to-fragile-hope-idUSTR7A62BN20111107>.

³ Reuters Staff, *Timeline: Liberia from Civil War Chaos to Fragile Hope* (Nov. 7, 2011)

<https://www.reuters.com/article/us-liberia-election-events/timeline-liberia-from-civil-war-chaos-to-fragile-hope-idUSTR7A62BN20111107>.

⁴ Human Rights Watch, *Liberia, A Human Rights Disaster – Violations of the Laws of War by All Parties to the Conflict* (Oct. 26, 1990) <https://www.hrw.org/reports/1990/liberia/>.

Fairness provisions. The fact that many of the Liberians targeted to benefit from LRIF fled a savage armed conflict and have documentary history that may be irregular due to the ravages of war should be constantly recognized when implementing the program.

As stated by Senator Jack Reed, primary sponsor of the LRIF law, this law was necessary because Liberians left their nation decades ago to escape danger and economic strife.⁵ Liberians living in the U.S. are making important economic and civic contributions to our communities and have been doing so since the civil war began to force them to flee their homeland in 1989.

Congress intended that eligibility for LRIF would be sweeping, generous and *mandatory*. This is evidenced by the clear language of the statute: “the Secretary shall adjust...” LRIF applicants. Almost all other adjustment to permanent residency statutes are discretionary, indicating the attorney general [USCIS or immigration judges] “*may* adjust” an eligible applicant.⁶ In addition, eligibility provisions for both Liberian applicants and their family members, the accelerated naturalization provisions of the law, all are much more generous than any other adjustment statutes. To fully realize Congressional intent, it is necessary that USCIS interpret LRIF to require generous and flexible adjudications, and that it is not permissible to add examiner “discretion” where the legislation clearly requires mandatory approval for all eligible applicants.

Notwithstanding consideration of the particular circumstances of this population, USCIS should also accept Liberian passports, expired or unexpired, as primary evidence of Liberian nationality because Liberian nationality law supports such a decision. Furthermore, similar legalization programs adjudicated and administered by USCIS have not required such onerous documentary evidence of nationality.

II. Liberian nationality law supports the proposition that a Liberian passport (expired or otherwise) is strong, primary evidence of valid Liberian nationality in most cases.

According to Chapter IV, Article 27 of the 1986 Liberian Constitution, Liberian citizenship is limited to those persons who qualify for citizenship by birth or by naturalization and are “Negroes or of Negro descent.”⁷ Any person with at least one Liberian citizen parent at the time of their birth outside of Liberia, shall also be considered a Liberian citizen, so long as they renounce other citizenships upon reaching the age of maturity.⁸

Part III, Chapter 20 of Liberia’s Alien and Nationality Law of 1973 further describes those who qualify for Liberian citizenship at birth:

- a. A person who is a Negro, or of Negro descent, born in Liberia and subject to the jurisdiction thereof;
- b. A person born outside Liberia whose father:
 - a. Was born a citizen of Liberia;
 - b. Was a citizen of Liberia at the time of the birth of such child; and
 - c. Had resided in Liberia prior to the birth of such child.⁹

⁵ United States Senator Jack Reed, <https://www.reed.senate.gov/issues/immigration> (2021).

⁶ See, e.g. INA 245(a) [general adjustment statute, including family and employment based applicants and VAWA violence against women act applicants]; 245(h) [special immigrant juvenile status adjustment applicants]; 245(j)[witness/informant re organized crime visa adjustment applicants]; 245(l)[“T” visa trafficking victim adjustment applicants]; 245(m)[“U” visa victim of crime adjustment applicants]; 209(b)[asylee adjustment applicants].

⁷ See Chapter IV, Article 27, https://www.constituteproject.org/constitution/Liberia_1986.pdf.

⁸ See Chapter IV, Article 28, https://www.constituteproject.org/constitution/Liberia_1986.pdf.

⁹ See Chapter 20, Section 20.1, <http://pul.org.lr/doc/Liberia%20Alien%20Law.pdf>.

We note that the Liberian Constitution, adopted in 1986, subsequent to the Liberian “Alien and Nationality Law,” clarifies that Liberian citizenship may be acquired at birth through *either* a father or mother.¹⁰

Further, a child who is a Liberian citizen according to subparagraph (b) above shall *lose* citizenship:

- a. Unless they have resided in Liberia before attaining the age of majority; or
- b. Unless the child takes the oath of allegiance to the Republic of Liberia before a Liberian consul between the age of majority and the age of 23.¹¹

Therefore, according to Liberian nationality law, persons who were issued a Liberian birth certificate or another document indicating that they were born in Liberia and who were then issued a Liberian passport, are *ipso facto* Liberian citizens without more. Those born outside of Liberia to a Liberian parent, who were subsequently issued a Liberian passport *after* the age of 23, are also nationals of Liberia under Liberian law, as they would have had to have taken the oath of citizenship prior to turning 23 years of age in order to be issued their passport at that time.

Thus, we recommend the following:

1. For applicants born in Liberia, USCIS should accept Liberian birth certificates OR expired or unexpired passports (which note place of birth as Liberia) issued at any age as primary evidence of Liberian nationality.
2. For applicants born outside of Liberia, expired or unexpired passports issued after the age of 23 for LRIF applicants as primary evidence of their Liberian nationality.
3. For applicants born outside of Liberia, who naturalized as Liberian citizens, proof of naturalization should be sufficient for USCIS.
4. For applicants born outside of Liberia, and who also possess an expired or unexpired passport issued *before* the age of 23, USCIS may request additional secondary, but not onerous, documentation of their Liberian nationality.

The only persons who appear to be “permanently ineligible” for Liberian citizenship are those who persons are born in Liberia but who are not “Negro or of Negro descent,” or those persons “Negro or of Negro descent” who were born outside of Liberia and did not have a Liberian citizen parent or could not naturalize under other applicable grounds.

III. Provisions in Liberian nationality law regarding the loss of citizenship or revocation of naturalization are not uniquely complex, and there is no longer any sweeping “automatic” loss or revocation of citizenship under Liberian law.

Similar to other countries, including the U.S., naturalized Liberian citizens may have their naturalization revoked under the following circumstances at the time of naturalization: the person procured naturalization using fraud or misrepresentation; the person was not eligible to naturalize; the person was not eligible to enter or reside in Liberia; the person was not of good moral character; the person was an anarchist or not attached to the principles of the Liberian Constitution; or the naturalization order was issued erroneously (with opportunity for correction).¹² Naturalized Liberian citizens may also have their naturalization revoked if they--at the time of naturalization--leave Liberia to reside in their country of origin for two years, or reside in any foreign country for five years. Such actions demonstrate

¹⁰“Any person, at least one of whose parents was a citizen of Liberia at the time of the Person's birth, shall be a citizen of Liberia[.]” See Chapter IV, Article 28, https://www.constituteproject.org/constitution/Liberia_1986.pdf.

¹¹ See Chapter 20, Section 20.1, <http://pul.org.lr/doc/Liberia%20Alien%20Law.pdf>.

¹² See Chapter 21, Subchapter C, Section 21.50-21.51, <http://pul.org.lr/doc/Liberia%20Alien%20Law.pdf>.

a lack of intention to reside permanently in Liberia at the time of filing for naturalization. Liberian law describes a process by which those threatened with revocation of their naturalization must receive notice and a hearing at which they can submit evidence in support of their stance.¹³

_____ Additionally, Liberian citizens may lose their citizenship by the performance of an act, similar to other countries. For example, Liberian citizens (by birth or naturalization) shall lose their citizenship if they: obtain citizenship in another country (except while under the age of 21); take an oath of allegiance to another country; serve in the armed forces of another country voluntarily; vote in a foreign political election; or formally renounce their Liberian citizenship before a Liberian consular officer in another country. Such loss may result from the performance of a Liberian citizen of any of the aforementioned acts, but such loss requires a formal proceeding by the Liberian government.¹⁴ Therefore, “automatic loss” of citizenship is no longer operational in Liberia.

IV. Other legal provisions adjudicated and administered by USCIS do not require such onerous documentary evidence of nationality.

A. Temporary Protected Status (TPS)

Many applicants for LRIF currently hold Deferred Enforced Departure (DED) status, and many previously held TPS for Liberia. As noted in previous advocacy letters, USCIS accepted Liberian birth certificates as evidence of Liberian nationality for TPS applicants. USCIS now posits that persons who last habitually resided in Liberia may have qualified for and received TPS for Liberia, and as such, a Liberian birth certificate alone is insufficient evidence of Liberian nationality for the purposes of LRIF. However, this is a misstatement of the TPS statute: persons eligible for TPS must be either a national of the designated country, or if the person has no nationality and/or is considered *stateless*, they may qualify if they last habitually resided in the designated country.¹⁵ Persons qualifying for TPS as stateless persons are extremely rare and should not be used to justify a higher burden of proof for the vast majority of principal LRIF applicants.

B. The Haitian Refugee Immigration Fairness Act of 1998 (HRIFA)

The HRIFA, a similar legalization provision to LRIF, required that principal applicants be nationals of Haiti. Regulations promulgated at that time accepted a Haitian birth certificate or another record of birth as proof of both identity and Haitian citizenship,¹⁶ unless the applicant indicated they had become a Haitian citizen other than by birth in Haiti--in that case, an applicant could submit a Haitian certificate of naturalization or citizenship.¹⁷ It is noteworthy that at the time, the 1987 Haitian Constitution required not only an individual’s birth in Haiti, *but also* a native-born Haitian parent for acquisition of citizenship at birth, which is not required by Liberia. The loss or revocation of citizenship could occur via typical provisions such as naturalizing in another country.¹⁸

¹³ See Chapter 21, Subchapter C, Section 21.53(2), <http://pul.org.lr/doc/Liberia%20Alien%20Law.pdf>.

¹⁴ *Jalloh v. King-Akerele et al*, Supreme Court of the Republic of Liberia, December 23, 2019, (finding unconstitutional section 22.2 of Liberia’s Aliens and Nationality Law which allowed for revocation of citizenship for actions specified under section 22.1 without due process), available at <https://frontpageafricaonline.com/wp-content/uploads/2019/12/Suprme-Court-of-Liberia-Ruling-on-Dual-Citizenship-Alvin-Teage-Jalloh-Case.pdf>; see also Arafat Ibnul Bashar, Jindal Global Law Review, *On automatic loss of citizenship: Looking into the Alvin Teage Jalloh v Olubanke King-Akerele case through the lens of international law*, available at <https://link.springer.com/article/10.1007/s41020-021-00138-5>.

¹⁵ See U.S. Code, Section 1254(a).

¹⁶ 8 C.F.R. Section 1245.15(h)(3)(i).

¹⁷ 8 C.F.R. Section 1245.15(h)(6).

¹⁸ Title II, Articles 10-13, <https://pdba.georgetown.edu/Constitutions/Haiti/haiti1987.html>.

C. *Nicaraguan Adjustment and Central American Relief Act (NACARA)*

NACARA, at the time of its passage, extended special rule cancellation of removal to not only Central American nationals but to nationals of the former Soviet Union, Latvia, Estonia, Lithuania, Poland, Czechoslovakia, Romania, Hungary, Bulgaria, Albania, East Germany, Yugoslavia, or any state of the former Yugoslavia at the time of their application for NACARA (among other requirements).¹⁹ No specific proof of nationality was required by regulation at the time, or is required presently.²⁰

V. **Conclusion**

Current LRIF evidentiary requirements for Liberian nationality which were promulgated under the last administration are overly burdensome, appear to have been designed to limit eligibility and discourage applicants, as well as appear to require applicants to prove a negative to USCIS: that they have not lost their Liberian citizenship or had their naturalization revoked. Liberian nationality law in actual fact supports the repeated recommendation that USCIS should accept expired Liberian passports, in conjunction with Liberian birth certificates or other records of birth, as primary evidence of Liberian nationality for the purposes of LRIF. The same is true for expired passports issued after the age of 23. Easing such documentary requirements is both within the spirit of the law and Congressional intent, given that LRIF is a statute granting mandatory relief for those who are deemed eligible. Further, easing such requirements is responsive to current events (most notably the ongoing COVID-19 pandemic) as well as the past events that have led to decades of immigration relief for Liberian nationals living in the U.S. We strongly recommend that USCIS amend the Policy Manual for LRIF regarding nationality requirements in the style of the TPS statute under 8 C.F.R. Section 244.9.²¹ We recommend that USCIS amend the Policy Manual to include a list of documents, in descending order of preference, through which a LRIF applicant can present evidence of their nationality: passport (current or expired), birth certificate, certificate of naturalization, government attestations and letters, affidavits of witnesses, and more.

¹⁹ Pub. L. 105-100, Section 203 (November 19, 1997).

²⁰ 8 C.F.R. Section 240.61, 240.64.

²¹ 8 CFR Section 244.9:

a) Documentation. Applicants shall submit all documentation as required in the instructions or requested by the Service. The Service may require proof of unsuccessful efforts to obtain documents claimed to be unavailable. If any required document is unavailable, an affidavit or other credible evidence may be submitted.

(1) Evidence of identity and nationality. Each application must be accompanied by evidence of the applicant's identity and nationality, if available. If these documents are unavailable, the applicant shall file an affidavit showing proof of unsuccessful efforts to obtain such identity documents, explaining why the consular process is unavailable, and affirming that he or she is a national of the designated foreign state. A personal interview before an immigration officer shall be required for each applicant who fails to provide documentary proof of identity or nationality. During this interview, the applicant may present any secondary evidence that he or she feels would be helpful in showing nationality. Acceptable evidence in descending order of preference may consist of:

- (i) Passport;
- (ii) Birth certificate accompanied by photo identification; and/or
- (iii) Any national identity document from the alien's country of origin bearing photo and/or fingerprint.