



# A NEW REMEDY FOR LIBERIANS

## *The Liberian Refugee Immigration Fairness Act (LRIF)*

By Peggy Gleason and Ann Block

Good news for immigrants in the United States is almost nonexistent these days, so the passage of the Liberian Refugee Immigration Fairness (LRIF) act this December 2019 comes as a very welcome surprise. The new law amends the Immigration and Nationality Act (INA), and provides a path to permanent residence for many Liberians living in the United States.

Enacted on December 20, 2019, this new law opened a one-year window that will allow many Liberians living in the United States to apply for permanent residence. The Liberian Refugee Immigration Fairness act was buried in Section 7611 of the National Defense Authorization Act for Fiscal Year 2020. LRIF received strong support from senators in Minnesota and Rhode Island, two states with the largest Liberian populations in the United States.<sup>1</sup> This practice advisory will provide a summary of the law, which went into effect immediately and will only allow applications for relief up to December 20, 2020. The practice advisory will also provide some background on Liberian populations and where they reside in the United States.

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.<sup>2</sup>

Liberia has a special history of close relationship with the United States. Many Liberians have relatives in the United States, and they are English-speaking. Some Liberians are Americo-Liberians, that is, emancipated slaves who immigrated to Liberia, while others are members of ethnic and language groups that are native to Liberia.

## I. Eligibility

The new law allows certain Liberians living in the United States to apply for permanent residence during the one-year application period. Since there are no implementing regulations, and the law became effective immediately, this summary is based on the statutory language.

<sup>1</sup> New York Times, *U.S. Citizenship Path for Thousands of Liberians Tucked in Spending Bill* (Dec. 18, 2019) <https://www.nytimes.com/reuters/2019/12/18/world/africa/18reuters-usa-defense-congress-liberia.html>.

<sup>2</sup> TPS for Liberians was terminated effective May 21, 2017, 81 Fed. Reg. 66059 (Sept. 26, 2016). DED for Liberians allowed eligible persons to apply for employment authorization during a wind-down period that is set to expire on March 30, 2020, 84 Fed. Reg. 13059 (Apr. 3, 2019).

The Act contains strong language in favor of applicants, starting with the mandatory language that, barring a few enumerated exceptions, the Secretary (of DHS) “shall adjust” the eligible Liberians who apply during the one-year window. This language differs significantly from most other adjustment provisions in the Immigration and Nationality Act (INA), under INA § 245, such as INA §§ 245(a)(family and employment immigrants), 245(i), 245(l)(“T” visa holders) and 245(m)(“U” visa holders), which provide that such applicants “may” be allowed to adjust, subjecting such applications ultimately to the discretion of USCIS adjudicators. No discretion is allowed in this new law which mandates adjustment if the applicant is eligible.<sup>3</sup>

There are only three specific exclusions from eligibility, for those convicted of an aggravated felony, persecutors of others, and those who have been convicted of two or more crimes involving moral turpitude (other than a purely political offense).<sup>4</sup>

### A. Continuous Presence Since November 20, 2014 for Principal Applicants

The law allows a national of Liberia who has been “continuously present” in the United States from November 20, 2014 up to the date of submitting an application, or who is the spouse, child or unmarried son or daughter of such a person, to apply for permanent residence. Thus, the dependent family members do not need to demonstrate continuous presence. Only the principal applicant has that requirement.<sup>5</sup>

**Example:** Mr. Nimely is a Liberian citizen who arrived in Washington, D.C. as a university student in 2013. His wife joined him in the United States in 2016. Mr. Nimely has never left the country since his 2013 arrival. He can present documentation of Liberian citizenship, such as a passport, and of his continuous presence since November 20, 2014 up to the time of filing for adjustment to qualify under the new law. His wife needs to document her legal marriage to Mr. Nimely, and her Liberian citizenship, but she does not have the requirement of showing continuous presence in the United States since November 20, 2014.

The requirement of ‘continuous physical presence’ is described in the negative: an applicant will not be considered to have *failed* to maintain physical presence based on one or more absences from the United States for one or more periods amounting, in the aggregate, to not more than 180 days. Thus, absences since November 20, 2014 that add up to less than six months should not be an obstacle to eligibility.

Lacking any implementing regulations, it might be argued from other parts of the INA that there should be some exceptions to disruptions of continuous presence by absences that exceed 180 days in the aggregate. Examples of exceptions to specific continuous presence and continuous residence requirements are found throughout the Immigration and Nationality Act (INA). An analogous provision would be the 1986 legalization provisions in the Immigration Reform and Control Act (IRCA), which also required “continuous physical presence”<sup>6</sup> and “continuous residence,”<sup>7</sup> applicable to specific periods of time, but “brief, casual and innocent” absences were excepted by the

<sup>3</sup> National Defense Authorization Act for Fiscal Year 2020, Section 7611 (b)(1). Liberian Refugee Immigration Fairness (Dec. 20, 2019), available at <https://www.congress.gov/116/bills/s1790/BILLS-116s1790enr.pdf>.

<sup>4</sup> *Id.* § 7611 (b)(3).

<sup>5</sup> *Id.* § 7611 (c)(1)(A)(i)-(ii), (B).

<sup>6</sup> INA § 245A(a)(3)(A)-(B).

<sup>7</sup> INA §§ 245A(a)(2)(A).

statute.<sup>8</sup> For legalization, the implementing regulations set out acceptable time periods for absences,<sup>9</sup> and then added a further exception for “emergent reasons” if the person could establish that their “return to the United States could not be accomplished within the time period allowed.”<sup>10</sup> Similar provisions restricting absences but providing “emergent reasons” exceptions are found in the regulations implementing the Legal Immigration Family Equity (LIFE) Act enacted in 2000.<sup>11</sup> In addition, the Temporary Protected Status (TPS) statute also requires “continuous residence” from a date certain established by DHS, but provides for “brief, casual and innocent” absences or an absence “due merely to a brief temporary trip abroad required by emergency or extenuating circumstances outside the control” of the TPS applicant.<sup>12</sup>

It is unclear what type of documentation USCIS will require to prove continuous presence because there is no implementing regulation. It may be useful to consult the regulations that applied during legalization (IRCA) describing proof of continuous residence.<sup>13</sup> Past employment records, utility bills, school records, medical records, attestations by churches and community organizations, money order receipts, passport entries, birth certificates of children born in the United States, letters received in the United States, bank records, social security or selective service records, car registration and records, receipts or real estate documents, tax records, insurance records, or “any other relevant document” including sworn statements by landlords, neighbors and others, were all ways of proving continuous residence during IRCA, and could also apply to the continuous physical presence requirement for Liberians applying under the Liberian Refugee Immigration Fairness program.

## B. Must be Admissible but Public Charge and Unlawful Entry Do Not Apply

When applying for permanent residence under this program, not all the grounds of inadmissibility will apply. The law exempts applicants from inadmissibility under INA §212(a)(4) for public charge, §212 (a)(5) for lack of labor certification, §212 (a)(6)(A) for being present without admission or parole, and §212 (7)(A) for failure to possess a valid entry document.<sup>14</sup> The most important exemptions here are for public charge and unlawful entry or presence, which likely will impact the greatest number of applicants.

**Example:** Ms. Washington came to Philadelphia as a tourist from Liberia in 2012. Her visa expired in 30 days. She hasn’t been able to travel and has never left the United States. She has been unemployed for the past six months and has been relying on relatives for support. She can apply for the Liberian Refugee Immigration Fairness program despite her overstaying her visa and her unlawful presence. She also doesn’t have to be screened for public charge inadmissibility.

While the statute does not mention waivers of inadmissibility, the USCIS web page instructions make clear that if any ground of inadmissibility does apply to a Liberian adjusting under this program, and the law normally allows for

<sup>8</sup> INA §§ 245A(a)(3)(B); see also 8 CFR § 245.1(f).

<sup>9</sup> 8 CFR §§ 245a.1(c)(1)(i) and (c)(2). Absences of forty-five (45) days for a single absence and 180 days in the aggregate prior to adjustment to temporary residence, and 30/90 after achieving temporary residence and prior to adjustment to permanent residence, were specifically excepted from “continuous residence” requirements. An exception to the “continuous presence” requirement, which in turn refers to the “continuous residence” requirements and exceptions is found in 8 CFR § 245.1(g), and continuous presence requirements.

<sup>10</sup> 8 CFR §§ 245a.1(c)(1)(i)-(iii) and (c)(2).

<sup>11</sup> 8 CFR § 245a.15(c). Note that 8 CFR § 245a.16 provides further instruction as to the “continuous physical presence” required for the time period after LIFE Act legalization was enacted and has no specific time period restrictions for absences, only that they be “brief, casual and innocent.” The regulations defined “brief, casual and innocent” in this section as “temporary, occasional trips abroad as long as the purpose of the absence from the United States was consistent with the policies reflected in the immigration laws of the United States.”

<sup>12</sup> INA §§ 244(c)(4)(B).

<sup>13</sup> 8 CFR §245a.2(d)(3) lists possible documentation that could be used to establish continuous residence for IRCA applicants.

<sup>14</sup> National Defense Authorization Act for Fiscal Year 2020, § 7611 (b)(2). Liberian Refugee Immigration Fairness (Dec. 20, 2019).

a waiver for adjustment applicants in that category, such waivers will be available to the Liberian applicants as well.<sup>15</sup>

### C. Eligibility for Those in Removal Proceedings or with Prior Orders

The law allows eligible Liberian nationals to apply for permanent residence notwithstanding a prior order of removal, deportation, exclusion or voluntary departure and specifically states that applicants shall not be required to file any separate motion to reopen such prior orders.<sup>16</sup> There is also a specific prohibition of removal provided for anyone who has a pending application for adjustment under the Liberian Refugee Fairness program who is in removal or deportation proceedings, although an applicant can be ordered removed if the adjustment application is ultimately denied.

The law provides that DHS shall establish regulations whereby an applicant who is subject to removal can apply for a formal stay of removal.<sup>17</sup> Those who presently have final orders should be able to apply now for a stay of removal, based upon the statutory language, after or concurrently upon submitting the application for adjustment of status, even before regulations are promulgated. Because the statutory language and Congressional intent is quite clear in that the government “may not order an alien to be removed” if in proceedings, practitioners should argue that those with present final removal, deportation or exclusion orders, whether or not detained, should be allowed time to submit applications for adjustment, even without an approved stay of removal. However, in these situations, it would be wise to submit a skeletal application immediately, to obtain a receipt or even proof of courier submission and/or delivery to provide to ICE with a copy of the LRIF adjustment application and a request for a stay.

## II. Appeals

While the statute has a section entitled “availability of administrative review,” it provides for the “same right” to administrative review as provided to applicants for adjustment under INA § 245 and those subject to removal under INA § 240. Since there is no administrative review provided to § 245 applicants, these applications cannot be appealed to the USCIS Administrative Appeals Office (AAO) or Board of Immigration Appeals (BIA) directly, but rather are reviewable in removal proceedings by the immigration judge.<sup>18</sup> The statute precludes judicial review of LRIF decisions by federal courts.<sup>19</sup>

## III. Procedure

Eligible Liberians should apply for the program by submitting an I-485, Application to Register Permanent Residence or Adjust Status by December 20, 2020. Applicants should include documents demonstrating that they are a national of Liberia, have been continuously present from November 20, 2014 to the date of filing the I-485, and that they are otherwise eligible for an immigrant visa.

The spouse, unmarried child under 21, or unmarried son or daughter over 21 of a principal applicant does not need to include proof of their own continuous presence but must include proof of the qualifying family relationship. USCIS

<sup>15</sup> USCIS, Liberian Refugee Immigration Fairness, <https://www.uscis.gov/green-card/other-ways-get-green-card/liberian-refugee-immigration-fairness> (Dec. 26, 2019).

<sup>16</sup> National Defense Authorization Act for Fiscal Year 2020, § 7611(b)(4)(A)-(B) Liberian Refugee Immigration Fairness (Dec. 20, 2019).

<sup>17</sup> *Id.* § 7611(d)(1)-(2).

<sup>18</sup> *Id.* § 7611(f).

<sup>19</sup> *Id.* § 7611(g).

specifically states that adjustment applicants who have an inadmissibility issue that is waivable can submit a waiver, “or other form of relief.”<sup>20</sup>

There are instructions on the USCIS website that direct applicants to indicate on their Form I-485, Part 2, under “other eligibility,” Item number 1.g, “LRIF” for Liberian Refugee Immigration Fairness. In addition, applicants filing for employment authorization should indicate “(c)(9)” for the eligibility category on Part 2, Item number 27 on the form I-765.<sup>21</sup> The law specifies that DHS shall authorize employment for Liberian adjustment applicants whose applications are pending for longer than 180 days.<sup>22</sup> Liberians with pending adjustment applications under the program are eligible to apply for advance parole if they need to travel abroad.<sup>23</sup>

LRIF applicants should be eligible for a fee waiver of adjustment, since the USCIS regulations and website instructions for I-912 fee waivers state that the I-485 fee may be waived for an eligibility category that is exempt from the public charge grounds of inadmissibility.<sup>24</sup> The related applications of I-765 and I-131 are also listed in USCIS instructions as eligible for a fee waiver.<sup>25</sup>

#### IV. Liberians in the United States

Liberian population estimates in the United States vary: The U.S. Census Bureau’s American Community Survey for 2013-2017 counted the Liberian population in the United States at 83,000.<sup>26</sup> Liberian American organizations estimate that the figure could be much higher, between 250,000 and 500,000.<sup>27</sup> Many Liberians have mixed households with some U.S. born members who are U.S. citizens, and other relatives who were born in Liberia and are Liberian citizens. While historically many Liberians came to the United States as students, political upheaval and a military coup in 1980 brought a wave of refugees to the United States. The fourteen-year long civil war beginning in 1989 brought thousands more here.<sup>28</sup>

The Liberian population in the United States is numerous in Minnesota, where approximately 12,000 Liberians live in the Minneapolis - St. Paul area, as well as and Brooklyn Park and Brooklyn Center, two cities just north of Minneapolis.<sup>29</sup> The New York metro area is estimated to have the largest east coast population of Liberians, while several thousand Liberians also reside in Providence and Pawtucket, Rhode Island.<sup>30</sup> Pennsylvania’s Liberian

<sup>20</sup> USCIS, Liberian Refugee Immigration Fairness, <https://www.uscis.gov/green-card/other-ways-get-green-card/liberian-refugee-immigration-fairness> (Dec. 26, 2019).

<sup>21</sup> USCIS, I-485 Special Instructions, <https://www.uscis.gov/i-485> (accessed Jan. 1, 2020).

<sup>22</sup> National Defense Authorization Act for Fiscal Year 2020, § 7611(d)(3) Liberian Refugee Immigration Fairness (Dec. 20, 2019).

<sup>23</sup> USCIS, Liberian Refugee Immigration Fairness, <https://www.uscis.gov/green-card/other-ways-get-green-card/liberian-refugee-immigration-fairness> (Dec. 26, 2019).

<sup>24</sup> USCIS, I-912 Instructions, <https://www.uscis.gov/i-912> (accessed Jan. 2, 2020), 8 CFR §103.7 (c)(4).

<sup>25</sup> USCIS, I-912 Instructions, <https://www.uscis.gov/i-912> (accessed Jan. 2, 2020).

<sup>26</sup> Migration Policy Institute tabulation of data from the U.S. Census Bureau's pooled 2013-2017 American Community Survey. <https://www.migrationpolicy.org/programs/data-hub/charts/us-immigrant-population-state-and-county?width=1000&height=850&iframe=true> (accessed Jan. 1, 2020).

<sup>27</sup> International Institute of Minnesota, <https://iimn.org/publication/finding-common-ground/minnesotas-refugees/africa/liberians/> (accessed Jan. 1, 2019) and Ken R. Wells, *Liberian Americans*, <https://www.everyculture.com/multi/Le-Pa/Liberian-Americans.html> (accessed Jan. 1, 2020).

<sup>28</sup> Macalester College, *A History of Liberia, its Conflicts and Diaspora*, <https://sites.google.com/a/macalester.edu/refugees/liberians> (accessed Jan. 1, 2020).

<sup>29</sup> *Id.*

<sup>30</sup> Migration Policy Institute tabulation of data from the U.S. Census Bureau's pooled 2013-2017 American Community Survey. <https://www.migrationpolicy.org/programs/data-hub/charts/us-immigrant-population-state-and-county?width=1000&height=850&iframe=true> (accessed Jan. 1, 2020).

population in Philadelphia and the Delaware Valley is estimated as 12,000, and another 7,000 Liberians live in the Baltimore-Washington, D.C. area.<sup>31</sup> 4,000 Liberians are estimated to live in Texas, concentrated in the Dallas-Fort Worth area.<sup>32</sup> Other significant populations of Liberians in the U.S. are found in New Jersey, North Carolina, Georgia, Boston, Massachusetts and California, where the population is primarily located in Los Angeles, the San Francisco Bay Area, Stockton and Vallejo.<sup>33</sup>

## V. One Year Application Period Ends December 20, 2020

The Liberian Refugee Fairness law only allows for acceptance of applications during the one-year window ending on December 20, 2020. Since there was no lead-in or public engagement on the program by USCIS, non-profit and community based organizations, community advocates and attorneys will need to do everything possible to let the public know about the existence of the program and ensure that all eligible applicants come forward.

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<sup>31</sup> At least 7000 Liberians reside in Maryland, with 2000 of those people living in Montgomery County. Migration Policy Institute tabulation of data from the U.S. Census Bureau's pooled 2013-2017 American Community Survey. <https://www.migrationpolicy.org/programs/data-hub/charts/us-immigrant-population-state-and-county?width=1000&height=850&iframe=true> (accessed Jan. 1, 2020).

<sup>32</sup> Migration Policy Institute tabulation of data from the U.S. Census Bureau's pooled 2013-2017 American Community Survey. <https://www.migrationpolicy.org/programs/data-hub/charts/us-immigrant-population-state-and-county?width=1000&height=850&iframe=true> (accessed Jan. 1, 2020).

<sup>33</sup> International Institute of Minnesota, <https://iimn.org/publication/finding-common-ground/minnesotas-refugees/africa/liberians/> (accessed Jan. 1, 2019) and Ken R. Wells, *Liberian Americans*, <https://www.everyculture.com/multi/Le-Pa/Liberian-Americans.html> (accessed Jan. 1, 2020).



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