



LIBERIAN REFUGEE IMMIGRATION FAIRNESS ACT (LRIF)

One-Year Program Stymied by USCIS Delays and Public Health Crisis

By Peggy Gleason and Victor Valdez Gonzalez

I. Background – LRIF in a Year of Agency Chaos

Liberian Refugee Immigration Fairness (LRIF) is a special immigration program that Congress passed for certain Liberians in the United States. The law was enacted and USCIS immediately opened a one-year application period on December 20, 2019.¹ LRIF was buried in Section 7611 of the National Defense Authorization Act for Fiscal Year 2020.² Legislators had pursued this remedy for years as a long-term solution for a population with strong historical ties to the United States. Since the late 1980s, thousands of Liberians, many of whom had origins and relatives in the United States, fled here to escape a civil war. Although temporary legal permission had been granted to some Liberians, a permanent avenue to legal status was not widely available until the passage of LRIF.³

See our practice advisory from January 2020 for more on the basic eligibility for LRIF.⁴ The current practice advisory will update applicants on the changes in interpretation of LRIF since its inception. We also discuss the administrative guidance, advocacy efforts, and hurdles to the application process to date.

Not only did USCIS not do outreach to the public about LRIF but also no implementing regulations have been published seven months into the one-year application period. Additionally, USCIS waited until April 2020 to publish any detailed information in its policy manual to guide adjudicators and applicants.⁵ Advocates have questioned USCIS's interpretations of the LRIF statute, finding that the policy manual imposed restrictions and limited eligibility for Liberians and their family members that were not part of the statute.⁶

By the time administrative guidance was issued in April 2020, COVID-19 gripped the United States and USCIS public offices had been closed for a month.⁷ A partial reopening of USCIS began on June 4, 2020, but as the public health crisis continues operations are hampered by the need for social distancing and limited numbers.⁸

By late June 2020, USCIS announced that it has a \$2.1 billion shortfall, and it issued furlough notices of 30-90 days in duration for 13,400 employees—70% of the overall staff of the agency. USCIS sent the furlough notices to employees to take effect on August 3, 2020. The agency claimed that a shortfall in application receipts was a result of the COVID-19 crisis at that time. By late July, application receipts had improved, but despite that increase in revenue and a surplus of funds, the agency announced that it was proceeding with furloughs on July 22, 2020.⁹ A few days later, USCIS relented temporarily, delaying the furloughs until at least

September 2020.¹⁰ Should the furloughs take effect, they will bring adjudications and interviews, including those under LRIF, to a crashing halt.¹¹ Even if furloughs are ultimately avoided, USCIS's erratic management of employees and the agency's budget has severely damaged morale and efficiency.

Amid this chaos, Liberians have been trying to prepare applications for LRIF, but they are facing a public health crisis and its limitations as well as an agency in meltdown.¹² The statute requires applicants to submit their LRIF application by December 20, 2020, or the opportunity to apply evaporates.

Preparing an LRIF application, let alone submitting it to an agency that cannot decide if it is open for service, will be an insurmountable task for many Liberians who are eligible under the new program. A recent study of USCIS data shows that only 1,177 persons had filed for LRIF by April 2020¹³ although various experts estimate the eligible Liberian population in the United States to be at least 10,000 primary applicants, not counting their eligible spouses and children.¹⁴

II. LRIF Basics

LRIF mandates that USCIS “shall adjust” eligible Liberians and their eligible family members, making them permanent residents if they can meet the basic criteria. The language “shall adjust” is starkly different from the usual statutory language from INA §245 adjustment, which specifically allows agency discretion by stating that USCIS “may adjust” eligible individuals. The LRIF's mandatory language is an overriding factor in its implementation which requires that doubts be construed in favor of the immigrant.¹⁵

LRIF is a streamlined statute, only requiring a few criteria for eligibility. A Liberian national is eligible if they meet two requirements. First, they must have been continuously physically present in the United States since November 20, 2014 (with absences in the aggregate of 180 days or less not breaking continuous physical presence). Second, they must be admissible under INA §212(a) or be eligible for a waiver. The following inadmissibility grounds, however, will not apply: public charge, present without admission or parole, labor certification, and documentation requirements.¹⁶ There are a few outright bars to LRIF: aggravated felony conviction, two or more convictions for crimes involving moral turpitude; and participating in the persecution of others.¹⁷

Family members of the eligible Liberian described above may also apply for permanent residence through LRIF and have even fewer statutory requirements. For instance, the spouse and unmarried child, son or daughter can apply even without being a Liberian national, and they are not required to have been continuously present since November 20, 2014.¹⁸

By statute, LRIF requires that an eligible individual “applies for adjustment not later than one year after the date of the enactment of this Act,”¹⁹ which established the one-year application period.

III. USCIS Policy Manual on LRIF

There are no USCIS regulations on LRIF. USCIS only had brief instructions for applicants on its webpage when LRIF began on December 20, 2019.²⁰ After the COVID-19 health crisis closed down USCIS offices, USCIS finally issued some detailed administrative guidance in its online policy manual on its implementation of LRIF eligibility.²¹ The policy manual was effective on publication but solicited comments. Several provisions of LRIF were interpreted very narrowly, imposing requirements that were not clearly contained in the statute,

especially the eligibility of family members, the documentation requirements, and the closure of the application period.²² These are discussed below.

IV. Rollback of Adjustment Date – Accelerated Eligibility for Naturalization

There is a rollback effect of LRIF adjustment such that a Liberian who becomes a lawful permanent resident under LRIF can backdate their residence status to their earliest arrival date in the United States from which the applicant established U.S. residence; or November 20, 2014, if the applicant cannot establish residence earlier.

Additionally, an eligible family member can rollback their admission date for permanent residence to their earliest arrival date in the United States from which the family member establishes residence in the United States; or the receipt date of the applicant's adjustment application, whichever is earlier.²³

The rollback of adjustment date will make many successful LRIF applicants immediately eligible for naturalization, as they will have acquired the necessary five years of permanent residence upon approval of their LRIF application..

V. Eligibility of Family Members

Under LRIF, spouses and unmarried children (of any age, to include sons and daughters) of an eligible Liberian are also eligible for LRIF. As noted above, the family member must be admissible under the same grounds and with the same exemptions as the Liberian applicant. The family member, however, need not be a Liberian national, nor do the family members have to have continuous physical presence since November 20, 2014, as do the Liberian applicants.²⁴

According to the USCIS Policy Manual, the family member must apply with or after the spouse or parent and is further limited by needing to demonstrate the continued relationship on the date of filing and on the date of adjudication of the family member's adjustment application. Also, the family member can only remain eligible for LRIF so long as the Liberian remains a lawful permanent resident.²⁵ These limitations are not in the statute, and given the mandatory "shall adjust" language of LRIF, USCIS has created barriers to permanent residence for family members that are *ultra vires*, or exceeding the language of the statute.

The LRIF language is marvelously simple, and does not describe family members as derivatives:

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).

The LRIF statute does not describe family members as only being able to apply with or after the Liberian applicant, which would be the procedure for derivatives in the Immigration and Nationality Act (INA), but USCIS appears to be imposing derivative limitations on the LRIF family members. There is no language about

“accompanying or following to join” which would designate a derivative, as in sections of the INA that deal with family categories of immigrants.²⁶

VI. Documentation Requirements

The USCIS Policy Manual describes in great detail the documentation that the LRIF applicant should submit with their adjustment application, including documentation of citizenship and continuous physical presence.²⁷ The manual states that an unexpired Liberian passport or Liberian certificate of naturalization may prove Liberian nationality, but does not offer other alternative documentation, including expired Liberian passports.

Many persons eligible for LRIF have been in the United States for decades, having fled their country when the civil war exploded beginning in 1989-1990, and if they had a passport at the time, they had little reason to renew it once they arrived in the United States. Passport renewals are not easily or quickly obtainable during the pandemic era.

VII. LRIF Application Period

According to the USCIS Policy Manual, the application window for LRIF ends on December 20, 2020, by showing that the agency or the USCIS Lockbox has received it on or before that date. This interpretation unnecessarily shortens the application window. Instead, USCIS could interpret the end of the application period to be for applications postmarked on or before December 20, 2020, as was recently done when USCIS implemented its new public charge rule.²⁸

VIII. Application Delays

Despite the generous eligibility provisions of LRIF, only a fraction of the eligible applicants have filed to date. Hampered by USCIS delays, a public health crisis, and a lack of outreach, only 1,177 applications had been filed by Liberians for LRIF from December 2019 through April 17, 2020.²⁹ The estimated number of eligible Liberians is 10,300, based on an analysis of USCIS and Census data.³⁰ The spouses and children would represent additional numbers of applications.

IX. Advocacy for Extension of Application Deadline and More USCIS Outreach

The congressional intent in passing LRIF was to provide a permanent remedy to a population that has a long history of close involvement with the United States, from the first settlement of Liberia to present times, when Liberians frequently have family, education, and employment connections the United States. That intent will be frustrated if Congress does not extend the application period beyond the current December 20, 2020 expiration date. In addition, USCIS needs to perform extensive outreach and education by holding public teleconferences and stakeholder engagements on a weekly basis from now until the end of the application period.

X. Resources

- Section 7611 of the National Defense Authorization Act for FY 2020 is the statute for LRIF [https://www.congress.gov/bill/116th-congress/senate-bill/1790#:~:text=%2F17%2F2019\),National%20Defense%20Authorization%20Act%20for%20Fiscal%20Year%202020,provided%20in%20subsequent%20appropriations%20legislation.](https://www.congress.gov/bill/116th-congress/senate-bill/1790#:~:text=%2F17%2F2019),National%20Defense%20Authorization%20Act%20for%20Fiscal%20Year%202020,provided%20in%20subsequent%20appropriations%20legislation.)
- USCIS Policy Manual (PM), 7 USCIS-PM P.(5) <https://www.uscis.gov/policy-manual/volume-7-part-p-chapter-5.>
- Executive Office for Immigration Review (EOIR) Policy Memo, *Section 7611 of the National Defense Authorization Act of 2020, Public Law 116-92* (Jan. 13, 2020).

In addition to government resources, several organizations have written papers about LRIF:

- Immigrant Legal Resource Center, *A New Remedy for Liberians* (Jan. 2020). https://www.ilrc.org/sites/default/files/resources/liberian_refugee_imm_fairness_act_jan_2020-1.15.pdf.
- Don Kerwin & Mike Nicholson, *The Liberian Refugee Immigration Fairness Program: Estimates of the Potentially Eligible*, Center for Migration Studies (June 12, 2020). This study of USCIS and Census data shows that more than 10,000 people may be eligible for LRIF, in addition to an uncounted number of spouses and children. [https://cmsny.org/the-liberian-refugee-immigration-fairness-program-estimates-of-the-potentially-eligible/.](https://cmsny.org/the-liberian-refugee-immigration-fairness-program-estimates-of-the-potentially-eligible/)
- The TPS Advocacy Working Group and African Communities Together, *Failing our Liberian Neighbors: Eligibility and Application Rates Under Liberian Refugee Immigration Fairness* (June 2020). <https://cliniclegal.org/resources/humanitarian-relief/liberian-refugee-immigration-fairness-lrif/report-failing-our.>

There is a coalition of organizations advocating for an application extension and for fair implementation of LRIF, and a listserv exists where practitioners share information. You can sign up for the LRIF experts listserv and learn the latest developments by emailing advocacy@cliniclegal.org with LRIF List in the subject line.

For questions about this advisory contact pgleason@ilrc.org.

End Notes

- ¹ National Defense Authorization Act for Fiscal Year 2020, Public Law 116-92, Section 7611(b)(1) Liberian Refugee Immigration Fairness (Dec. 20, 2019) available at [https://www.congress.gov/bill/116th-congress/senate-bill/1790#:~:text=%2F17%2F2019\)-,National%20Defense%20Authorization%20Act%20for%20Fiscal%20Year%202020,provided%20in%20subsequent%20appropriations%20legislation.](https://www.congress.gov/bill/116th-congress/senate-bill/1790#:~:text=%2F17%2F2019)-,National%20Defense%20Authorization%20Act%20for%20Fiscal%20Year%202020,provided%20in%20subsequent%20appropriations%20legislation.)
- ² Ted Hesson, *U.S. Citizenship Path for Thousands of Liberians Tucked into Spending Bill*, Reuters (Dec. 18, 2019).
- ³ Temporary Protected Status (TPS) for Liberians terminated on May 21, 2017, 81 Fed. Reg. 66059 (Sept. 26, 2016). Deferred Enforced Departure (DED) provided a wind-down period when employment authorization was possible, but that has a final extension to January 10, 2021. See USCIS, *DED Granted Country Liberia*, <https://www.uscis.gov/humanitarian/ded-granted-country-liberia> (updated Apr. 7, 2020).
- ⁴ ILRC, *A New Remedy for Liberians, The Liberian Refugee Immigration Fairness Act (LRIF)* (Jan. 2020) https://www.ilrc.org/sites/default/files/resources/liberian_refugee_imm_fairness_act_jan_2020-1.15.pdf.
- ⁵ USCIS, *Policy Alert, Liberian Refugee Immigration Fairness* (Apr. 7, 2020) <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20200407-LRIF.pdf> announcing the publication of USCIS's LRIF guidance in 7 USCIS-Policy Manual (USCIS-PM) P.5.
- ⁶ See Comments on USCIS Policy Manual (May 7, 2020) from eight national immigration organizations, available at https://www.ilrc.org/sites/default/files/resources/final_lrif_pm_comment_from_organizations_7_may_2020.pdf.
- ⁷ See USCIS, *USCIS Office Closures* (updated July 22, 2020) <https://www.uscis.gov/about-us/uscis-office-closings>.
- ⁸ *Id.* Partial reopening of some, but not all, USCIS offices began on June 4, 2020. However, many essential services such as Application Support Centers, where the agency performs required biometrics for benefits applicants, remained closed at least until July 27, 2020. Information on closings changes rapidly, and USCIS advises applicants to check daily whether offices remain open even when they are scheduled for an appointment.
- ⁹ See Nicole Ogrysko, *Furlough Notices Arrive for Some 13,400 USCIS Employees*, Federal News Network (June 29, 2020) <https://federalnewsnetwork.com/workforce/2020/06/furlough-notices-arrive-for-some-13400-uscis-employees/> and Eric Katz, *Homeland Security Moves Forward With 13,000 Furloughs Despite Its Improving Financial Situation*, Government Executive (July 21, 2020) <https://www.govexec.com/workforce/2020/07/homeland-security-moves-forward-13000-furloughs-despite-its-improving-financial-situation/167081/>.
- ¹⁰ U.S. Senator Patrick Leahy, *Leahy Announces That USCIS is Postponing Furloughs of 13,000 Public Servants, Including 1,109 in Vermont* (July 24, 2020) <https://www.leahy.senate.gov/press/leahy-announces-that-uscis-is-postponing-furloughs-of-13000-public-servants-including-1109-in-vermont>; Alyssa Aquino, *USCIS Delays Furlough Plans After Finances Improve*, Law 360 (July 24, 2020) https://www.law360.com/immigration/articles/1295291/uscis-delays-furlough-plans-after-finances-improve?nl_pk=0a5e9b17-6ae3-4be3-b80c-6cf8e8d1d9e9&utm_source=newsletter&utm_medium=email&utm_campaign=immigration.
- ¹¹ Hamed Aleaziz, *The Immigration System is Set to Come to a Near Halt, and No One is Paying Attention*, Buzzfeed (June 30, 2020) <https://www.buzzfeednews.com/article/hamedaleaziz/immigration-system-budget-cuts>.
- ¹² Aside from USCIS dysfunction, LRIF applicants during the pandemic face obstacles in assembling the needed documentation, obtaining biometric fingerprints, scheduling medical exams, and obtaining photos needed for the application. Delays and closures are impacting offices outside of USCIS, as well.
- ¹³ Catholic Legal Immigration Network, the TPS Advocacy Working Group and African Communities Together, *Failing Our Liberian Neighbors: Eligibility and Application Rates Under Liberian Refugee Immigration Fairness* (June 2020) available at <https://cliniclegal.org/resources/humanitarian-relief/liberian-refugee-immigration-fairness-lrif/report-failing-our>.
- ¹⁴ See Don Kerwin & Mike Nicholson, *The Liberian Refugee Immigration Fairness Program: Estimates of the Potentially Eligible*, Center for Migration Studies. The analysis of USCIS and Census data shows that more than 10,000 people may be eligible for LRIF, not including the spouses and children who may also be eligible (June 12, 2020) <https://cmsny.org/the-liberian-refugee-immigration-fairness-program-estimates-of-the-potentially-eligible/>.
- ¹⁵ Sec. 7611(b)(1) provides that except as provided in (3) [which contains the criminal bars] the Secretary **shall adjust** the status of an alien described in subsection (c)... if the individual applies within one year (by December 20, 2020); is otherwise admissible, (c) is a national or Liberia who has been continuously present from November 20, 2014 to date of submission of application, or is the spouse, child unmarried son or daughter (emphasis added).
- ¹⁶ LRIF applicants are exempted from inadmissibility under INA § 212(a)(4), §212(a)(5), §212(a)(6)(A) and §212(a)(7)(A), National Defense Authorization Act for Fiscal Year 2020, Section 7611(b)(C)(2).
- ¹⁷ National Defense Authorization Act for Fiscal Year 2020, Section 7611(b)(C)(3).

- ¹⁸ National Defense Authorization Act for Fiscal Year 2020, Section 7611(c)(1)(B).
- ¹⁹ National Defense Authorization Act for Fiscal Year 2020, Section 7611(b)(1)(A).
- ²⁰ USCIS, *I-485 Application to Register Permanent Residence or Adjust Status* <https://www.uscis.gov/i-485>.
- ²¹ 7 USCIS Policy Manual (USCIS-PM) P.5. Note that this section of the PM was published on April 7, 2020, at a time when USCIS offices had already been closed to the public for three weeks.
- ²² See Comments on USCIS Policy Manual (May 7, 2020) from eight national immigration organizations, available at https://www.ilrc.org/sites/default/files/resources/final_lrif_pm_comment_from_organizations_7_may_2020.pdf.
- ²³ 7 USCIS-PM P.5 (E)(2).
- ²⁴ National Defense Authorization Act for Fiscal Year 2020, Section 7611(c)(1)(A)(ii).
- ²⁵ 7 USCIS-PM P.5 (C)(4).
- ²⁶ Derivative categories for spouses and children exist in the family preference categories, and contain qualifying language to designate they are derivatives by including “accompanying or following to join,” See INA 203(d) Treatment of family members – a spouse or child...shall...be entitled to the same status, and the same order or consideration provided in the respective subsection, if accompanying or following to join, the spouse or parent.
- ²⁷ 7 USCIS-PM P.5 (D)(1) and (2).
- ²⁸ USCIS, *Public Charge Fact Sheet* (June 25, 2020) <https://www.uscis.gov/news/public-charge-fact-sheet>.
- ²⁹ Don Kerwin & Mike Nicholson, *The Liberian Refugee Immigration Fairness Program: Estimates of the Potentially Eligible*, Center for Migration Studies (June 12, 2020).
- ³⁰ *Id.*



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