



LIBERIAN REFUGEE IMMIGRATION FAIRNESS ACT EXTENDED TO DECEMBER 20, 2021

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I. Background

The Liberian Refugee Immigration Fairness Act (LRIF) created a limited-term program allowing many Liberians living in the United States to apply for permanent residence. Initially, LRIF's application period opened on December 20, 2019 and was set to expire on December 20, 2020. On January 3, 2021, however, Congress passed the Consolidated Appropriations Act 2021, extending the application period for LRIF for another year, until December 20, 2021.¹

This one-year extension was a result of significant and effective community advocacy. The lack of government outreach and the impact of the pandemic discouraged applications during the first year.² In addition, overly burdensome documentation and other requirements imposed by USCIS, as set out in the USCIS policy manual in 2020, have not only deterred applicants, but also resulted in "Requests for Evidence" (RFEs) which contravened congressional intent.³ As noted in a recent Executive Order, "the LRIF application process was hampered by a slow launch, cumbersome procedures, and delays in adjudication."⁴ Congress responded with the extension and eligible applicants will now have until December 20, 2021 to file.⁵

Liberians also were the focus of one of the first executive orders of the Biden Administration. The President extended Deferred Enforced Departure (DED) and employment authorization for eligible Liberians to June 30, 2022.⁶ DED for Liberians had expired on March 2020, and the administration noted that many Liberians who had qualified for DED and were also eligible for LRIF were left without the option of employment authorization in the interim, due to the many delays in the LRIF program.⁷

LRIF is 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 DED, those programs only provided protection for a few years at a time and did not provide any long-term solution for Liberians.⁸

This practice advisory will provide a summary of the LRIF law, discuss the administrative guidance on the program, and provide practice tips for overcoming some of the obstacles applicants may face.

II. Authorities

The Liberian Refugee Immigration Fairness Act can be found buried in Section 7611 of the National Defense Authorization Act for Fiscal Year 2020.⁹ The language of the statute remains the primary authority on its interpretation because no implementing regulations have been published to date. Without a regulatory notice and comment process under the Administrative Procedures Act,¹⁰ the public has had no meaningful input in the implementation of LRIF.

The application period began the day the statute was signed into law on December 20, 2019 with no public outreach or regulations. After USCIS closed its public offices for the pandemic in March 2020, the agency belatedly published LRIF interpretative guidance in its policy manual.¹¹ The guidance in the policy manual was effective immediately. Although “feedback” can be submitted by the public to USCIS, there is no public record of the comments received, unlike the regulations process, and the government does not respond to the comments.¹²

A coalition of advocates sent feedback to USCIS stating that the policy manual improperly restricted LRIF eligibility, contradicting the statute.¹³ In particular, the policy manual contradicts the statutory intent by requiring excessive documentation to prove eligibility and by truncating the ability of spouses and sons and daughters to apply for LRIF. The policy manual also conflates LRIF’s requirement of “continuous physical presence” with a different legal concept, that of “continuous residence,” and grafts naturalization concepts of abandonment of residence into the LRIF guidance.¹⁴

Besides the USCIS policy manual guidance, there are basic administrative instructions on the USCIS website describing how and where to submit an LRIF application.¹⁵

The Director of the Executive Office for Immigration Review also published administrative guidance in a memo directing the immigration courts on the handling of LRIF eligible individuals in removal proceedings.¹⁶ LRIF grants exclusive jurisdiction to USCIS, and the statute states that LRIF adjustment to permanent residence may be granted to persons who are subject to an exclusion, deportation or removal order, without a requirement of reopening in immigration court or at the Board of Immigration Appeals.

III. Statutory Language Strongly Favoring Eligibility of Applicants and Family Members

LRIF is a very generous statute. The intent of Congress to make as many persons eligible as possible, given the statutory language, should be considered when assessing any gray areas in eligibility and the appropriate burden to be placed on applicants to document their eligibility.

The LRIF statute contains strong language in favor of applicants, starting with the mandatory language that, barring a few enumerated exceptions, the Secretary (of the Department of Homeland Security (DHS)) “shall adjust” eligible Liberians who apply during the open application window. This language differs significantly from most other adjustment provisions in the Immigration and Nationality Act (INA), 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 LRIF, which mandates adjustment if the applicant is eligible.¹⁷

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).¹⁸

Other parts of LRIF also indicate unusually strong congressional intent to construe the law in favor of applicants. Unlike most other adjustment applicants, LRIF applicants are not subject to four major grounds of inadmissibility. The law exempts applicants from inadmissibility under INA §212(a)(4) (public charge), §212(a)(5) (no labor certification), §212(a)(6)(A)(present without admission or parole), and §212(a)(7)(A) (no valid entry document).¹⁹

In addition, LRIF gives USCIS exclusive jurisdiction and makes applicants eligible for permanent residence even if they have a prior final order of exclusion, deportation, removal, or voluntary departure.²⁰ Ordinary adjustment applicants are precluded from eligibility for permanent residence in such circumstances, or must attempt to reopen cases in immigration court, which is an arduous process that does not apply to LRIF applicants.

Also, spouses and unmarried sons and daughters of LRIF applicants are able to apply for permanent residence by virtue of their legal relationship with a Liberian applying for the program, without having to prove Liberian nationality or the continuous physical presence as required for the Liberian principal applicant.²¹ No such privilege of fast-track permanent residence exists for the family members of ordinary applicants for permanent residence.

In addition, LRIF rolls back the date of the grant or issuance of permanent residence to the date that continuous presence was required to be established by applicants, which is November 20, 2014 for the Liberian national. For family members, that date will vary based on whatever date the family member is able to prove that they first established their presence in the United States.²² This provision is also very generous, as the vast majority of adjustment applicants only have their permanent residence established as of the date their application is approved, and then need to wait five more years before they are eligible for naturalization. Successful LRIF applicants may be eligible to naturalize immediately.

The cumulative impact of these extraordinary provisions in the LRIF is to express very strong congressional intent in favor of applicants' eligibility and a generous interpretation of the statute.

IV. Eligibility Requirements

A. Proof of Liberian Nationality

While qualifying family members do not need to prove Liberian nationality, the principal Liberian applicant must do so. The language in the USCIS policy manual indicates a preference for presenting an unexpired Liberian passport, or a Liberian naturalization certificate, but it also states that evidence of nationality is not limited to these documents.²³ However, persons applying for LRIF thus far have reported receiving frequent Requests for Evidence (RFEs) from USCIS asking for a valid passport, even after an application is submitted with alternative evidence.

Many Liberians do not have current passports because they have been in the United States for years and have not travelled internationally. Applying for a passport during a pandemic is both costly and fraught with obstacles. The application requires obtaining the supporting documents, paying the required fees, and appearing for an in-person appointment at one of only three passport application centers in New York, Minnesota or Washington, D.C.²⁴ This is an unnecessary hurdle to LRIF when many eligible applicants have alternative documentation that provides evidence of their Liberian nationality.

In the first USCIS public engagement held on LRIF on February 25, 2021, presenters from the USCIS Office of Policy and Strategy stated that the reason for these RFEs is because Liberian citizenship laws are “complex” and loss of citizenship may automatically occur, and for these reasons a Liberian birth certificate and unexpired passport are often considered insufficient without additional documentation.²⁵ However, under the Liberian Constitution and immigration and citizenship statutes, birth in Liberia is sufficient to confer citizenship, as long as the person is “Negro or of Negro descent.”²⁶ And naturalization, likewise, is only available to persons of “Negro or of Negro descent.”²⁷ As a result, a birth certificate and expired passport should be

sufficient proof of nationality and advocates should argue that these documents be accepted. In addition, a simple reading of Liberian immigration laws makes clear that the only “automatic” loss of citizenship occurs when a Liberian is born abroad of a Liberian father and fails to take an oath of citizenship by the age of twenty-three.²⁸

In other contexts, USCIS often accepts alternative proof of nationality. For example, under the prior Clinton and Bush administrations, Haitians eligible to apply for the Haitian Immigration Refugee Fairness Act of 1998 were not so restricted in the documents required to prove nationality, even though Haitian citizenship laws are much more complicated than Liberian law. In that instance, legacy INS simply required the Haitian birth certificate as proof of identity and citizenship, unless the applicant indicated they had become a Haitian citizen other than by birth in Haiti (8 C.F.R. § 1245.15(h)(3), (6)), yet the Haitian Constitution at the time (1987) required not only birth in Haiti, but proof of a native-born parent.

In the case of NACARA, the Nicaraguan Adjustment and Central American Relief Act of 1997, Eastern Europeans who were citizens of former Soviet bloc countries were beneficiaries of that legislation which provided “special rule cancellation” for eligible applicants who were nationals of those countries, yet have never been required to submit any particular documents at all to prove their nationality, as the fact of their prior applications for asylum, and their testimony alone could be sufficient.²⁹

For Liberian TPS, birth certificates and expired passports were accepted. The TPS regulations explicitly allow applicants to document all efforts to obtain a needed document and if unavailable to present affidavits or other credible evidence, and if a passport is unavailable, a birth certificate and photo identification, and/or a national identity document is acceptable.³⁰

Many LRIF applicants have already been determined to be Liberian nationals by USCIS because they had prior applications for TPS or DED, both of which required them to prove their nationality. Liberians in the United States often have had prior applications for immigration benefits and will have extensive files at USCIS that could supply other evidence of nationality, including proof of Liberian birth.

During the USCIS public engagement cited above, in response to a question regarding why USCIS is requiring more from LRIF applicants than from Liberian TPS applicants, the presenters claimed that the TPS statute only requires that a person “last habitually resided” in the TPS designated country, and so TPS has a lesser standard of proof of nationality. However, this claim is inaccurate, as a quick reading of the TPS statute makes clear, that like LRIF, a person must be a “national” of the designated country, and only “stateless” persons are allowed to provide solely evidence of a “last habitual residence.”³¹

For LRIF, proof of identity should suffice in cases where an individual has already proven their nationality to USCIS or an Immigration Judge in prior applications. In all cases, alternative proof of nationality other than a current passport should be explicitly allowed. A generous interpretation of this requirement is needed to comport with the intent of the LRIF statute.

B. Continuous Physical Presence Since November 20, 2014

The law allows a national of Liberia who can demonstrate “continuous physical presence” 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. Any absences of 180 days or less in the aggregate since November 20, 2014 will not prevent an eligible applicant from establishing continuous presence. The dependent family members do not need to demonstrate continuous presence. Only the principal applicant has that requirement.³²

Example: Titus is a Liberian citizen who arrived in Providence, Rhode Island as a university student in 2010. He married his wife, who is a citizen of Sri Lanka, in November 2020. Titus left the country once since his 2010 arrival, travelling to Montreal in 2015 on a month-long study trip. He had Liberian TPS and DED after his student visa expired. He needs to prove Liberian nationality for LRIF. His Liberian passport has expired. While the USCIS policy manual states that an unexpired Liberian passport or Liberian certificate of naturalization may demonstrate nationality, other documents should also be sufficient, as this is not an exhaustive list.³³ He can document Liberian citizenship by showing his expired passport, and additionally can show that USCIS has already examined his nationality by awarding him TPS and DED, so that further adjudication of his nationality should not be required. Or he could combine the expired passport with his Liberian birth certificate. Titus will also need to demonstrate his continuous physical presence since November 20, 2014 up to the time of filing for adjustment to qualify under the new law and will document the exit and re-entry dates for his two-month trip abroad. He does not have any absences greater than 180 days in the aggregate that would prevent him from proving continuous physical presence. His wife needs to document her legal marriage to him, and the termination of any prior marriages, but she does not have the requirement of showing continuous presence in the United States since November 20, 2014, nor does she have to be a Liberian citizen.

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 the penalty for absences that exceed 180 days in the aggregate. Examples of exceptions to specific continuous presence requirements are found throughout the Immigration and Nationality Act (INA). One such analogous provision would be the 1986 legalization provisions in the Immigration Reform and Control Act (IRCA), which also required “continuous physical presence”³⁴ applicable to specific periods of time, but “brief, casual and innocent” absences were excepted by the statute.³⁵ For legalization, the implementing regulations set out acceptable time periods for absences,³⁶ 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.”³⁷ Similar provisions restricting absences but providing “emergent reasons” exceptions are found in the regulations implementing the Legal Immigration Family Equity (LIFE) Act enacted in 2000.³⁸ Notably LRIF applicants should also enjoy exceptions at least as generous as those of legalization applicants, since LRIF adjustment of status is mandatory, similar to legalization under both the IRCA and LIFE Acts.³⁹

Confusion arises between “residence” and “physical presence” in the policy manual, which appears to impose a residence requirement on Liberian nationals where none exists in LRIF, and further conflates the naturalization concept of “abandonment” into LRIF.⁴⁰

This confusion and conflation of statutory language with different meanings is apparent where USCIS states in its policy manual:

“[f]or both Liberian principal applicants and eligible family members, officers should review the nature of all arrivals and departures and absences from the United States to determine if the applicant abandoned residence in the United States. For example, an alien who first arrived as a nonimmigrant tourist (B-2) and timely departed the United States would not have begun a period of residence, but a subsequent arrival may begin a period of residence. Similarly, an alien who first arrived as a nonimmigrant tourist (B-2) and never departed could have begun a period of residence. In such a case, any subsequent long absences from the United States (after the applicant’s first arrival) may indicate that the applicant no longer intended to live in the United States, so the applicant’s admission date for permanent residence might not roll back to the applicant’s earliest arrival date. The applicant bears the burden to establish the earliest arrival date from which he or she established residency in the United States.”⁴¹

However, because the statute does not mention “continuous residence,” but merely “continuous physical presence,” establishing the latter should be sufficient, with the caveat that one or more lengthy absence could cause the period of “continuous presence” to restart later than the applicant’s initial entry. In the example above provided by the policy manual, a “timely departure” after a B-2 tourist entry should not break the period of continuous presence if the applicant returned to the U.S. after a brief period abroad. At minimum, this provision in the policy manual should apply only to the “rollback” of the establishment of the approved LRIF applicant’s date of admission for permanent residence.

While being aware of the policy manual in preparing applications, practitioners should point out the legal flaws in these restrictions and argue eligibility based on the statute. If an applicant can establish *physical presence*, whether or not they actually established a “residence” in the United States, as of the key date, they should be able to satisfy the statutory continuous presence requirement for Liberian nationals.

The policy manual describes the types of documentation USCIS will request to prove continuous presence, and states that this is a non-exclusive list. Advocates should provide other types of credible documentation as well. The policy manual suggests these documents: copy of passport pages with visa, admission or parole stamps; arrival/departure record (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.⁴²

Family members do not need to demonstrate physical presence since November 20, 2014, but they can have their LRIF adjustment date rolled back to the date that they establish presence in the United States. According to the policy manual:

“An eligible family member’s admission is either: [t]he earliest arrival date in the United States from which the applicant establishes residence in the United States; or [t]he receipt date of the applicant’s adjustment application (if the applicant cannot establish residence earlier).”⁴³

Again, the policy manual appears to be confusing physical presence with residence in the United States, which is not referenced anywhere in LRIF. Residence refers to actual dwelling place in fact, the place of general abode of the individual.⁴⁴ Physical presence merely requires that the person be actually in the United States, whether or not it is their place of general abode.

If a family member applicant can establish *physical presence*, whether or not they actually established a “residence” in the United States, as of the key date, they should be able to satisfy the statutory presence requirement for the rollback date of their admission as permanent residents.

C. LRIF Admissibility

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(a)(7)(A) for failure to possess a valid entry document.⁴⁵ 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. Jallah came to Minnesota as a tourist from Liberia in 2013 to visit relatives. Her visa expired in thirty days. She has not been able to travel and has never left the United States. She has been taking care of her relatives’ children and relies on the relatives for room and board. She does not have any other income. She can apply for LRIF despite overstaying her visa and being unlawfully present. She also does not have to be screened for public charge inadmissibility. If she can demonstrate inability to pay the filing fees, she is eligible for a fee waiver for her adjustment application, and for additional filings such as an application for employment authorization.⁴⁶

In addition to the LRIF exemptions, waivers of inadmissibility grounds that apply generally to adjustment applicants under the INA also apply to LRIF applicants.⁴⁷

D. Eligibility for Persons in Removal Proceedings or with Prior Orders

LRIF allows eligible Liberian nationals to apply for permanent residence to USCIS 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.⁴⁸ There is also a specific prohibition of removal for anyone who has a pending application for adjustment under LRIF who is in removal or deportation proceedings, although an applicant can be ordered removed if the adjustment application is ultimately denied.

Although this has not happened to date, the law provides that DHS shall establish regulations whereby an applicant who is subject to removal can apply for a formal stay of removal.⁴⁹ 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 before the government attempts removal, 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.

Administrative guidance from the Executive Office for Immigration Review details some of the procedural measures that the immigration judges and Board of Immigration Appeals (BIA) should undertake with LRIF applicants, noting that final orders of a judge will be cancelled by DHS upon a grant of LRIF adjustment. The EOIR guidance also states that status dockets should be used if utilized by a particular EOIR office, but only when an LRIF applicant does *not* have other applications pending before the Immigration Court.⁵⁰ If other applications are pending, the courts are directed to proceed with adjudication, unless the applicant indicates they wish to withdraw their other applications for relief.

The BIA is also directed to proceed with disposition of appeals, but with a significant difference: *only if the result is favorable to the immigrant* – either through termination or affirmation of a termination below, a grant or affirmation of a grant of relief (except for voluntary departure) or a grant or affirmation of a grant of TPS. All other cases are to be deferred by the BIA until USCIS adjudicates the LRIF application.⁵¹

Finally, no motions to reopen final orders will be accepted if based solely on a pending LRIF application, as the EOIR guidance has directed the courts to reject such motions, on the basis that no such motion is necessary as specified in the law itself. Once LRIF is granted, however, such *joint* motions to reopen by the respondent and DHS are to be adjudicated and granted expeditiously, though whether such a motion is actually necessary is not yet clear.⁵²

Example: Thomas first arrived in the United States as a visitor from Liberia in 2000 and later applied for asylum. His asylum application was denied by the Asylum Office and the Immigration Judge. He did not appeal from the final denial in 2006 and he received an order of removal, but he never left. He is eligible to file for LRIF with USCIS, which has exclusive jurisdiction over the program. Although procedures have yet to be outlined, he can submit a copy of his LRIF adjustment filing with a request for a stay to ICE to prevent any risk of removal now. He should attach a copy of the LRIF statute with the pertinent sections on stays of removal highlighted. Thomas cannot be removed from the United States during the

pendency of his LRIF application, unless and until there is a final decision denying LRIF. Under LRIF, USCIS “shall cancel” his removal order upon approval of his adjustment application.

For any case pending before the immigration courts or the BIA when LRIF adjustment is approved, the EOIR guidance directs expeditious adjudication of motions by either party.⁵³

1. 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 BIA directly, but rather are reviewable in removal proceedings by the immigration judge.⁵⁴ The statute precludes judicial review of LRIF decisions by federal courts.⁵⁵

V. Eligibility of Family Members

A. Qualifying Relationship

LRIF is also available to a person who is the spouse, child, or unmarried son or daughter of an LRIF eligible Liberian. The statutory language on family members is very broad, exempting family members from the continuous presence and Liberian nationality requirement.

The adjustment provision of LRIF reads: “(c) 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).

There is no other limitation in the statute regarding the family member’s eligibility, yet USCIS in its policy manual appears to treat them as derivatives who must show that the Liberian relative has a pending or approved application for permanent residence under LRIF. The statute does not impose these limitations.

In addition to documenting the legal relationship to the Liberian national, the policy manual requires the following of family members:

“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 policy manual also states, “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.”⁵⁶

There is no requirement in the statute that the relationship to the Liberian national exist both on the date of filing and on the date of the family member's adjustment, nor does the statute require that the Liberian national remain an LPR and not naturalize for the family member to remain eligible. Indeed, because of the rollback provisions in LRIF, many Liberians will immediately qualify to naturalize upon a grant of permanent residence, which would thereby prohibit their family members from adjusting through LRIF. These policy manual limitations are not in compliance with the statutory language and the strong bias in favor of applicants' eligibility as expressed by Congress. Nonetheless, practitioners should be aware of the current position of USCIS when filing applications and be prepared to challenge these *ultra vires* policy manual limitations in cases that would qualify, but for these restrictive interpretations.

VI. Procedure

USCIS directs applicants to indicate on their Form I-485, Part 2, under “other eligibility,” Item number 1.g, “LRIF” to indicate they are applying 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-765.⁵⁷ The law mandates that DHS shall authorize employment for Liberian adjustment applicants whose applications are pending for longer than 180 days.⁵⁸ Liberians with pending adjustment applications under the program are eligible to apply for advance parole if they need to travel abroad.⁵⁹

Eligible Liberians should apply for the program by submitting an I-485, Application to Register Permanent Residence or Adjust Status to be *received by* USCIS on or before December 20, 2021.⁶⁰ Liberian national 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.

USCIS specifies the preferred contents of the LRIF adjustment application for Liberian nationals, and has separate instructions for family members, who do not need to provide continuous presence since November 20, 2014 nor Liberian nationality.⁶¹

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 or an application for a fee waiver;
- Two identical color photographs of the applicant taken recently;
- 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);
- A properly completed Report of Medical Examination and Vaccination Record ([Form I-693](#));
- 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.⁶²

VII. Fee Waivers Available for LRIF

LRIF applicants are eligible for a waiver of adjustment fees. As the USCIS website instructions for I-912 fee waivers states, the I-485 fee may be waived for “[a]n eligibility category that is exempt from the public charge grounds of inadmissibility of section 212(a)(4) of the INA,” which includes LRIF adjustment. Fee waivers are specifically allowed for employment authorization applications (I-765) and waivers of inadmissibility (I-601) as well.⁶³

VIII. Two-Year Application Period Ends December 20, 2021

LRIF only allows for acceptance of applications during the two-year window ending on December 20, 2021. Since there has been scant public engagement on the program by USCIS, non-profit and community-based organizations, community advocates and attorneys will continue to need

to do everything possible to let the public know about the existence of the program and ensure that all eligible applicants come forward.

IX. Liberians in the United States

Liberian population estimates in the United States vary: The U.S. Census Bureau's American Community Survey for 2013-2018 counted the Liberian population in the United States at more than 84,000.⁶⁴ Liberian American organizations estimate that the figure could be much higher, between 250,000 and 500,000.⁶⁵ 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.⁶⁶

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 in Brooklyn Park and Brooklyn Center, two cities just north of Minneapolis.⁶⁷ 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.⁶⁸ Pennsylvania's Liberian population in Philadelphia and the Delaware Valley is estimated at 12,000, and another 7,000 Liberians live in the Baltimore-Washington, D.C. area.⁶⁹ Thousands of Liberians are estimated to live in Texas, concentrated in the Dallas-Fort Worth area.⁷⁰ Other significant populations of Liberians in the United States 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.⁷¹

X. Conclusion

Congress passed an extraordinarily generous statute in LRIF, allowing thousands of Liberians and their family members a path to permanent residence after decades of uncertainty. USCIS has less than ten months to ensure that the program reaches as many eligible persons as possible. Active engagement with the immigrant community is needed to make that goal a reality.

End Notes

- ¹ Consolidated Appropriations Act 2021, Sec. 901, Public Law 116-260 (Jan. 3, 2021).
- ² ILRC, *LRIF – One Year Program Stymied by USCIS Delays and Public Health Crisis* (July 2020).
- ³ See advocates' recommendations for fair implementation of LRIF and request for engagement with the administration and USCIS, <https://www.ilrc.org/request-engagement-administration-and-uscis-liberian-refugee-immigration-fairness-act-implementation> (Mar. 16, 2021).
- ⁴ The White House, *Memorandum to the Secretary of Homeland Security*, <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/reinstating-deferred-enforced-departure-for-liberians/> (Jan. 20, 2021).
- ⁵ Consolidated Appropriations Act 2021, Sec. 901, Public Law 116-260 (Jan. 3, 2021); USCIS, *LRIF Webpage*, <https://www.uscis.gov/green-card/green-card-eligibility/liberian-refugee-immigration-fairness> (Jan. 4, 2021).
- ⁶ The White House, *Memorandum to the Secretary of Homeland Security*, <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/reinstating-deferred-enforced-departure-for-liberians/> (Jan. 20, 2021).
- ⁷ *Id.*
- ⁸ 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 was set to expire on March 30, 2020, 84 Fed. Reg. 13059 (Apr. 3, 2019). The wind-down period was further extended through Jan. 10, 2021. The Jan. 2021 Executive Order extended DED again to June 30, 2022.
- ⁹ National Defense Authorization Act for 2020, Sec. 7611 <https://www.congress.gov/116/bills/s/1790/BILLS-116s1790enr.pdf> (Dec. 20, 2019).
- ¹⁰ Administrative Procedures Act 5 U.S.C. § 553; See Office of the Federal Register, *A Guide to the Federal Rulemaking Process*, https://www.federalregister.gov/uploads/2011/01/the_rulemaking_process.pdf.
- ¹¹ USCIS, *Policy Alert, Liberian Refugee Immigration Fairness*, <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20200407-LRIF.pdf> (Apr. 7, 2020) announcing new content to 7 USCIS-PM P.5 interpreting LRIF eligibility requirements.
- ¹² USCIS, *Policy Manual for Comment, Feedback Opportunities*, <https://www.uscis.gov/outreach/feedback-opportunities/policy-manual-for-comment>.
- ¹³ ILRC, *Joint Comment on USCIS Policy Manual for LRIF*, https://www.ilrc.org/sites/default/files/resources/final_lrif_pm_comment_from_organizations_7_may_2020.pdf (May 7, 2020). Also see advocates' recommendations for fair implementation of LRIF and request for engagement with the administration and USCIS, <https://www.ilrc.org/request-engagement-administration-and-uscis-liberian-refugee-immigration-fairness-act-implementation> (Mar. 16, 2021).

¹⁴ See the USCIS policy manual at 7 USCIS-PM P.5.C.4, <https://www.uscis.gov/policy-manual/volume-7-part-p-chapter-5>.

¹⁵ USCIS, *LRIF Webpage*, <https://www.uscis.gov/green-card/green-card-eligibility/liberian-refugee-immigration-fairness> (Jan. 4, 2021).

¹⁶ Executive Office for Immigration Review Office of the Director, *Management of Cases related to Section 7611 of the National Defense Authorization Act for Fiscal Year 2020*, <https://www.justice.gov/eoir/page/file/1234156/download> (Jan. 13, 2020).

¹⁷ National Defense Authorization Act for Fiscal Year 2020, § 7611(b)(1). Liberian Refugee Immigration Fairness (Dec. 20, 2019).

¹⁸ National Defense Authorization Act for Fiscal Year 2020, § 7611(b)(3). Liberian Refugee Immigration Fairness (Dec. 20, 2019).

¹⁹ National Defense Authorization Act for Fiscal Year 2020, § 7611(b)(2). Liberian Refugee Immigration Fairness (Dec. 20, 2019).

²⁰ National Defense Authorization Act for Fiscal Year 2020, § 7611(1)(B), Liberian Refugee Immigration Fairness (Dec. 20, 2019).

²¹ National Defense Authorization Act for Fiscal Year 2020, § 7611(b)(4)(A), Liberian Refugee Immigration Fairness (Dec. 20, 2019).

²² 7 USCIS-PM P.5.E.2; Note that continuous physical presence differs from continuous residence. Residence is defined in the Immigration and Nationality Act (INA) § 101(a)(33): the places of general abode of a person means his principal, actual dwelling place in fact, without regard to intent. Continuous physical presence merely refers to actual presence in the U.S. from a date certain, here November 20, 2014 for the Liberian national applicant. The continuous residence vs. continuous physical presence requirements are familiar but completely separate concepts and requirements from the naturalization context. (INA §316 (b) and INA §316 (a)(1)).

²³ 7 USCIS-PM P.5.

²⁴ See Embassy of The Republic of Liberia to the United States, *Liberia ECOWAS Passport*, <http://www.liberianembassyus.org/>.

²⁵ USCIS, *LRIF and DED for Liberians*, <https://www.uscis.gov/outreach/liberian-refugee-immigration-fairness-lrif-and-deferred-enforced-departure-ded-for-liberians> (Feb. 25, 2021). Notes of the engagement are on file with the authors of this practice advisory.

²⁶ 1986 Constitution of Liberia, Chapter IV, Article 27, available at https://www.constituteproject.org/constitution/Liberia_1986.pdf; Title 4, Liberian Code of Laws, “Alien and Nationality Law,” Part 3, Chapters 20-22 (1973), available at <http://pul.org.lr/doc/Liberia%20Alien%20Law.pdf>.

²⁷ Title 4, Liberian Code of Laws, “Alien and Nationality Law,” Part 3, Chapters 20-22 (1973), available at <http://pul.org.lr/doc/Liberia%20Alien%20Law.pdf>.

²⁸ *Id.*

²⁹ 8 CFR § 240.60 et seq.

³⁰ 8 CFR § 244.9 provides that TPS applicants may do the following to prove nationality:

(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.

³¹ 8 USC § 1254, INA § 244.

³² National Defense Authorization Act for Fiscal Year 2020, § 7611 (c)(1)(A)(i)-(ii), (B) Liberian Refugee Immigration Fairness (Dec. 20, 2019).

³³ 7 USCIS-PM P.5.

³⁴ INA § 245A(a)(3)(A)-(B).

³⁵ INA §§ 245A(a)(3)(B); *see also* 8 CFR § 245.1(f).

³⁶ 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.

³⁷ 8 CFR §§ 245a.1(c)(1)(i)-(iii) and (c)(2).

³⁸ 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.”

³⁹ INA § 245A.

⁴⁰ Abandonment of permanent residence is legal concept relevant in examining whether a lawful permanent resident (LPR) has maintained their status. If an LPR has made prolonged or repeated trips outside of the United States that may disqualify them from naturalization and subject them to removal from the United States for being inadmissible at the time of entry under INA § 212(a)(7)(A)(i). See INA § 101 (a)(27)(A); *Matter of Huang*, 19 I&N Dec. 749 (BIA 1988).

⁴¹ 7 USCIS-PM P.5.E.2.

⁴² 7 USCIS-PM P.5.

⁴³ 7 USCIS-PM P.5.

⁴⁴ INA § 101(a)(33) defines residence.

⁴⁵ National Defense Authorization Act for Fiscal Year 2020, § 7611(b)(2). Liberian Refugee Immigration Fairness (Dec. 20, 2019).

⁴⁶ Fee waivers are provided for I-485 applications in categories which are exempt from public charge grounds of inadmissibility. Applicants need to show current receipt of a means-tested benefit, income at or below 150 percent of the federal poverty guidelines, or a financial hardship. A means-tested benefit received only by an applicant's child, rather than by the applicant or the applicant's spouse, will not be considered sufficient to meet the "means-tested benefit" basis for a fee waiver, but will be evidence toward eligibility based on low income or financial hardship. See USCIS, *Instructions for Request for Fee Waiver* <https://www.uscis.gov/sites/default/files/document/forms/i-912instr-pc.pdf>. For more information on fee waivers, see ILRC, *Status of USCIS Fee Waiver Changes*, <https://www.ilrc.org/status-uscis-fee-waiver-changes> (Oct. 2, 2020).

⁴⁷ 7 USCIS-PM P.5.;

USCIS, Liberian Refugee Immigration Fairness, <https://www.uscis.gov/green-card/green-card-eligibility/liberian-refugee-immigration-fairness> (Jan. 4, 2021).

⁴⁸ National Defense Authorization Act for Fiscal Year 2020, § 7611(b)(4)(A)-(B) Liberian Refugee Immigration Fairness (Dec. 20, 2019), 7 USCIS-PM P.5.C.6-7.

⁴⁹ National Defense Authorization Act for Fiscal Year 2020, § 7611(d)(1)-(2) Liberian Refugee Immigration Fairness (Dec. 20, 2019).

⁵⁰ Executive Office for Immigration Review Office of the *Director, Management of Cases related to Section 7611 of the National Defense Authorization Act for Fiscal Year 2020*, <https://www.justice.gov/eoir/page/file/1234156/download> (Jan. 13, 2020).

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ National Defense Authorization Act for Fiscal Year 2020, § 7611(f) Liberian Refugee Immigration Fairness (Dec. 20, 2019).

⁵⁵ National Defense Authorization Act for Fiscal Year 2020, § 7611(g) Liberian Refugee Immigration Fairness (Dec. 20, 2019).

⁵⁶ 7 USCIS-PM P.5.C.4.

⁵⁷ USCIS, *I-485 LRIF Instructions*, <https://www.uscis.gov/sites/default/files/document/forms/i-485specinstr.pdf>.

⁵⁸ National Defense Authorization Act for Fiscal Year 2020, § 7611(d)(3) Liberian Refugee Immigration Fairness (Dec. 20, 2019).

- ⁵⁹ USCIS, *Liberian Refugee Immigration Fairness*, <https://www.uscis.gov/green-card/other-ways-get-green-card/liberian-refugee-immigration-fairness> (Dec. 26, 2019).
- ⁶⁰ 7 USCIS-PM P.5.C.5.
- ⁶¹ USCIS, *I-485 LRIF Instructions*, <https://www.uscis.gov/sites/default/files/document/forms/i-485specinstr.pdf>.
- ⁶² 7 USCIS-PM P.5.
- ⁶³ USCIS, *I-912 Instructions*, <https://www.uscis.gov/i-912>; Adjudicator's Field Manual (AFM) Chapters 10.9 and 10.10. and 8 CFR §103.7(c).
- ⁶⁴ 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>.
- ⁶⁵ International Institute of Minnesota, <https://iimn.org/publication/finding-common-ground/minnesotas-refugees/africa/liberians/> and Ken R. Wells, *Liberian Americans*, <https://www.everyculture.com/multi/Le-Pa/Liberian-Americans.html>.
- ⁶⁶ Macalester College, *A History of Liberia, its Conflicts and Diaspora*, <https://sites.google.com/a/macalester.edu/refugees/liberians>.
- ⁶⁷ *Id.*
- ⁶⁸ 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>.
- ⁶⁹ 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>.
- ⁷⁰ 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>.
- ⁷¹ International Institute of Minnesota, <https://iimn.org/publication/finding-common-ground/minnesotas-refugees/africa/liberians/> and Ken R. Wells, *Liberian Americans*, <https://www.everyculture.com/multi/Le-Pa/Liberian-Americans.html>.



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About the Immigrant Legal Resource Center

The Immigrant Legal Resource Center (ILRC) works with immigrants, community organizations, legal professionals, law enforcement, and policy makers to build a democratic society that values diversity and the rights of all people. Through community education programs, legal training and technical assistance, and policy development and advocacy, the ILRC's mission is to protect and defend the fundamental rights of immigrant families and communities.