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May 11, 2021

Samantha Deshommès
Chief, Regulatory Coordination Division
Office of Policy and Strategy
U.S. Citizenship and Immigration Services
20 Massachusetts Avenue NW
Washington, D.C. 20529-2140

Re: DHS Docket No. USCIS-2021-0004; Request for Public Input; Identifying Barriers Across U.S. Citizenship and Immigration Services (USCIS) Benefits and Services

Dear Ms. Deshommès,

The undersigned members of the Liberian Refugee Immigration Fairness (LRIF) Strategy Group respectfully submit the following comments in connection with the U.S. Citizenship and Immigration Services' (USCIS) Request for Public Input published in the Federal Register on April 19, 2021. The Strategy Group is a focused coalition of local, state, and national-level organizations that provide direct legal and other community-based services to Liberians in the United States and includes experts in USCIS operations and implementation issues and Liberian cultural competency.

The LRIF Strategy Group -- which had been engaged in systemic advocacy for the Liberian community prior to and following the creation of the LRIF program in 2019 -- was grateful for President Biden's Day One action to reinstate DED for Liberia and for directing the Secretary of Homeland Security "to review the LRIF application procedures administered by United States Citizenship and Immigration Services to ensure that they facilitate ease of application and timely adjudication."¹ Over the course of 2020, the Strategy Group tracked and engaged with the prior administration and Congress to address the botched implementation of the program.² We submitted to the Biden transition team specific recommendations regarding how to address the systemic issues that led to only a fraction of cases being adjudicated in the first year of the program, as well as the public engagement and outreach failures of the prior administration.³

On February 25, 2021 USCIS held its first public engagement webinar on the LRIF program. During the presentation and question and answer session, the LRIF Strategy Group became concerned that the current administration is continuing many of the policies and practices put in place by the Trump

¹ Presidential Memorandum, Reinstating Deferred Enforced Departure for Liberians, The White House (Jan. 20, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/reinstating-deferred-enforced-departure-for-liberians/>.

² LRIF Strategy Group Recommendations Letter 1 (Jan. 28, 2020), <https://cliniclegal.org/resources/humanitarian-relief/temporary-protected-status-and-deferred-enforced-departure-1/>; LRIF Strategy Group Recommendation Letter 2 (June 5, 2020), <https://cliniclegal.org/resources/federal-administrative-advocacy/ngo-lrif-recommendations-letter-uscis/>; LRIF Strategy Group Joint Comment regarding Policy Manual (May 21, 2020), <https://cliniclegal.org/resources/humanitarian-relief/liberian-refugee-immigration-fairness-lrif/liberian-refugee/>.

³ LRIF Strategy Group Transition Recommendations (Nov. 25, 2021), <https://cliniclegal.org/resources/humanitarian-relief/liberian-refugee-immigration-fairness-lrif/lrif-strategy-group/>.

administration -- again, the issues that led to a failed implementation of the program in year one and prompted the Congressional extension and President Biden's directive on Day One of the administration. As of the time of this comment, these policies and practices are ongoing at USCIS.

I. STATUTORY INTERPRETATION:

The LRIF provisions in the National Defense Authorization Act of FY 2020 contain strong language in favor of applicants, starting with the mandatory language that, barring a few enumerated exceptions, the Secretary of DHS "*shall adjust*" eligible Liberians who apply during the open application window.⁴ This is in contrast to the discretionary language of "may adjust" in most other adjustment provisions in the Immigration and Nationality Act, which apply to family and employment immigration applicants, victims of domestic violence, trafficking and victims of other specified crimes and even asylees. There are also inadmissibility grounds that appear in similar programs that do not apply to LRIF.

LRIF gives USCIS exclusive jurisdiction over applications and makes applicants eligible for permanent residence, canceling any prior final order of exclusion, deportation, removal, or voluntary departure. Spouses and unmarried children of LRIF applicants are able to apply for permanent residence by virtue of their legal relationship with an eligible Liberian applying for the program, without having to prove their own Liberian nationality or the continuous physical presence that the principal Liberian applicant must demonstrate. Finally, LRIF rolls back the date of permanent residence to the date that continuous residence was established, which is November 20, 2014 for the Liberian national, and to whatever date the included family member is able to establish their continuous physical presence in the United States. Successful LRIF applicants may be eligible to naturalize immediately.

Taken cumulatively, these provisions indicate clear Congressional intent in favor of applicants' eligibility and require a generous interpretation of the statute.

II. ONGOING IMPLEMENTATION ISSUES AND RECOMMENDATIONS:

The recommendations below are based on the plain language of the statute and ongoing implementation issues -- tracked and analyzed by the LRIF Strategy Group -- which led to the botched implementation of the program under the previous administration. As USCIS shared at their February 25th LRIF webinar, as of December 24, 2020, only 2,679 applications had been received, 362 approved, and 56 denied, out of an eligible population of at least 10,000.⁵ In an updated data set released by the Congressional Research Service on May 6, 2021, as of April 2, 2021, only 3,248 applications had been received, 666 approved, and 111 had been denied.⁶ These low numbers, in both applications submitted and completed cases, as well as slow rate of progress, are reflective of the barriers, policy decisions, and other implementation issues at USCIS as described below.

- A. Policy Manual Comments Were Neither Reviewed Nor Addressed:** Following the delayed publication of the Policy Manual in 2020, the Trump administration did not review or address public comments. We inquire whether the Biden administration has reviewed the previous comments, and if not, we strongly recommend they are reviewed and addressed -- including updating the Policy Manual accordingly. Particularly, the LRIF Strategy Group organizational

⁴ National Defense Authorization Act for Fiscal Year 2020, Section 7611(b)(1), Pub. L. No. 116-92 (2019), www.congress.gov/116/bills/s/1790/BILLS-116s1790enr.pdf.

⁵ Applications for Liberian Refugee Immigration Fairness: Fact Sheet, Congressional Research Service (Dec. 9, 2020), <https://crsreports.congress.gov/product/pdf/R/R46487>.

⁶ Applications for Liberian Refugee Immigration Fairness: Fact Sheet, Congressional Research Service (May 6, 2021), <https://crsreports.congress.gov/product/pdf/R/R46487>.

comment flagged multiple issues where the Policy Manual is inconsistent with the statutory language.⁷ We also urge USCIS to publish all comments in the Electronic Reading Room for public transparency.

- B. Proof of Nationality Requirements Indicate Disparate Treatment and a Higher Standard of Proof Than Past Adjustment Programs:** Presently, USCIS lists only two primary evidentiary sources that may prove Liberian nationality for principal applicants: an unexpired Liberian passport or a Liberian certificate of naturalization. Past communications with the Trump Administration, and recently, the Biden Administration, have noted the overly burdensome nature of these documentary requirements and their adverse impact on access to the program - particularly, requiring an unexpired Liberian passport presents significant logistical obstacles to eligible applicants. Due to the COVID-19 pandemic, Liberian consulates closed for many months, severely limiting consular services including passport renewals. Furthermore, many LRIF eligible Liberians have lived in the United States for decades and have not traveled freely in and out of the country, eliminating the necessity for renewing their expired Liberian passports. While the Policy Manual notes that this list is not exclusive, applicants have received discouraging “requests for additional evidence” and, we believe, denials, when expired passports have been submitted. Some are not likely even applying for residency under LRIF, if they lack an unexpired passport or naturalization certificate.

This requirement deviates from past practice for other applicants for immigration benefits who are required to prove nationality, including Temporary Protected Status (TPS) applicants, Eastern European NACARA applicants, and others. We believe that USCIS has misstated both U.S. and Liberian law, in continuing this practice, as made clear in the February 25th webinar. At the webinar, in response to a question as to why USCIS is requiring more documentation of nationality than it did for Liberian TPS, or all other TPS applicants generally, USCIS stated that those applying for TPS have a lower bar for documentation of nationality, as they are allowed to merely submit proof of “last habitual residence.” However, the TPS statute is clear in that eligibility is based on nationality and only those who are stateless may utilize the “habitual residence” provisions.⁸

The second part of USCIS’ response to this question at the webinar is that Liberia has “complex” citizenship laws, and for that reason a Liberian birth certificate is insufficient, even if submitted together with an expired passport. A review of Liberian citizenship laws reveals that all Liberians born on Liberian soil are granted Liberian citizenship, unless they are *not* “Negroes or of Negro descent,” according to the Liberian Constitution and Liberian “Alien and Nationality” laws. Because these same laws also clearly state that only those who are “Negroes or of Negro descent” may naturalize as Liberian citizens if not born in Liberia, it should be evident that anyone with a Liberian birth certificate and a Liberian passport, expired or unexpired, is a Liberian citizen.

A third reason USCIS raised as to why it is maintaining the previous administration’s requirements, is that there are those who could have “automatically lost” their Liberian citizenship. But again, a read of the relevant Liberian laws makes clear this provision *only* applies to those Liberians born abroad of a Liberian father, who acquired citizenship at birth, but did not

⁷ LRIF Strategy Group Joint Comment regarding Policy Manual (May 21, 2020), <https://cliniclegal.org/resources/humanitarian-relief/liberian-refugee-immigration-fairness-lrif/liberian-refugee>.

⁸ See 8 USC § 1254, INA § 244.

thereafter reside in Liberia nor took an oath of allegiance before a Liberian consul prior to their 23rd birthday. Therefore, being issued a passport *after* age 23 is prima facie evidence that there was no “automatic loss” of citizenship, and the same is true if issued a passport prior to age 23, and the person resided in Liberia at any time prior or took an oath of allegiance abroad.

It appears Liberians are being treated unequally and disparately than others applying for residency in the U.S. whose eligibility is based in part on their nationality. The citizenship laws of most countries in the world are much more complicated than those of Liberia, as most countries do not accord citizenship by birth on that country’s soil, or “jus soli.” Approximately 33 countries do so unconditionally, and the rest have varied “conditions.” Under the prior Clinton and Bush administrations, Haitians eligible to apply for the Haitian Immigration Refugee Fairness Act of 1998 (HIRFA), were not so restricted in the documents required to prove nationality, even though Haitian citizenship laws are much more complicated than Liberia. In that instance, legacy INS under these prior administrations, 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.⁹ All these countries, more than twenty in total, with the sole exception of Albania, have much more complicated requirements for citizenship and nationality than does Liberia.

In conclusion, USCIS should revise the Policy Manual to accept Liberian birth certificates and/or expired Liberian passports as proof of nationality. Doing so would be clearly in line with both the language of the statute and President Biden’s directive to “facilitate ease of application and timely adjudication.”

- C. Current Family Eligibility Implementation is Inconsistent with the Statute:** LRIF is available to a person who is the spouse, child, or unmarried son or daughter of a 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 applicant’s eligibility, besides being a ***spouse, child, or unmarried son or daughter*** of the Liberian applicant. The USCIS

⁹ 8 CFR 240.60 et seq.

Policy Manual appears to conflate LRIF applicants with general family immigration applicants, treating them as “derivative” LRIF applicants when LRIF makes the family member independently eligible. USCIS also requires that the relationship to the Liberian applicant must exist both at the time of filing and at the time of adjudication of the principal’s LRIF application, and that the principal applicant remain an LPR in order for the family member applicant to be approved -- requirements that exceed the plain language of the statute. Because LRIF allows a rollback period to 2014 for adjustment of status, Liberian applicants will be immediately eligible to naturalize upon approval for permanent residency. But if principal applicants do act on this important opportunity, they will no longer be LPRs, they will be U.S. citizens. And due to the “qualifying relationship” limitations imposed by USCIS, not Congress, becoming a U.S. citizen will actually disqualify their family members’ from becoming permanent residents under LRIF, if the family members’ adjustment to permanent resident applications are not yet adjudicated. Accordingly, USCIS policy is clearly contrary to Congressional intent in providing eligibility for family members. Congress never intended that family members be cut off from LRIF eligibility when their Liberian principal applicant relative becomes a U.S. citizen.

- D. Conflation of Residence and Physical Presence for Family Member Applicants:** Family member applicants do not need to demonstrate continuous physical presence in the United States since November 20, 2014, but they can have their LRIF adjustment date rolled back to the date that they established arrival or physical presence in the United States. The statute requires that, “(e) RECORD OF PERMANENT RESIDENCE - On the approval of an application for adjustment of status ... the Secretary shall establish a record of admission for permanent residence for the alien as of the date of arrival of the alien in the United States.” USCIS’ interpretation of this statutory provision is unduly restrictive. According to the Policy Manual: “An eligible family member’s admission is either: The earliest arrival date in the United States from which the applicant establishes residence in the United States; or the receipt date of the applicant’s adjustment application (if the applicant cannot establish residence earlier).” The USCIS Policy Manual appears to conflate “arrival in the United States” or physical presence, which is required by LRIF, with “residence” in the United States, which is defined by INA 101 (a)(33) and is not referenced anywhere in LRIF. Residence under the INA refers to the actual dwelling place in fact, or the place of general abode of the individual. Arrival or physical presence as stated in LRIF merely requires that the person be physically present in the United States. USCIS should amend its Policy Manual to remove the requirement that family member applicants demonstrate residence and rollback their adjustment to the date of their arrival in the United States.
- E. Increase Efficiency By Processing Cases at a Single Location and Ceasing In Person Interviews:** USCIS should consider implementing a waiver of in-person interviews for applications that are prima facie approvable, given the ongoing COVID-19 pandemic and to increase efficiency. We understand that USCIS has been requiring a large number of in-person interviews for LRIF cases, which is a significant barrier, particularly during a pandemic. Again, this appears to be disparate treatment of LRIF applicants, as even parents of U.S. citizens continue to be approved for family based adjustment of status without the requirement of an interview, unless there exist serious concerns with their application, such as prior criminal convictions which might trigger inadmissibility. We note again the language of the statute which dictates that USCIS *shall grant* LRIF to anyone who can demonstrate eligibility and that nothing in the underlying LRIF statute indicates that Congress intended to require interviews to qualify for relief under LRIF.

At least in part, in order to arrange for unnecessary in-person interviews, USCIS is processing

cases at various service centers. We strongly recommend USCIS process all cases at a single location with specially trained staff to increase efficiency and reduce needless paperwork.

- F. A Robust and Meaningful Outreach Plan is Still Needed:** A major flaw in the implementation of LRIF has been lack of meaningful outreach and engagement with the Liberian community, which contributed to only a few thousand of the potentially 10,000+ eligible persons applying before the original Dec. 20, 2020 deadline. The LRIF Strategy Group recommends that 1) USCIS affirmatively contact all DED holders who applied for an EAD with information about the program, 2) immediately add call prompts for DED and LRIF to the USCIS system, 3) direct CROs to affirmatively and specifically engage with ICE to conduct outreach to eligible Liberians currently in detention centers, 4) put in place a culturally competent outreach plan which includes Liberian media outlets in the United States, and 5) establish monthly stakeholder meetings with the LRIF Strategy Group and others to ensure a successful implementation is on track and to address emerging issues and trends.

As described in the LRIF Strategy Group’s recommendations to the Biden transition team, in light of the ongoing pandemic and economic recession, LRIF applicants face a variety of fiscal and legal barriers to accessing the relief provided by LRIF. A grant program to state and local organizations to assist in increasing LRIF applications would go far in ensuring that LRIF is successful. As President Biden wrote in his memorandum reinstating DED for Liberia, “Providing work authorization to these Liberians, for whom we have long authorized TPS or DED in the United States, while they initiate and complete the LRIF status-adjustment process, honors the historic close relationship between the United States and Liberia and is in the foreign policy interests of the United States.”¹⁰

III. CONCLUSION:

Thank you for your consideration of our comments. For any questions, please contact Diana Konaté, Policy Director at African Communities Together at diana@africans.us; Breanne Palmer, Policy & Community Advocacy Counsel, UndocuBlack Network, at breanne@undocublack.org; Peggy Gleason, Senior Staff Attorney, Immigrant Legal Resource Center at pgleason@ilrc.org; and Lisa Parisio, Advocacy Attorney for Policy, Catholic Legal Immigration Network, at lparisio@cliniclegal.org.

Sincerely,

LRIF Strategy Group Members:

African Communities Together
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UndocuBlack Network

¹⁰ Presidential Memorandum, Reinstating Deferred Enforced Departure for Liberians, The White House (Jan. 20, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/reinstating-deferred-enforced-departure-for-liberians/>.