

January 28, 2020

The Honorable Chad Wolf
Acting Secretary of Homeland Security
U.S. Department of Homeland Security
2707 Martin Luther King, Jr. Avenue SE
Washington, D.C. 20528-0445

James W. McCament
Deputy Under Secretary
Office of Strategy, Policy, and Plans
MS 0445
U.S. Department of Homeland Security
2707 Martin Luther King, Jr. Avenue SE
Washington, D.C. 20528-0445

Re: Recommendations to Ensure Continued Protection of People Who May Benefit from Liberian Refugee Immigration Fairness

Dear Acting Secretary Wolf and Deputy Under Secretary McCament:

On behalf of the undersigned organizations, we write to formally request that the U.S. Department of Homeland Security (DHS) and its component agencies coordinate with the U.S. Department of Justice (DOJ) and the White House, as necessary, to implement policies and practices to ensure the successful implementation of the Liberian Refugee Immigration Fairness (LRIF) program, enacted as part of the National Defense Authorization Act for Fiscal Year 2020.¹

Individuals eligible for LRIF who are now or will become vulnerable to deportation face significant barriers to access timely and reliable information about how to apply for lawful permanent resident (LPR) status, particularly those in detention and removal proceedings. Further, individuals desiring to apply for LRIF depend upon uninterrupted work authorization to sustain themselves and their families while gathering the financial resources and vital documents needed to apply. The below recommendations present options in which these issues could be resolved, based on past precedent and efficiency. If followed, the recommendations will help ensure adherence to the letter and spirit of this legislation and avoid unnecessary hardship for those it seeks to benefit.

Specifically, we urge you to take the following actions:

- (a) Extend work authorization for Liberians who currently have DED. This extension can be accomplished by automatically extending the expiration date of EADs currently held by Liberians as was done for Haitians in 1998 after passage of the Haitian Refugee Immigration Fairness Act (HRIFA). Alternatively, the President could extend Liberian DED for another year.

¹ National Defense Authorization Act for Fiscal Year 2020, tit. LXXVI, § 7611 Pub. L. No. 116-92, 2019 S. 1790 (2019); *Liberian Refugee Immigration Fairness*, U.S. Cit. & Immigr. Servs., <https://www.uscis.gov/green-card/other-ways-get-green-card/liberian-refugee-immigration-fairness> (last visited Jan. 22, 2020).

(b) Take immediate action to prevent the removal of persons who qualify for LRIF by issuing guidance and providing training to line officials making clear that all Liberians and their qualifying family members in custody or removal proceedings must be screened and released if they are prima facie eligible for relief under LRIF and expect to apply for adjustment of status under its provisions.

(c) Consider recommending to the White House that the President provide DED to all who meet LRIF's residence requirements and otherwise meet the criminal and admissibility requirements for DED. This would allow these individuals to apply for LRIF adjustment in an orderly fashion.

I. Background

Liberian nationals in the United States benefited from a variety of temporary humanitarian protections for close to three decades, including Temporary Protected Status (TPS) and, most recently, DED.² Since March of 1991, various administrations issued grants of TPS and DED to Liberia, including TPS in 1991; DED in 1999; TPS in 2002; DED in 2006; and extensions of DED under the Obama and Trump administrations.³ LRIF represents a roadmap to LPR status and citizenship for Liberians with years of contributions to our country during their diaspora from Liberia.

LRIF allows Liberian nationals, including DED holders, who resided in the United States since November 20, 2014, to adjust status to LPR.⁴ For the close to 4,000 Liberian nationals who currently benefit from DED (and who currently or formerly held an EAD through DED or TPS), LRIF potentially provides the opportunity for uninterrupted protection from removal and continued access to employment authorization—in line with congressional intent—but only with immediate action and policy commitments from DHS and its component agencies.

There is a serious risk that Liberians with current or previous EADs under DED will experience a gap in protection from removal *and* access to employment authorization, especially for Liberian DED holders with EADs expiring March 30, 2020. Without protection from deportation, LRIF-eligible individuals would be subject to arrest, detention, and deportation, as this population represents removable noncitizens. Similarly, without an EAD, LRIF-eligible individuals would be unable to lawfully work in the United States. While USCIS is currently accepting LRIF applications, the statute provides 180 days before USCIS must issue employment authorization, which means that even individuals applying as of the date of this letter will not receive employment authorization until the end of July of 2021 (likely longer with processing delays), resulting in at *least* a four-month interruption to both status and employment authorization.⁵

While we understand that USCIS has a policy that enables individual applicants to seek expedited processing for certain applications, it would be wholly inefficient and burdensome for LRIF applicants who are trying to file their adjustment applications as soon as possible to add an expedite request to their work authorization application and for USCIS

² Jill H. Wilson, Cong. Research Serv., RS20844, Temporary Protected Status: Overview and Current Issues 8–9 (2019).

³ *Id.*

⁴ *Liberian Refugee Immigration Fairness*, *supra* note 1.

⁵ *Id.*

adjudicators to make these determinations on a case-by-case basis.⁶ Further, as of this writing, USCIS has not updated its Policy Manual or issued any additional detailed guidance to the public on LRIF adjudications. Thus, people who rush to file their adjustment applications now in an attempt to lessen the impending lapse in employment they face, will have filed an application without receiving USCIS’ full guidance on how applications should be prepared. It is in the mutual interest of USCIS and applicants to have a stop-gap measure that would avoid this rush of filings with individual requests for expedited processing attached. Importantly, a commitment from USCIS to “expedite” EAD applications without any of these policy changes is insufficient, particularly because of the adjudication delays and backlogs discussed below. It is unlikely that USCIS will be able to promptly adjudicate and approve work permit applications before most DED recipients’ EADs expire.

For Liberian DED holders who must collect identity documents, secure counsel, gather filing and associated fees, complete and mail an application, and who must therefore apply even later, this gap will be even longer. EADs are also essential for Liberian nationals to continue to access vital services, including identity documents such as driver’s licenses, bank and other financial accounts, and other state, federal, and local benefits. This potential gap is also exacerbated by existing processing times for EADs. As of the date of this letter, processing times for EADs based on a pending Application for Adjustment of Status (Form I-485) are three to five months at the California Service Center, 5.5 to 7.5 months at the National Benefits Center, four to six months at the Nebraska Processing Center, upwards of five months at the Texas Service Center, and 3.5 to 5.5 months at the Vermont Service Center.⁷ Moreover, USCIS is currently in the midst of experiencing historic adjudication backlogs and delays, generally.⁸ Below, we provide policy recommendations regarding how USCIS can ensure that those eligible for LRIF receive uninterrupted protection from deportation and employment authorization.

I. Option 1: Automatically Extend EADs Under Existing Precedent and Provide Guidance to Prevent Deportation of LRIF-Eligible Individuals

A. Automatically Extend EADs for Liberian Nationals Under Existing Precedent

We recommend that USCIS issue a Federal Register Notice (FRN) that automatically extends the validity of EADs for Liberians who: (a) currently hold a valid EAD under the existing grant of DED; (b) previously held an EAD under a previous DED grant; and (c) previously held TPS. There is past precedent for the automatic extension of EADs for nationals from a country with a grant of DED where Congress provided those nationals the ability to adjust their status. On December 14, 1998, then–Immigration and Naturalization Service (INS) issued an FRN that automatically extended the validity of EADs for Haitians with EADs under a then-grant of DED.⁹ INS issued this automatic extension in response to

⁶ *How to Make an Expedite Request*, U.S. Cit. & Immigr. Servs., <https://www.uscis.gov/forms/forms-information/how-make-expedite-request> (last visited Jan. 27, 2020).

⁷ *Check Case Processing Times*, U.S. Cit. & Immigr. Servs., <https://egov.uscis.gov/processing-times/> (select “I-765 | Application for Employment Authorization” from the “Form” dropdown menu and the appropriate service center from the “Field Office or Service Center” dropdown menu; then click “Get processing time.”) (last visited Jan. 22, 2020).

⁸ Am. Immigr. Lawyers Ass’n, AILA Doc. No. 19012834, *USCIS Processing Delays Have Reached Crisis Levels Under the Trump Administration* (2019).

⁹ Extension of Work Authorization for Certain Haitians Previously Granted Deferred Enforced Departure (DED), 63 Fed. Reg. 68,799 (Dec. 14, 1998).

Congress enacting HRIFA, which allowed Haitian nationals to adjust their status and concurrently apply for an EAD—much like LRIF.¹⁰

Additionally, we urge USCIS to automatically extend the EADs of Liberians who previously held an EAD but who may not have renewed that EAD because of fear that DED would be terminated or other issues. We also urge USCIS to automatically extend EADs for Liberians who previously were granted TPS (Liberia's TPS designation expired on May 21, 2017).¹¹ Automatic extensions for these populations would enable Liberians to maintain and expand their economic self-sufficiency and also assist them in obtaining the financial resources to apply to LRIF before the deadline.

We propose that USCIS publish the following (or substantially similar) language in an FRN, with an effective date of March 30, 2020:

By this notice, USCIS is granting an automatic extension until March 30, 2021, of the validity of EADs issued to Liberian DED and TPS beneficiaries. This action will provide an opportunity for Liberian beneficiaries of DED and TPS to apply for adjustment of status to that of lawful permanent resident pursuant to the Liberian Refugee Immigration Fairness program, allowing them to maintain their employment eligibility until they are able to apply for and receive a new EAD in connection with their application for adjustment of status.

Importantly, while the deadline to apply for LRIF is December 20, 2020, a March 30, 2021, automatic extension would help Liberians who apply for LRIF later this year or closer to the deadline continue to maintain employment authorization while USCIS processes their applications, especially in light of previously discussed processing times. In addition to the FRN, we also strongly recommend that USCIS issue a physical mailing to an individual's last known address, similar to HRIFA, advising them of LRIF and announcing the automatic extension.¹²

B. Issue Guidance to Prevent the Deportation of LRIF-Eligible Individuals

In order to cover the gap in protection from deportation, we also urge DHS to issue training guidance to USCIS, U.S. Immigration and Customs Enforcement (ICE), U.S. Customs and Border Protection (CBP), and DOJ in the form of policy memoranda for immigration agencies who may encounter LRIF-eligible individuals. Under this guidance, upon a person showing prima facie eligibility for LRIF, ICE and CBP would not arrest or detain LRIF-eligible persons; ICE and CBP would release currently detained LRIF-eligible persons; and DOJ, through the Executive Office for Immigration Review (EOIR), would administratively close or terminate ongoing removal cases for LRIF-eligible persons.

Releasing and refraining from arresting and detaining LRIF-eligible persons is critical to maximize the number of people and qualifying relatives who obtain relief, a goal consistent

¹⁰ Adjustment of Status for Certain Nationals of Haiti, 64 Fed. Reg. 25,756, 25,756–25,774 (May 12, 1999) (codified at 8 C.F.R. pts. 3, 212, 240, 245, 274).

¹¹ Six-Month Extension of Temporary Protected Status Benefits for Orderly Transition Before Termination of Liberia's Designation for Temporary Protected Status, 81 Fed. Reg. 66,059 (Sept. 26, 2016).

¹² See, e.g., Extension of Work Authorization for Certain Haitians Previously Granted Deferred Enforced Departure (DED), 63 Fed. Reg. at 68,799 (“Individuals will be notified that their EAD has been automatically extended by: (1) The Federal Register notice, and (2) A letter mailed to the individual's last known address.”).

with the law passed by Congress and signed by the President. People who are detained face significantly greater barriers in accessing relief, particularly when it comes to identifying and securing counsel to assist them with their applications.¹³ Immigration detention facilities are often in rural and inaccessible locations, severing ties between detained immigrants and supporting community and family networks—all of which are essential in securing relief.¹⁴

Enforcement guidance in the immigration context has a long history and has been utilized by multiple administrations to prioritize enforcement and other resources.¹⁵ For example, the current administration, through Executive Order 13768, established a specific set of policies prioritizing immigrants with previous contacts with the criminal justice system.¹⁶ Ultimately, prosecutorial discretion is particularly important to satisfy congressional intent and provide Liberians and their families the opportunity to learn about, apply for, and receive relief under LRIF.

II. Option 2: Recommend Extending the Wind down Period for DED for Liberia by One Additional Year

Alternatively, DHS could recommend that the White House provide one final extension of DED for Liberia until March 30, 2021 and even move the date-of-entry requirement to November 20, 2014, to match that of LRIF. As discussed above, while the deadline to apply for LRIF is December 20, 2020, a March 30, 2021 DED extension would ensure that Liberians who apply for LRIF later this year or closer to the deadline will continue to maintain protection from deportation and employment authorization while USCIS processes their LRIF applications. DED for Liberia is scheduled to end on March 30, 2020 leading to the expiration of employment authorization for 840 Liberians.¹⁷ Under one final DED extension with an updated date-of-entry, many Liberian nationals eligible for LRIF would have an existing mechanism to efficiently renew their EAD while their application for LRIF is pending. Moreover, DED would provide a blanket form of relief from deportation for eligible Liberian nationals, providing protection from arrest, detention, and deportation by ICE.

President Trump noted that DED for Liberia was an invaluable tool to conduct foreign relations and a needed bridge while a permanent solution is developed and implemented.¹⁸ At the time of the most recent extension of the wind down period for Liberian DED, the President stated that “I understand that there are efforts underway by Members of Congress to provide relief for the small population of Liberian DED beneficiaries Extending the wind-down period will preserve the status quo while the Congress considers remedial

¹³ Ingrid Eagly & Steven Shafer, Am. Immigr. Council, Access to Counsel in Immigration Court 1 (2016) (“Detained immigrants, particularly those held in remote locations, face the additional obstacle of accessing counsel from behind bars”).

¹⁴ *Id.*

¹⁵ Shoba Sivaprasad Wadhia, *The History of Prosecutorial Discretion in Immigration Law*, 64 Am. U. L. Rev. 101, 101–18 (2015); Am. Immigr. Council, Understanding Prosecutorial Discretion in Immigration Law (2011).

¹⁶ Exec. Order No. 13,768, 82 Fed. Reg. 8,799 (Jan. 30, 2017) (“In executing faithfully the immigration laws of the United States, the Secretary of Homeland Security (Secretary) shall prioritize for removal . . .”).

¹⁷ Wilson, *supra* note 2, at 8–9.

¹⁸ Memorandum on Extension of Deferred Enforced Departure for Liberians, 2019 Daily Comp. Pres. Doc. 185 (March 28, 2019) (“Further, I understand that there are efforts underway by Members of Congress to provide relief for the small population of Liberian DED beneficiaries who remain in the United States. Extending the wind-down period will preserve the status quo while the Congress considers remedial legislation.”).

legislation.” Accordingly, the White House has already made a determination that it is in the foreign policy interests of the United States to facilitate Liberians with temporary protection to transition to a permanent status. While ultimately the White House must make a determination as to whether an additional exercise of DED is appropriate, USCIS and DHS are situated, as governmental stakeholders, to present a DED recommendation, which would efficiently accomplish the two major considerations for a successful and smooth implementation of LRIF—extension of work authorization and protection from deportation—in a single step.

Thank you for your consideration of this request. Please contact Jill Marie Bussey, Director of Advocacy at the Catholic Legal Immigration Network, Inc., with any questions at jbussey@cliniclegal.org or (301) 565-4844.

Sincerely,

African Communities Together
Black Immigrant Collective
Catholic Legal Immigration Network, Inc. (CLINIC)
Immigrant Law Center of Minnesota (ILCM)
Service Employees International Union (SEIU)
The Advocates for Human Rights
The Black Alliance for Just Immigration (BAJI)
UndocuBlack Network

cc: Mark Koumans, Deputy Director, U.S. Citizenship and Immigration Services;
Michael T. Dougherty, Citizenship and Immigration Services Ombudsman