Lesson Plan Overview

Course	Refugee, Asylum, and International Operations Directorate Officer Training Asylum Division Officer Training Course
Lesson	***One-Year Filing Deadline***
Rev. Date	May 6, 2013
Lesson Description	This lesson describes the statutory bar to applying for asylum more than one year after an alien's date of last arrival. Through discussion of the statute, the implementing regulation, and the review of examples, the lesson explains the standard of proof and exceptions to the one-year filing deadline.
Terminal Performance Objective	Given an asylum application to adjudicate in which the one-year filing deadline or a previous denial is at issue, the asylum officer will be able to properly determine if an applicant is eligible to apply for asylum.
Enabling Performance Objectives	1. Identify to what extent the one-year filing rule is at issue in a given case. (ACRR4)(AA1) 2. Apply the clear and convincing evidentiary standard to determine if an asylum application complies with the one-year filing rule. (ACRR4)(AA1) 3. Explain the exceptions to the one-year filing rule. (AA3)(AIL1) 4. Identify all relevant factors in evaluating credibility with respect to the one–year filing rule. (AAS5) 5. Determine whether an applicant is barred from applying for asylum. (ACRR3)(AA3)
Instructional Methods	Lecture, discussion, practical exercises
Student References / Materials	INA §§ 208(a); 101(a)(42); 8 C.F.R. § 208.4(a); *Matter of Y-C-*, 23 I & N Dec. 286, 288 (BIA 2002); *Vahora v. Holder,* 641 F.3d 1038 (9th Cir. 2011).
Method of Evaluation	Practical exercise, written exam
Background Reading	Joseph E. Langlois. Asylum Division, Office of International Affairs. *Procedures for Implementing the One-Year Filing Deadline and Processing Cases Previously Denied by EOIR*, Memorandum to Asylum Office Directors, et al. (Washington, DC: Jan. 4, 2002), 11 p. plus attachments. (See Asylum lesson plan, *Mandatory Bars Overview and Criminal Bars to Asylum* and RAIO *Discretion* Training Module)

Critical Tasks

Skill in identifying information required to establish eligibility. (4)
Knowledge of policies and procedures for one-year filing deadline. (4)
Knowledge of mandatory bars and inadmissibilities to asylum eligibility. (4)
Knowledge of the criteria for establishing credibility. (4)
Skill in determining materiality of facts, information, and issues. (6)
Skill in analyzing complex issues to identify appropriate responses or decisions. (5)

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c. an applicant's conversion from one religion to another, or abandonment of religion altogether recent antagonism in an applicant's country toward the applicant's race or nationality

Taslimi v. Holder, 590 F.3d 981 (9th Cir. 2010) (finding that the delay between the applicant's conversion ceremony and the filing of her asylum application was reasonable, as religious conversion is a subjective process that may begin on a certain date but takes time to incorporate into one's life).

d. recent antagonism in an applicant's country toward the applicant's race or nationality

e. threats against an applicant's family member living abroad

Example

A Russian citizen of West African ancestry has lived in the United States since 1989. She filed an I-589 in June 2000. Country conditions information shows that since the 1991 breakup of the former Soviet Union, individuals with West African ancestry have been targeted by ordinary citizens in Russia. The police have tolerated this abuse. Depending on the particular circumstances of the case, this applicant could be considered a refugee *sur place*. Provided there are no additional exceptions, because the change in country conditions occurred before April 1997, the applicant's failure to file for asylum within one year of arrival would result in her application being referred. **Note:** If there had been an escalation of violence between ethnic Russians and West Africans after April 1, 1997, the applicant would be eligible for an exception, provided the delay in filing is a reasonable period of time.

See Matter of A-M-, 23 I&N Dec. 737 (BIA 2005) (where applicant entered the U.S. on January 22, 2001, and filed for asylum over 2 years later, the nightclub bombing in Bali, Indonesia on October 12, 2002 did not constitute a material change in circumstances because the bombing did not materially affect or advance applicant's claim: he was from a different island and of a different ethnicity and religion than both those generally in Bali and the specific victims of the Bali bombing).

B. Extraordinary Circumstances

1. General considerations

8 C.F.R. § 208.4(a)(5).

Events or factors in an applicant's life that caused the applicant to miss the filing deadline may except the applicant from the requirement to file within one year of the last arrival or April 1, 1997, whichever is later. To be eligible for this exception, the applicant must:

a. establish the existence of an extraordinary circumstance;

b. establish that the extraordinary circumstance was directly related to the failure to timely file;

c. not have intentionally created the extraordinary

circumstance, through his or her action or inaction, for the purpose of establishing a filing-deadline exception; and

d. file the application within a reasonable period given the circumstances that related to the failure to timely file.

Although an extraordinary circumstance can occur before or after an applicant's arrival in the U.S., and before or after the April 1, 1997, the effective date of the statutory provision, the extraordinary circumstance must directly relate to an applicant's failure to file within the one year period when filing would be timely.

Note: Because an extraordinary circumstance must directly relate to the failure to file, it must occur in the period when filing would be timely for an exception to exist (in contrast with a changed circumstance, which may occur at any time).

2. Types of circumstances that may be "extraordinary"

The federal regulations describe several situations that could fall under the extraordinary circumstances exception. This list is not exhaustive or all-inclusive. There are other circumstances that might apply if the applicant is able to show that those circumstances were extraordinary and directly related to the failure to timely file.

The Asylum Division considers the examples of extraordinary circumstances listed in the regulation as circumstances that, if experienced by an applicant, are likely to relate to the failure to timely file. When an applicant establishes the existence of an enumerated extraordinary circumstance, the officer should verify that the extraordinary circumstance is directly related to the failure to timely file.

Extraordinary circumstances include but are not limited to:

a. serious illness or mental or physical disability, including any effects of persecution or violent harm suffered in the past

8 C.F.R. § 208.4(a)(5)(i).

The illness or disability must have been present, although not necessarily incurred, during at least part of the one-year period after arrival.

If the applicant has suffered torture or other severe trauma in the past, the asylum officer should elicit information about any continuing effects from that torture or trauma, which may be related to a delay in

Effects of persecution can include inability to recall details, severe lack of focus, problems with eating and sleeping, and other post-

filing. Torture may result in serious illness or mental or physical disability.

traumatic stress disorder (PTSD) symptoms. *See* RAIO training module *Interviewing - Survivors of Torture. See also* RAIO training module *Guidance for Adjudicating Lesbian, Gay, Bisexual and Intersex Claims.*

b. the death or serious illness or incapacity of the applicant's legal representative or a member of the applicant's immediate family.

8 C.F.R. § 208.4(a)(5)(vi).

Applicant's legal guardian, or holder of power of attorney, is also considered a family member.

The degree of interaction between the family members, as well as the blood relationship between applicant and the family member must be considered. For example, an estranged brother with whom the applicant has never had much contact would not qualify, but a grandparent or uncle for whom the applicant has sole physical responsibility would qualify.

c. legal disability

8 C.F.R. § 208.4(a)(5)(ii).

This is best described as an incapacity for the full enjoyment of ordinary legal rights; it includes minors and mental impairment.

Black's Law Dictionary, 5th Ed.

The legal disability must have existed at a point during the one-year period after arrival.

The regulations specifically include "unaccompanied minors" as an example of a category of asylum applicants that is viewed as having a legal disability that constitutes an extraordinary circumstance. Keeping in mind that the circumstances that may constitute an extraordinary circumstance are not limited to the examples listed in the regulations, the Asylum Division's policy is to find that all minors who have applied for asylum, whether accompanied or unaccompanied, also have a legal disability that constitutes an extraordinary circumstance.

8 C.F.R. § 208.4(a)(5)(ii); *see Matter of Y-C-*, 23 I & N Dec. 286 (BIA 2002).

A minor applicant is defined as someone under the age of eighteen at the time of filing. *See* USCIS Memorandum, "Updated Procedures for Minor Principal Applicant Claims, Including Changes to RAPS," Aug. 14, 2007, p.5.

The same logic underlying the legal disability ground listed in the regulations applies to accompanied minors: minors are generally dependent on adults for

their care and cannot be expected to navigate adjudicatory systems in the same manner as adults.

As long as an applicant applies for asylum while still a minor (while the legal disability is in effect), the minor should be found to have not only established the existence of an extraordinary circumstance, but also to have filed within a reasonable period of time given the circumstance, thus meriting an exception to the one-year filing deadline.

See section VI, below, "Reasonableness…."

(i) Unaccompanied Alien Children (UAC)

The Trafficking Victims Protection Reauthorization Act (TVPRA) of 2008 amended the INA to state that the one-year filing deadline does not apply to *unaccompanied alien children*. An unaccompanied alien child is a child who has no legal guardian in the United States, or for whom no parent or legal guardian in the United States is available to provide care and physical custody. As of March 23, 2009, the effective date of the TVPRA, when an asylum officer determines that a minor principal applicant is an unaccompanied alien child, the asylum officer should forego the one-year filing deadline analysis and conclude that the one-year filing deadline does not apply.

See INA § 208(a)(2)(E); TVPRA, P.L. 110-457, § 235(d)(7)(A); S*ee also* Asylum lesson, *Guidelines for Children's Asylum Claims*. Note: reference to the Asylum lesson is accurate as of this date. At a future date, this will reference the RAIO training module, *Children's Claims, Asylum Supplement*.

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(ii) Minors Who Are Not Found To Be Unaccompanied Alien Children

The one year filing deadline continues to be applicable for minor principal applicants in lawful immigration status and minor principal applicants who are accompanied. Such cases should be analyzed according to the general guidance above.

Note: As passage of the TVPRA exempts only unaccompanied alien children from the one-year filing deadline, the deadline still applies to minors who are not found to be unaccompanied alien children. As a result, the examples listed in 8 CFR § 208.4(a)(5)(ii) are still valid.

d. ineffective assistance of counsel (limited to attorneys or accredited representatives)

8 C.F.R. § 208.4(a)(5)(iii)

The following are required for this exception:

(i) the applicant must file a written affidavit explaining the agreement in detail and listing what promises the attorney made or did not

make, and

(ii) testimony or documentary evidence that the accused counsel was informed of the allegation and was given an opportunity to respond, and

(iii) testimony or documentary evidence that indicates whether there has been a complaint filed with the appropriate disciplinary authorities and, if not, an explanation why there has been no complaint.

Note: Regulations and case law that address whether counsel's assistance was ineffective are not relevant here. The asylum officer is not evaluating whether applicant was given poor counsel; rather, the responsibility of the asylum officer is to decide whether the above asylum regulatory elements have been fulfilled and that the counsel's actions were related to the delay in filing. Therefore, a recent ruling of the Attorney General that an alien has no right to effective assistance of counsel in removal proceedings is not relevant in determining whether an extraordinary circumstance exists and if an exception is warranted.

8 C.F.R. § 292.3(a); *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988); *Matter of B-B-*, Int. Dec. #3367 (BIA 1998).

See Matter of Compean, 24 I&N Dec. 710 (AG 2009)

e. maintenance of TPS, lawful status, or parole until a reasonable period before filing an asylum application

8 C.F.R. § 208.4(a)(5)(iv).

The regulations specifically provide that maintaining lawful immigration status during at least part of the one-year period qualify as an extraordinary circumstance. Thus, maintaining lawful status may enable an applicant to establish an exception to the requirement to file within the one-year period. As with all extraordinary circumstances that affect filing, maintaining lawful status excuses the failure to file within the one-year period so long as the application was filed within a reasonable period given the circumstance that relate to the failure to timely file.

The Department of Justice included these possible extraordinary circumstances exceptions to avoid forcing a premature application for asylum in cases in which an individual believes circumstances in his or her country may improve. For example, an individual admitted as a student who expects that the political situation in her country may soon change for the better

See 65 Fed. Reg. 76121, 76123 (Dec. 6, 2000).

as a result of recent elections may wish to refrain from applying for asylum until absolutely necessary.

Given the rationale for the inclusion of legal status as an extraordinary circumstance, the Asylum Division has determined that the "maintaining lawful status" extraordinary circumstance will generally relate to the failure to timely file, even where the applicant does not reference having status as a reason for the delay in filing.

An applicant has not "maintained lawful status" when:

(i) the admission is based on fraudulent documents,

(ii) he or she appears to be in lawful status, but has actually violated that status, or

(iii) the term parole specifically require that asylum be filed within one year.

Note: The applicant is not precluded from establishing an extraordinary circumstance where legal status has not been maintained. Consider if the case involves a "delayed awareness" of the violation of status. *See* section VI.B., *Delayed Awareness*, below.

Although applicants in the above circumstances have not maintained lawful status, some still may establish extraordinary circumstances exceptions. In evaluating whether an exception applies, the asylum officer should determine whether the applicant believed that he or she was maintaining lawful status.

In some circumstances, where the visa allows an applicant to be admitted to the United States for a specific function or purpose, and the applicant never performs that function or purpose, the applicant will be unable to establish that he or she qualifies for an extraordinary circumstances exception.

For example, an applicant who was admitted as an F-1 student, but never attended school (where the purpose of the visa is to permit the applicant to attend school in the United States) would be unable to establish that he or she qualifies for an extraordinary circumstances exception to filing within the one-year deadline.

On the other hand, an F-1 student may work, mistakenly, or transfer schools without permission, believing that this does not violate the terms of the admission. The applicant's belief that he or she is maintaining F-1 status may provide for an extraordinary circumstances exception, provided that the applicant filed within a reasonable period of time

See section VI., *Filing Within a Reasonable Period of Time*, below.

given the circumstances that relate to the failure to timely file.

In evaluating whether an extraordinary circumstances exception applies, asylum officers should keep in mind the rationale for including "maintaining lawful status" among the exceptions to the filing deadline (see note above). Although not actually maintaining status, the applicant who believes he or she is maintaining lawful status also may delay filing for asylum until there is no alternative.

Parole of one year or less for the purpose of submitting an asylum application may not be considered an exception to the one-year filing deadline. Applicants paroled for the purpose of filing asylum are expected to file their asylum applications within one year of the parole and are given notice to that effect. Therefore, unless such applicants are granted an extension of this parole or granted some other form of legal status, they are not eligible for the lawful status exception to a timely filing.

Applicants who are not paroled for the purpose of submitting an asylum application during the required filing period may qualify for an extraordinary circumstances exception. In such cases, applicants still must file within a reasonable time after the period of parole ends.

The same logic that applies for asylum applicants who are maintaining a status or parole may apply to asylum applicants who are derivatives on a principal's asylum application. For instance, where a child is a derivative on her parent's asylum application and the child decides to file her own asylum application as the principal applicant, the child's having been a derivative on a pending asylum application at a point during the one-year following the child's last entry could constitute an extraordinary circumstance.

An alien with a pending application, who is not in any lawful status, may be considered to be an alien whose period of stay is authorized by the Attorney General. The types of "stay authorized by the Attorney General" that the asylum officer might encounter could include pending applications for adjustment of status, Such applicants would not be analyzed specifically under the "lawful status" exception to the one-year

For examples of periods of stay authorized by the Attorney General, *see Michael Pearson, Executive Associate Commissioner, Field Office Operations, Period of stay authorized by the Attorney General after 120-day tolling period for*

filing deadline. However, insofar as the "extraordinary circumstances" exception is not limited to the precise scenarios outlined, the Asylum Officer should consider the totality of the circumstances when determining whether an applicant with a pending application can establish an exception to the requirement that the application be filed within one year of last arrival.

purposes of section 212(a)(9)(B) of the Immigration and Nationality Act (the Act). *(AD 00-07)*, Memorandum to INS field offices, March 3, 2000.

f. initial attempted submission of application was timely

(i) defect in first submission

8 C.F.R. § 208.4(a)(5)(v).

The I-589 was mailed within one year of the last arrival, but the USCIS Service Center returned it as improperly filed. It was subsequently refiled more than one year after the arrival. In cases such as this, the applicant is presumed to have attempted a timely request for protection with USCIS. The application will not be referred on the basis of the one-year filing deadline, provided the applicant refiles within a reasonable period of time from the date the application was returned by the Service Center. **Note:** The file must always be thoroughly checked to ensure that correspondence to an applicant from the Service Center is not overlooked.

(ii) administrative closure

Where a case was initially filed before April 16, 1998 or prior to the expiration of the one-year period, then closed and subsequently reopened by USCIS, there is no filing deadline issue because the application was timely filed.

(iii) previous asylum case was terminated by an immigration judge

Provided the first filing was before April 16, 1998, or before the expiration of the one-year period, an asylum officer should examine the period of time from the termination date to the second filing date in order to determine whether the delay was reasonable.

g. other circumstances

See also RAIO training module *Guidance for Adjudicating Lesbian, Gay,*

Other circumstances that are not specifically listed in

the non-exclusive list in the regulations, but which may constitute extraordinary circumstances, depending on the facts of the case, include, but are not limited to, severe family or spousal opposition, extreme isolation within a community, profound language barriers, or profound difficulties in cultural acclimatization. Any such factor or group of factors must have had a severe enough impact on the applicant's functioning to have produced a significant barrier to timely filing.

Bisexual and Intersex Claims.

C. Burden and Standard of Proof

1. Applicant's burden

The burden of proof is on the applicant to establish the existence of a changed circumstance materially affecting eligibility for asylum or of an extraordinary circumstance related to the applicant's failure to apply for asylum within one year from the last arrival.

2. Standard of proof

The standard of proof to establish changed or extraordinary circumstances is proof to *the satisfaction of the Attorney General.* This is a lower standard of proof than the "clear and convincing" standard that is required to establish that the applicant timely filed.

INA § 208(a)(2)(D); *see* RAIO Training Module, *Evidence*.

The standard "to the satisfaction of the Attorney General" places the burden on the applicant to demonstrate that an exception applies. The applicant is not required to establish "beyond a reasonable doubt" or by "clear and convincing evidence" that the exception applies. Rather, this standard has been described in another immigration context as requiring the applicant to demonstrate that the exception applies through "credible evidence sufficiently persuasive to satisfy the Attorney General in the exercise of his reasonable judgment, considering the proof fairly and impartially."

See Matter of Barreiro, 12 I&N Dec. 277, 282 (BIA 1967) (interpreting the "satisfaction of the Attorney General" standard as applied when adjudicating an exception to deportability for failure to notify the Service of a change of address).

This standard has also been interpreted in other immigration contexts to require a similar showing as the "preponderance of evidence" standard, requiring an individual to prove an issue:

- "by a preponderance of evidence which is reasonable, substantial and probative," or

See e.g. Matter of Barreiros, 10 I&N Dec. 536, 538 (BIA 1964) (interpreting same standard for rescinding LPR status by establishing that applicant was not eligible for adjustment); *Matter of V-*, 7 I&N Dec. 460, 463 (BIA

- "in his favor, just more than an even balance of the evidence."

1957) (interpreting standard for an alien to establish that a marriage was not contracted for the purpose of evading immigration laws).

3. Evidence

Generally, asylum officers must consult country conditions information relevant to the applicant's claim to determine whether there are changed country conditions material to the applicant's eligibility for asylum.

Note: This, of course, would not apply where the changed circumstance is a change in the applicant's spousal or parent-child relationship to the principal in a previous application.

While the burden of proof is on the applicant to show that there are changed circumstances that now materially affect his or her eligibility for asylum, many applicants affected by changed circumstances may not be able to articulate those circumstances. The unique nature of assessing an applicant's need of protection places the officer in a "cooperative" role with the applicant. It is an asylum officer's affirmative duty "to elicit all relevant and useful information bearing on the applicant's eligibility for asylum."

See RAIO Training Module, Researching and Using Country of Origin Information in RAIO Adjudications.

UNHCR Handbook, para. 196; 8 C.F.R. § 208.9(b). .

Asylum officers must be flexible and inclusive in examining changed or extraordinary circumstances, if credible testimony or documentary evidence relating to an exception exists. Documentary evidence includes country conditions and legal information that the asylum officer researches and uses.

INS, Interim Rule with Request for Comments, 62 Fed. Reg. 10312, 10316 (Mar. 6, 1997) (acknowledging the weight of "a decision to deny an alien the right to apply for asylum"); 142 Cong. Rec. S11840 (Sept. 30, 1996) (comments by Senators Hatch and Abraham shortly before passage of IIRIRA that indicate legislative intent for exceptions to cover a broad range of circumstances).

VI. FILING WITHIN A REASONABLE PERIOD OF TIME

A. Overview

If there are changed or extraordinary circumstances either material to the applicant's claim or related to the applicant's failure to file timely, respectively, the applicant must have filed the asylum application within a reasonable period of time from the occurrence of the changed or extraordinary circumstance in order to establish an exception to the one-year filing deadline.

8 C.F.R. § 208.4(a)(4)(ii).

B. Delayed awareness

If the applicant can establish that he or she did not become aware of the changed circumstances until after they occurred, such delayed awareness must be taken into account in determining what constitutes a "reasonable period of time."

8 C.F.R. § 208.4(a)(4)(ii).

C. Evaluation of the "reasonable period of time"

What constitutes a reasonable period of time to file following a changed or extraordinary circumstance depends upon the facts of the case. There is no amount of time that is automatically considered reasonable or unreasonable. Asylum officers must ask themselves if a reasonable person under the same or similar circumstances as the applicant would have filed sooner. Asylum officers are encouraged to give applicants the benefit of the doubt in evaluating what constitutes a reasonable time in which to file. An applicant's education and level of sophistication, the amount of time it takes to obtain legal assistance, any effects of persecution and/or illness, when the applicant became aware of the changed circumstance, and any other relevant factors should be considered.

Asylum Procedures, 65 Fed. Reg. 76121, 16123-24 (Dec. 6. 2000) (Supplementary Information) (noting that the finding of changed or extraordinary circumstances would justify late filing "to the extent necessary to allow the alien a reasonable amount of time to submit the application," but not providing an automatic extension of a certain period of time); *see Matter of T-M-H- & S-W-C-*, 25 I&N Dec. 193 (BIA 2010) (finding that there is no automatic one year extension in which to file an asylum application following material "changed circumstances")

In addition, the applicant may assert that a particular situation that would otherwise be considered "an extraordinary circumstance," such as a serious injury to the applicant and/or his or her representative, that took place outside of the one year filing period contributed to his or her delay in filing. Though such situations cannot be considered "extraordinary circumstances" for the purposes of an exception, they should be considered when determining whether the application was filed in a reasonable period of time where there has been a changed or extraordinary circumstance identified that could give rise to an exception.

Examples

1) An educated human rights lawyer arrived in the U.S. in 1985. She demonstrates that country conditions changed in 1997, placing her at risk. She files for asylum in January 2001. Due to this particular applicant's knowledge of the law and human rights conditions, an explanation for waiting so long to file would have to be very convincing to be considered reasonable.

2) In 1987 a Polish citizen was jailed by the Polish Government for one year for expressing a pro-democracy

political opinion. He arrived in the U.S. in 1988. He filed for asylum in September 2000. His attorney states that an I-589 was not filed for many years because she did not believe he was eligible. She believes that a BIA case decided in May 2000 affects his eligibility. Presuming his attorney is correct, a changed circumstance exception to the filing deadline rule – change in applicable U.S. law – applies, provided that the four-month period from May to September is considered a reasonable delay.

3) Applicant was seriously ill during a one-year period after her last arrival, but was in very good health for 18 months prior to filing her asylum application. When asked why she waited so long, she replied that she was too busy repairing her home. While this applicant's illness constituted an extraordinary circumstance for not timely filing the I-589, delaying the filing as long as she did was not reasonable. Such a delay might, depending on the circumstances, be considered reasonable for an applicant who continued to require intensive therapy and other treatment as a result of the illness.

Examples related to permission to remain in the U.S. ("status cases")

When it is determined that an application was untimely filed and that during the one-year period the applicant had TPS, parole, or a lawful status, the inquiry is whether the applicant filed for asylum within a reasonable period of time after the TPS, parole, or lawful status ended. The existence of an extraordinary circumstance in the form of a legal status does not toll the one-year limitation. The determinations of reasonableness are made on a case-by-case basis. Although the totality of circumstances in the case determines what is considered a reasonable period of time, guidance offered by the Department of Justice states that more than a six-month delay would usually be considered unreasonable.

Husyev v. Mukasey, 528 F.3d 1172 (9th Cir. 2008) (Court found that Husyev's filing 364 days after his lawful status expired was unreasonable even though the filing was six months after the one-year deadline had passed.); *see* Asylum Procedures, 65 Fed. Reg. 76121, 76123-24 (Dec. 6, 2000) (Supplementary Information) ("Clearly, waiting six months or longer after expiration or termination of status would not be considered reasonable.").

1) In February 1999, Applicant was admitted on a B-2 visa until August 1999. She applied for asylum untimely in June 2000. An extraordinary circumstance exception applies because Applicant was in lawful status during the one-year filing period. The issue before the asylum officer

See Asylum Procedures, 65 Fed. Reg. 76121, 76123 (Dec. 6, 2000) (Supplementary Information) ("The Department would expect a

is whether ten months between the expiration of lawful status (August 1999) and the time of filing (June 2000) is a reasonable period of time to file. The asylum officer does NOT look to the period of time between when the application should have been filed (February 2000) and when it was actually filed (June 2000).

person in that situation to apply for asylum, should conditions not improve, within a very short period of time after the expiration of her status. Failure to apply within a reasonable time after expiration of the status would foreclose the person from meeting the statutory filing requirements.").

2) In September 1998, Applicant entered the U.S. on a student visa. Her status lapsed in June 2000. She filed for asylum in August 2000. Because the I-589 was filed more than one year after the last arrival, the issue for the asylum officer is whether it was reasonable to delay filing for two months after the applicant's lawful status lapsed. **Note:** Barring facts to the contrary, in this situation a two-month delay would ordinarily be considered a reasonable period of time. A longer period of time may also be reasonable, depending on the circumstances.

3) In March 1999, Applicant was admitted to the U.S. on a B-1 visa and authorized to stay until June 1999. She applied for asylum in February 2000. This applicant timely filed the application within one year of her last arrival, so there is no filing deadline issue to adjudicate; whether it was reasonable to delay filing for eight months from the visa expiration is irrelevant. Applicant has met the one-year filing requirement.

VII. CREDIBILITY

A. Overview

As explained in this lesson, an applicant must demonstrate by clear and convincing evidence that he or she applied for asylum within one year after the date of last arrival. This may be demonstrated either by establishing the date of last arrival or by establishing that the applicant was outside the United States less than one year prior to the date the application was filed. If the applicant fails to file within one year from the date of last arrival, the applicant may still be eligible to apply for asylum if the applicant establishes to the satisfaction of the asylum officer that an exception applies. To determine whether the applicant met the filing deadline or whether an exception applies, the asylum officer will have to evaluate the credibility of the applicant's testimony regarding each of these issues.

B. Totality of the Circumstances

Irrelevant Pages Omitted