Lesson Plan Overview

Course	Asylum Officer Training
Lesson	*One-Year Filing Deadline*
Field Performance Objective	Given an asylum application to adjudicate in which the one-year filing deadline is an issue, the asylum officer will be able to properly apply the one-year filing rule.
Interim (Training) Performance Objectives	1. Identify whether the one year filing rule applies. 2. Correctly use the clear and convincing evidentiary standard. 3. Explain the exceptions to the one-year filing rule. 4. Correctly process applications in which the one-year rule applies and no exceptions exist.
Instructional Methods	Lecture, Practical Exercises
Student Materials/ References	INA § 208(a); 8 C.F.R. § 208.4 (a) (4/9/97 interim)

TABLE OF CONTENTS

page #

I. Introduction 3
II. Overview 3
14-Day Grace Period 4
Full Asylum Interview Requirement 4
III. Standard of Proof: "Clear and Convincing" 4

A. Evidence to Support a "Clear and Convincing" Finding............ 5
1. Testimonial Evidence.. 5
2. Documentary Evidence... 5
a. Difficulties in "Proving a Negative"............................... 5
b. Corroborative Clear and Convincing Evidence as Unnecessarily Burdensome.. 5
IV. Exceptions to the One Year Rule.. 7
A. Changed Circumstances.. 7
1. General Considerations.. 7
a. Standard of Proof: Reasonable.................................... 8
b. Changed Circumstances Period of Time........................ 8
c. Reasonableness of Filing Delay if Exception Applies...... 9
d. Affirmative Duty to Consult Additional Sources........... 9
2. Specific Considerations.. 10
a. Changes in U.S. Law or Policies.................................. 10
b. Changes in the Dependent Relationship........................ 11
3. Refugees *Sur Place*.. 12
4. Reasonable Possibility Standards....................................... 13
a. Well-founded Fear... 13
b. One-Year Filing Deadline... 14
5. Evaluation of What Constitutes a Reasonable Period of Time.. 14
B. Extraordinary Circumstances.. 17
General Factors.. 18
Specific Circumstances... 18
1. Serious Illness/Mental or Physical Disability........................ 18
2. Legal Disability... 19
3. Ineffective Assistance of Counsel....................................... 19
4. Maintaining of Lawful Status... 20
a. TPS.. 20
b. Immigrant or Non-Immigrant Status............................. 20
5. Timely Initial First Submission.. 21
a. Defect in First Submission.. 21
b. Administrative Closure... 22

Presentation	References

I. INTRODUCTION

Prior to the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), eligibility for asylum was not linked to how long an applicant had been in the United States. IIRIRA introduced a new eligibility requirement: an asylum applicant filing after April 1, 1998, must apply within one year of his or her last arrival, unless there are changed circumstances which materially affect his or her eligibility for asylum, or extraordinary circumstances relating to the delay in filing. Applicants who last arrived before April 1, 1997, must file no later than April 1, 1998, unless there are changed or extraordinary circumstances.

Authority for the rule is contained in INA § 208(a)(2)(B) & (D) and the exceptions to the rule are given in (the 4/9/97 interim) 8 C.F.R. § 208.4 (hereafter referred to without the "interim" designation)

II. OVERVIEW

An asylum applicant whose last arrival in the U.S. was more than one year before filing an I-589 and whose I-589 was filed after April 1, 1998, shall have his or her application rejected by an asylum officer, immigration judge, or the BIA. There are several exceptions to this rule. It is important to keep in mind that:

- Only the applicant's last arrival is operative.

- The filing date is found on the Service's date/time stamp on the I-589 and on the RAPS 'I589' and 'CSTA' screens. If any of these dates are different, the earliest date is to be used.

- The one year is calculated from the last arrival date up to the previous calendar day the following year. For example, an applicant who arrives on June 4, 1997, and files on June 3, 1998, will have timely filed; an applicant who arrives on June 4, 1997, and files on June 4, 1998, will not have timely filed.

14-Day Grace Period

Although April 1, 1998, is the effective date for those who arrived before April 1, 1997, there is an internal 14-day grace period in order to allow for efficient processing. This 14-day period only applies during the initial implementation period immediately following April 1, 1998. Applications with a filing date on or after April 16, 1998, are subject to the one-year rule; applications with a filing date on or before April 15, 1998 will not be subject to the one-year filing deadline as implemented by the Asylum Program.

Each applicant is to be given a full asylum interview

An asylum interview is the method asylum officers use to determine an applicant's race, religion, nationality, membership in a particular social group, or political opinion. It is also the way to determine if any exceptions to the filing deadline apply. No applicant is to be denied a full asylum interview based solely on one-year filing deadline issues. A full and thorough asylum interview includes a pre-interview check of country conditions and post-interview research.

INA § 101(42); 8 C.F.R. § 208.13

III. STANDARD OF PROOF: CLEAR AND CONVINCING

Pursuant to INA Section 208(a)(2) asylum officers are to use the *clear and convincing* evidentiary standard of proof to determine *whether an applicant applied within one year* of his or her last arrival in the United States. This burden of proof is on the applicant. "Clear and convincing" is that degree of proof that will produce a "firm belief or conviction", and "where the truth of the facts asserted is highly probable." The proof need not be "conclusive" or "unequivocal"; if put on a scale, the clear and convincing standard would be somewhere between the "preponderance of evidence" standard (greater than 50% standard, or "more likely than not" – the general rule for accepting testimony as truthful) and that of the "beyond a reasonable doubt" standard used in criminal trials. It is stressed that when using such a percentage scale the clear and convincing standard need not be located mid-point between preponderance of evidence and beyond a reasonable doubt; rather, clear and convincing could be located anywhere between these two standards.

Black's Law Dictionary, 5th and 6th Editions; *Woodby v. INS, 385* U.S. 276 (1966); *Matter of Carrubba*, 11 I&N Dec. 914 (BIA 1966); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988)

A. Evidence to Support a "Clear and Convincing" Finding

1. Testimony is evidence; standing alone without witness corroboration or documentary evidence, it can be sufficiently clear and convincing to lead an asylum officer to a "firm belief" that the applicant arrived within one year before the filing date.

   8 C.F.R. § 208.13(a); *Matter of S-M-J-*, Int. Dec. #3303 (BIA 1997) *See* Asylum Officer Basic Training Course ("AOBTC") lesson, *Eligibility Part IV: Burden of Proof and Evidence.*

2. Documentary evidence such as passport entries, leases, etc., are probative of when a residency began or ended.

a. In most cases it would seem unreasonable to require documents proving that an applicant was not physically present in the United States at a given time. "Proving a negative" presents multiple problems for both the applicant and the Service.

U.S. v. Taylor, 1954 WL 2702 (AFBR), 17 C.M.R. 753 (proving a negative was found to be a "formidable task"); *U.S. v. Eramdjian*, 155 F.Supp. 914 (1957) (proving a negative presented "difficulties of proof"); *Chow v. INS*, 641 F.2d 1384 (1981) (the court was "cognizant of the difficulties inherent in proving a negative")

b. The statute requires a clear and convincing showing that the application was filed within one year of arrival. Caselaw that addresses an asylum applicant's responsibility to provide reasonably available corroborating evidence or an explanation for its absence may not be appropriate for this new area of law. The furnishing of documentary and other supplementary evidence that a residence was maintained outside the United States for a fixed number of years would in most cases be unduly burdensome to an applicant. Due to circumstances that give rise to a refugee's flight, such proof would typically require copious documentation that an applicant cannot reasonably be expected to have.

See Asylum Officer Basic Training Course ("AOBTC") lesson, *Eligibility Part IV: Burden of Proof and Evidence*.

Examples

1) Applicant testifies that he was in India prior to entering the U.S. without inspection six months before the filing date, that he worked until one week before his departure from India, and that he lost his passport. The standard of proof for each of these facts and events is a preponderance of evidence, i.e., each event or occurrence must be more likely than not of having taken place. The sum of these findings for timely filing purposes, however, must be a clear and convincing showing that the application was filed within one year of the arrival.

See AOBTC lesson, *Eligibility Part IV: Burden of Proof and Evidence*, Sec. III, Standards of Proof-Comparison

2) Applicant testified that she entered the U.S. without inspection seven years ago and lived for six years in California. Applicant left and then reentered the U.S. six months ago with a fraudulent passport in New York and remained in New York. She testified about her first six years in the U.S., her activities outside the U.S. for the six months, and her life in the U.S. after reentering. The standard of proof for each of these facts and events is a preponderance of evidence, i.e., it must be more likely than not that each event or occurrence took place. The sum of these findings for timely filing purposes, however, must be a clear and convincing showing that the application was filed within one year of this applicant's last arrival.

IV. EXCEPTIONS TO THE ONE-YEAR RULE: Changed Circumstances (materially affecting eligibility) and Extraordinary Circumstances (relating to a delay in filing)

A. Changed Circumstances

1. General considerations

INA § 208(a)(2)(D)

The statute allows for exceptions due to changed circumstances that materially affect an applicant's eligibility for asylum. Changed circumstances include but are not limited to:

- Changed conditions in applicant's country of nationality or, if stateless, applicant's country of last habitual residence — 8 C.F.R. § 208.4(a)(4)(i)(A)
- Changes in applicable U.S. law — 8 C.F.R. § 208.4(a)(4)(i)(B)
- Changes in applicant's personal circumstances, such as recent political activism, conversion from one religion to another, etc. — 8 C.F.R. § 208.4(a)(4)(i)(B)
- The ending of applicant's dependent relationship to the principal applicant in a previous application

a. Standard of proof: reasonable

The standard of proof to establish changed circumstances is proof to *the satisfaction of the Attorney General;* only immigration judges, the BIA, and asylum officers have the regulatory authority to adjudicate this filing requirement. This is a reasonableness test, i.e., it must be reasonable for the asylum officer, immigration judge, or BIA to conclude that a changed circumstance exists.

8 C.F.R.§ 208.4(a)(2)(i)(B)

8 C.F.R. § 208.4(a)(1)

b. Changed circumstances period of time

Changed circumstances must occur while applicant is in the United States, and must occur on or after April 1, 1997, which is the effective date of the one-year filing deadline statute.

Examples

1) Applicant was forced to undergo an abortion procedure by her government in 1991; she arrives in the U.S. in 1992. A change in the refugee definition in 1996 – i.e., harm pursuant to a coercive population control program -- materially affects her asylum eligibility, and she files for asylum on April 18, 1998. This applicant does not have a changed circumstance under the law because the change did not occur on or after April 1, 1997. If no other exceptions apply, her application will be rejected because she did not apply within one year of her last arrival.

2) Applicant is a member of the XYZ party in his country; he arrives in the U.S. in 1994. In 1995 there is a coup, and XYZ party members are executed. Applicant files in May of 1998, and on the day of the interview, XYZ members are still being executed. Because the change of conditions in applicant's country occurred before April 1, 1997, applicant is not eligible for a changed circumstances exception. Because he filed more than one year after his last arrival in the U.S., his application will be rejected if no other exceptions apply. Note: If conditions for XYZ members worsened on or after April 1, 1997, this applicant may have a changed circumstance under the law.

c. If an exception applies, the filing must be done within a reasonable period of time. What constitutes a reasonable period of time is explained later in the lesson.

d. Asylum officers must consult sources of information beyond an applicant's testimony.

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 this. 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 AOBTC lesson, *Country Conditions Research and the Resource Information Center ("RIC")*

UNHCR *Handbook*, para. 196; *Matter of S-M-J-*, Int. Dec. #3303 (BIA 1997)

8 C.F.R. § 208.9(b)

Asylum officers must be flexible and inclusive in examining changed circumstances exceptions or other filing deadline exceptions, 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.

See comments on proposed rule in 3/6/97 Federal Register; see also comments by Senators Hatch and Abraham shortly before passage of IIRIRA that indicate legislative intent for the exceptions to cover a broad range of circumstances. 142 Cong. Rec. S11840, 9/30/96.

8 C.F.R. § 208.12(a)

Example

An ethnic Albanian applicant from the former Yugoslavia arrives in 1989, marries a Serbian woman in 1993, and files for asylum in June of 1999. His testimony as to his activities in the Kosovo separatist movement is not credible. After the interview it is discovered in country condition sources that beginning in 1998 those in mixed marriages in applicant's region were at risk. Although his testimony as to political activities is not credible, documentary evidence shows that the mixed-marriage materially affects his asylum eligibility after the effective date of the law. Provided this applicant files for asylum within a reasonable period of time after the changed circumstance, he would be eligible for an exception to the filing deadline.

2. **Changed circumstances – specific**

In some cases an applicant's need of protection occurs by dint of changes in his or her individual circumstances and/or changes in U.S. law or policies. Examples include but are not limited to:

8 C.F.R. § 208.4(a)(4)(i)(B)

a. changes in U.S. law or policies. A few examples are:

   (i) precedential caselaw, including BIA decisions, which affect applicant's asylum eligibility

   (ii) recent hostilities between the U.S. and the government of applicant's country

b. a change in the dependent relationship between applicant and the former principal applicant spouse or former principal applicant parent, due to marriage, divorce, death, or attainment of the age of 21

Examples

1) Applicant arrived in the U.S. in 1989 and has never left. She was included as a dependent on her mother's I-589, which was filed in 1992. Applicant's mother died in May of 1997 before receiving her asylum interview; in June of 1999 applicant files her own I-589. Due to the change in applicant's dependent relationship occurring after April 1, 1997, an exception to the filing deadline would apply provided the asylum officer considered the delay in filing from April of 1998 (the filing deadline) to June of 1999 a reasonable period of time.

2) Applicant was a dependent on his father's I-589, which was filed in 1994. In July of 1998 applicant turned 21 years of age, but his father still had not received an asylum interview. An exception to the filing deadline would apply in applicant's case provided the asylum officer considered the delay in filing from April 15, 1998 (the filing deadline) to the I-589 filing date a reasonable period of time. Note: Even if applicant had attained the age of 21 before the effective date of the statute (April 1, 1997), an exception to the filing deadline would still apply provided the I-589 was filed within a reasonable period of time after April 15, 1998. This example underscores the purpose of the filing deadline rule: to insure that those who need the protection of the United States make that need known in a timely way. When viewed in this way, an aged-out applicant's inclusion as a dependent on an application that was timely filed is eligible for an exception under Asylum Division policy.

3. **Refugees *sur place***

Changes occurring in an applicant's country or place of last habitual residence, and/or activities by an applicant outside his or her country may make one a refugee *sur place*. Examples include but are not limited to:

8 C.F.R. § 208.4 (a)(4)(i)(A); UNHCR *Handbook*, Paragraphs 94-95; *Matter of Mogharrabi*, 19 I&N Dec. 439 (BIA 1987); *See* AOBTC lesson, *Asylum Eligibility Part II: Well-Founded Fear*, Sec. X, Refugee *Sur Place*

a. a change of government which is now hostile to applicant's profession, such as journalists

b. applicant's involvement in political organizing or other activities in the U.S. that are critical of applicant's government

c. applicant's conversion from one religion to another

d. recent antagonism in applicant's country toward 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 and filed a Request for Asylum in June of 1998. Post-interview research shows that since the breakup of the former socialist system in 1991, minorities have been targeted by ordinary citizens and the police have tolerated this abuse. Provided there are no additional exceptions, because the change in country conditions occurred before April of 1997, applicant's failure to file for asylum within one year of arrival would result in his application being rejected. Note: If there had been an escalation of violence between ethnic Russians and minorities after April 1, 1997, applicant would then be eligible for an exception provided the delay in filing from the deadline date of April 15, 1998 to June of 1998 is a reasonable period of time.

4. **General standard for allowing a changed circumstance exception**

INA § 208(a)(2)(D)

The statute allows for an exception if there are changed circumstances that materially affect the applicant's eligibility for asylum. The regulations provide that exceptions may include cases where the change in circumstances creates a *reasonable possibility that applicant may qualify for asylum.*

8 C.F.R. § 208.4(a)(4)(i)(B)

Do not confuse this "reasonable possibility" with the "reasonable possibility" of an applicant suffering persecution upon return to his or her country.

8 C.F.R. § 208.13(b)(2); *Mogharrabi, supra*; See *INS v. Cardoza-Fonseca*, 480 U.S. 421 (1987) for a discussion of a reasonable possibility of persecution being as low as a 10% chance

a. Well-founded fear: A reasonable possibility in the context of a well-founded fear refers to the chance of being persecuted upon return

b. One-year filing deadline: A reasonable possibility in the context of finding a changed circumstances exception to the one-year filing deadline refers to the level of evidence that would lead an asylum officer to conclude that there is a reasonable possibility that the applicant's asylum eligibility is materially affected by the changed circumstance. Changed circumstances must be material and must be viewed by considering the conditions of the country involved.

Examples

1) While living in the United States a male citizen of Bangladesh converts to Judaism. Bangladesh country conditions show that such conversions place one at risk. The changed circumstance – applicant's religious conversion – is material and relevant to his asylum eligibility.

2) While living in the United States a male citizen of Denmark converts to Judaism. Denmark country conditions show that such conversions have no impact on one's safety. Because the changed circumstance is not material, it is irrelevant to applicant's asylum eligibility.

5. **When an exception applies, filing must be done within a reasonable time**

8 C.F.R. § 208.4(a)(4)(ii)

Reasonable period: If there are changed circumstances that except an applicant from the one-year filing rule, the I-589 must be filed within a reasonable period of time.

Evaluation of a "reasonable period of time": What constitutes a reasonable period of time depends upon the facts of the case at hand. To understand reasonableness in this context, asylum officers must ask themselves if a reasonable person under the same or similar circumstances would have filed sooner. Generally speaking, an applicant who falls into one or more exceptions already has demonstrated that there should be an allowance for the delayed filing, and 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, and many other factors should be considered. **Note:** It is not required that an applicant be aware that changed circumstances now materially impact on his or her asylum eligibility. If and when an applicant became aware of the changed circumstance shall be considered in what constitutes a reasonable period of time in which the applicant had to file.

Examples

1) An educated human rights lawyer who arrived in the U.S. in 1985 and who shows that country conditions changed against him in 1997 fails to file until June of 2001. Due to this particular applicant's grasp of his asylum possibilities, an explanation for failing to file from April of 1998 to June of 2001would have to be very convincing to avoid a determination that the reasonable time period for filing was not met.

2) An illiterate female applicant from a strict Islamic country arrives in the U.S. 1996. A

3) In 1987 applicant – 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 and filed for asylum in September of 1998. His attorney states at the interview that an I-589 was not filed for many years because she did not believe he was eligible, but that she recently decided to file her client's I-589 because of possible asylum eligibility under a BIA case decided in May of 1998. A changed circumstance exception to the filing deadline rule – change in applicable U.S. law – would apply provided the application was filed within a reasonable period of time.

4) A citizen of Bulgaria arrives in the U.S. in 1989 and files for asylum in November of 1999. She is educated and fluent in English and does not have an attorney. An asylum officer knows that a change in U.S. law in June of 1997 may help applicant's asylum case. Applicant is unaware of the 1997 law, and when asked why an application was not filed before 1999, applicant says that until 1998 she did not know that asylum existed. This applicant has a changed condition but probably will not be considered to have filed within a reasonable period of time. <u>Note:</u> The credibility of an applicant's unawareness of asylum should be assessed on a case-by-case basis. In this example, it may be a significant credibility stretch that an educated eastern European living in the U.S. for 10 years and fluent in English would not know that asylum existed.

Keep in Mind:

1) the ultimate decision on whether an applicant qualifies for asylum is irrelevant to analyzing one-year filing deadline issues; rather, the task at this initial stage is to determine whether an exception to the one-year filing deadline applies.

2) would a reasonable person under similar circumstances also not have timely filed?

B. Extraordinary Circumstances

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. To show that this exception applies, the applicant must:

- establish the existence of the claimed extraordinary circumstance
- establish that the extraordinary circumstance was directly related to the failure to timely file
- not have intentionally created the extraordinary circumstance for the purpose of establishing a filing-deadline exception
- file the I-589 within a reasonable period given the circumstances that gave rise to the failure to timely file

Extraordinary circumstances period of time

- Although extraordinary circumstances can occur at anytime, before or after an applicant's arrival in the U.S., and before or after the April 1, 1997 effective date of the one-year deadline, the effects of the circumstance must cause an applicant to not file within one year of his or her arrival.

Regulations describe several situations that could fall under the extraordinary circumstances exception. This list is not all-inclusive, however, and there are many other circumstances that might apply if the applicant is able to show that, *but for* such circumstances, the application would have been timely filed. Extraordinary circumstances include but are not limited to:

Comments, both from the public and the INS, on proposed rule in 3/6/97 Federal Register.

1. **Serious illness/mental or physical disability**

Includes serious illness to a family member

a. must be or have been of significant duration, and must have been present – although not necessarily incurred – during at least part of the one-year period after arrival.

b. if the alien has suffered torture in the past, the asylum officer should consider the possibility that torture has resulted in serious illness or mental or physical disability.

Effects of persecution can include inability to recall details, severe lack of focus, problems with eating and sleeping, and other post-traumatic stress disorder (PTSD) symptoms. See AOBTC lesson, *Interviewing Part V: Interviewing Survivors.*

c. mental disability may include cases where the alien was unable to timely file for asylum due to such factors as severe family or spousal opposition, extreme isolation within a refugee community, profound language barriers, or profound difficulties in cultural acclimatization. Any such factor or group of factors must have been severe enough in impact on the alien's functioning to have produced a significant barrier to timely filing.

d. if the illness or disability ended before the last date applicant was required to file (either April 15, 1998 or one year after the last arrival, whichever is most recent), the period of time before the asylum filing date must be reasonable.

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

f. the practical relationship as well as the blood relationship between applicant and the family member must be considered.

Example

An estranged brother with whom applicant has never had much contact would not

2. **Legal disability**

8 C.F.R. § 208.4(a)(5)(ii); *Black's Law Dictionary*, 5th Ed.

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

3. **Ineffective assistance of counsel (attorneys or accredited representatives)**

8 C.F.R. § 208.4(a)(5)(iii)

The following are required for this exception:

a. applicant must file a written affidavit explaining the agreement in detail and listing what promises the attorney made or did not make, and

b. testimony or documentary evidence that the accused counsel was informed of the allegation and was given an opportunity to respond, and

c. testimony or documentary evidence that indicates whether there has been a complaint filed with the appropriate disciplinary authorities, and an explanation why there has been no complaint if such action was not taken

Note: regulations and caselaw which 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 elements have been fulfilled.

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)

4. **Maintaining of lawful status**

8 C.F.R. § 208.4(a)(5)(iv); INA Sec. 244(a); 8 C.F.R. § 244.2

a. Temporary Protected Status (TPS) was maintained until a reasonable period before filing the asylum application

b. immigrant or non-immigrant lawful status was maintained <u>for any period</u> during the one year applicant was required to file, and the application was filed within a reasonable time after an applicant's one-year required filing period ended. <u>Note #1</u>: There is no filing deadline issue presented when an applicant maintains a lawful status through the one-year required filing period and continues to maintain lawful status up to the I-589 filing date. <u>Note #2</u>: Applicants who during their required period to file have been given humanitarian parole for the purpose of submitting a Request for Asylum are not eligible for an extraordinary circumstance. All applicants with other types of parole during the required filing period will be eligible for an extraordinary circumstance. <u>Note #3</u>: Although not explicitly provided for in the regulations, the maintaining of a lawful status as an exception will be followed as a matter of Asylum Division policy.

Example

Applicant entered the United States with an F1 visa in 1991 and had maintained her legal status until her school program and related curricular practical training ended in February, 1998; she files for asylum in November of 1999. The period of time the filing was delayed between April of 1998 (the last month for the required filing) and November of 1999 is now to be examined and a determination made whether or not it was reasonable.

5. **Initial submission of application was timely**

8 C.F.R. § 208.4(a)(5)(v)

a. defect in first submission

The I-589 was submitted within one year of the last arrival, but the Service rejected it as improperly filed and it was subsequently refiled by applicant. In this instance the period of time that must be reasonable runs from the Service Center rejection to the resubmission. Note #1: The file must always be thoroughly checked to insure that correspondence to an applicant that his or her application was rejected is not overlooked. Note #2: The re-filing must be done within a reasonable period of time following the initial rejection of the I-589.

b. administrative closure

Case was initially filed before April 16, 1998 but closed and subsequently reopened. In this situation, there is no filing deadline issue because the applicant first filed on time. Note: This would usually occur when an interview no-show results in the administrative close, and a subsequent employment authorization renewal reopens the case.