



Preparing for Questioning at an Asylum Office Interview on the One-Year Filing Deadline May 2024

Practitioners representing clients before the asylum office must be prepared for questioning on the one-year filing deadline. This is particularly true when an applicant does not have primary evidence, such as a visa stamp or I-94 card, showing the date of admission to the United States or if the applicant is arguing for an exception to the one-year filing deadline.

An asylum officer must resolve the threshold question of whether the applicant has timely filed for asylum or can establish a relevant exception to that deadline. Even the most meritorious asylum cases can be denied or referred to immigration court if a one-year filing deadline issue is present.

This resource will explain the types of questions that an applicant can expect related to the one-year filing deadline so that practitioners can best prepare their clients to answer them.

Applicant Is Claiming Timely Filing But Entered Without Inspection

The law requires that an asylum applicant demonstrate by clear and convincing evidence that his or her application for asylum was filed within one year of arrival in the United States.¹ The “clear and convincing” standard is a high one, so asylum applicants who entered without inspection should be prepared to present documentary evidence of their claimed entry into the United States. This typically includes medical, employment, travel receipts, or other records that place them in the home country within a year of their filing an application for asylum. However, even with those records, applicants can expect questioning to establish their date of arrival in the United States.

Asylum Office Questions on the Date of Arrival

- What is the last date that you entered the United States?
- How do you remember that date?
- Was there an event or something that happened that makes you remember that date?
- Do you have any evidence that shows that you entered when you claim?
- How old were you when you entered the United States?
- Have you left the United States since the first date of entry?
- Where did you enter the United States?
- How do you remember it was in (place of claimed entry)?
- What was your immigration status when you entered the country?

Applicant Concedes Late Filing but Argues for a Regulatory Exception

Another common scenario arises when an applicant concedes a failure to timely file for asylum but argues for an exception to the one-year filing deadline. In that situation, applicants can expect background questions such as the ones listed above to establish when the applicant entered the country

and how lengthy the delay in filing was. The officer will then move to ask questions to elicit whether there may be an exception to the one-year filing deadline.

An applicant may establish an exception to the one-year filing deadline if changed or extraordinary circumstances are present.² If either is present, the applicant must show they are filing within a reasonable period of the changed or extraordinary circumstance, typically six months or less from the changed or extraordinary circumstance.

Changed circumstances refer to circumstances materially affecting the applicant's eligibility for asylum. The changed circumstances enumerated in the regulations include, but **are not limited to**, the following:

- Changes in conditions in the applicant's country of nationality or, if the applicant is stateless, country of last habitual residence;
- Changes in the applicant's circumstances that materially affect the applicant's eligibility for asylum, including changes in applicable U.S. law, and activities in which the applicant becomes involved outside the country of feared persecution that place the applicant at risk; or
- In the case of an applicant who had previously been included as a dependent in another applicant's pending asylum application, the loss of the spousal or parent-child relationship to the principal applicant through marriage, divorce, death, or attainment of age 21.

An alternate means of showing asylum eligibility despite a late filing is through arguing for **extraordinary circumstances**. The applicant must show that the circumstances were not intentionally created through his or her own action or inaction, that those circumstances were directly related to the failure to file the application within the one-year period, and that the delay was reasonable under the circumstances. Extraordinary circumstances include but **are not limited to** the following:

- Serious illness or mental or physical disability, including any effects of persecution or violent harm suffered in the past, during the one-year period after arrival;
- Legal disability (e.g., the applicant was an unaccompanied minor or suffered from a mental impairment) during the one-year period after arrival;
- Ineffective assistance of counsel, provided that:
 - The applicant files a declaration setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard;
 - The counsel whose integrity or competence is being impugned has been informed of the allegations leveled against him or her and given an opportunity to respond; and
 - The applicant indicates whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not, why not.
- The applicant maintained Temporary Protected Status, lawful immigrant or nonimmigrant status, or was given parole, until a reasonable period before the filing of the asylum application;
- The applicant filed an asylum application prior to the expiration of the one-year deadline, but that application was rejected as not properly filed, was returned to the applicant for corrections, and was refiled within a reasonable period thereafter; and
- The death or serious illness or incapacity of the applicant's legal representative or a member of the applicant's immediate family.

If arguing for an exception to the one-year filing deadline, applicants can expect questions related to these regulatory exceptions. Sample questions related to the most asserted regulatory exceptions are included below.

General Questions

- Why didn't you file for asylum within the first year of your entry?
- Why did it take you years to apply for asylum?
- When did you first learn about asylum?
- Were you aware of the one-year filing deadline for asylum when you first entered the country?
- What did you hear about asylum when you learned about it?
- Why didn't you apply for asylum when you first found out about it?
- Did anything happen to you to prevent you from learning about asylum earlier?
- Did anything happen to you in the first year after your entry to the United States that made it difficult to apply for asylum?
- Why did you decide to file for asylum when you did?
- Did anything happen to you in the past six months that made you want to file for asylum?
- Did you speak to any attorneys about asylum? Did you ever seek a second opinion?

Serious Illness or Mental or Physical Disability of Applicant or Family

- Were you healthy when you first entered the United States?
- Did you suffer from any mental health problems? If yes, when did those begin? How did they affect your life?
- Did you suffer from any physical health problems? If yes, when did those begin? How did they affect your life?
- Since you have been in the United States, have you sought any medical treatment?
- Have you sought therapy in the United States?
- When did you first start therapy?
- For how long did you go to therapy?
- What made you start therapy?
- How has therapy impacted your mental health?
- How many therapy sessions did you attend?
- What did you discuss in the therapy sessions?
- Do you currently receive therapy or mental health treatment?
- Did your therapist/psychologist explain anything about your mental health conditions?
- Do you know of any diagnosis reached by the treating mental health professional?
- How did you feel when you had to talk about the events that had happened to you?
- Have you shared any of your experiences with anyone else besides a mental health professional/therapist/psychologist?
- How did your mental health impact your ability to apply for asylum?
- When you first arrived in the United States, were you able to work?
- Were you able to go to work every day when you found a job?
- What were the work conditions like?
- How long did you work there?
- When you left your former employer, did you find another job?
- Why were you able to work but not apply for asylum?
- With whom did you first live after you came to the United States?

- Did you have community support after arrival? If not, how did that impact your ability to apply for asylum?
- Have you ever been hospitalized because of mental health issues?
- Have you ever been hospitalized because of physical health issues?
- Did the harm you suffered in your home country impact your ability to file for asylum? In what way?
- Did any family members suffer health issues during the first year after your arrival in the United States? If so, how did that impact your ability to apply for asylum?

Ineffective Assistance of Counsel

- Did you seek legal advice in the United States about asylum?
- What did that legal representative tell you about asylum?
- What type of agreement, if any, did you have with a legal representative to help you file for asylum?
- Did you ever seek a second opinion on filing for asylum?
- Have you ever filed any type of complaint against your legal representative related to your asylum case? If so, what was the result of that complaint?

Maintenance of Lawful Status

- Did you ever have lawful status during your first year in the United States?
- If so, when did that lawful status expire? Did you do anything to violate the terms of your lawful status?
- Did you ever apply for any type of lawful status with USCIS during your first year in the United States?
- If so, when did you receive a decision on that application for lawful status?

Rejection of Application by USCIS

- Did you ever have any problems with USCIS accepting your application for asylum?
- If so, what types of problems did you have?

Changed Country Conditions

- Did something change in your home country to make you apply for asylum? If so, when did this event occur?
- Did this event make you afraid to return to your country?
- In what way?
- How did this event increase your fear of return?
- How did this event make you more vulnerable in your country?
- If this event had not occurred, would you still be afraid to return to your country?
- Why will it be worse if you return to your country now?

Changed Personal Circumstances:

Common changed personal circumstances can include conversion to a persecuted religion, involvement with politics in the United States, and changes related to sexual orientation or gender identity (such as coming out as gay or socially or medically transitioning).

- When did you tell people in the United States that you are [[examples, gay, a convert to a persecuted religion, member of a disfavored political party]]? How did they react to this?
- When did you tell people in your home country that you are [[examples, gay, a convert to a persecuted religion, member of a disfavored political party]]? How did they react to this?
- Did something change in your personal life to make you apply for asylum?
- When did this change occur?
- How did this change make you more afraid to return to your home country?
- Would this changed personal circumstance put you at greater risk in your home country? In what way?
- Would people in your home country become aware of this change? How?

Tips on Arguing an Exception at the Asylum Office:

- Officers are looking for some changed or extraordinary circumstance that happened in the six months prior to the filing. They may even state this explicitly during the interview. Keep this timeline in mind when you are deciding whether to file the application—is there anything you can point to as an advocate within the last six months prior to filing to explain the delay?
- Most officers are very thorough. However, if they don't ask a question that you feel is important, you can ask that question at the end of the interview.
- Asylum officers typically allow an attorney or accredited representative to make a closing statement. This closing statement may be either written or oral depending on the asylum officer's preference. In that closing, you should point to the evidence that supports your argument in addition to the applicant's testimony. This may be a psychological evaluation, country conditions evidence, or declarations from family and friends.
- Be creative! The regulations are broad and leave open the door for novel arguments. Perhaps you can combine two extraordinary circumstances to explain a lengthy delay in filing. Perhaps you can argue for both changed and extraordinary circumstances.
- Don't be scared by the length of the delay if you have a strong argument for an exception. Your client might be filing 15 years after entry, but if there is a clear changed circumstance that materially affects their eligibility for asylum that occurred two months ago, that will provide a strong argument for an exception.

Helpful Legal Resources on Exceptions to the One-Year Filing Deadline

USCIS's [Lesson Plan](#) on the One-Year Filing Deadline. It is still utilized by officers, as USCIS references it in its [current page](#) on Afghan nationals and asylum.

There is also a publicly available [Training Module](#) from 2019 from USCIS specifically on LGBT asylum claims and the one-year filing deadline.

CLINIC has a [practice advisory](#) on Overcoming the Asylum One-Year Filing Deadline for DACA Recipients, which goes into more detail on the case law surrounding the one-year filing deadline.