



UNACCOMPANIED CHILDREN AND THE ONE-YEAR FILING DEADLINE

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I. Introduction

The Trafficking Victims Protection Reauthorization Act of 2008 exempts unaccompanied children (UCs) from the one-year filing deadline for asylum.¹ A UC, referred to in federal law as an “unaccompanied alien child” or “UAC,” is defined as a child who “(A) has no lawful immigration status in the United States; (B) has not attained eighteen years of age; and (C) with respect to whom – (i) there is no parent or legal guardian in the United States; or (ii) no parent or legal guardian in the United States is available to provide care and physical custody.”²

Recently, the administration has whittled away at these protections and sought to narrow who will be treated as a UC for various purposes.³ Although these changes are just now being implemented on a large scale, it appears that many children will lose the statutory protections connected with designation as a UC and their asylum claims may be subjected to the one-year filing deadline. This practice advisory provides an overview of the deadline and tips specifically for UC advocates on satisfying this requirement.⁴

II. UCs and the One-Year Filing Deadline

A. The One-Year Filing Deadline

Following the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), all asylum applicants are required to file their application within one year of their last entry into the United States.⁵ An affirmative application is considered filed when it is received by U.S. Citizenship and Immigration Services (USCIS).⁶ A defensive application before the Executive Office for Immigration Review (EOIR) is considered filed the date it is filed with the court.⁷

An applicant must establish timely filing by clear and convincing evidence.⁸ Both USCIS and the Board of Immigration Appeals (BIA) have found that testimony alone may be sufficient to meet this burden of proof regarding date of entry.⁹ The one-year filing deadline runs from the applicant’s *most recent arrival* in the United States.¹⁰ Following a decision by the Ninth Circuit, USCIS’s Asylum Division policy is to begin counting from the day *after* the applicant’s arrival.¹¹

Recently, it has become possible to lodge asylum applications with EOIR to preserve the date for work authorization eligibility.¹² The lodging of an application may be considered by the immigration judge when deciding whether an exception to the one-year bar applies, but it does not automatically create such an exception.¹³ As more youth asylum seekers lose UC protections, as discussed in further detail below, lodging may also become an option to meet the one-year filing deadline and possibly preserve initial asylum office jurisdiction.

B. The TVPRA and Recent Changes to UC Asylum

Under the TVPRA, UCs are not subject to the one-year filing deadline or the safe third country bar to asylum.¹⁴ As such, the one-year filing deadline was typically not a concern in UC asylum practice since the TVPRA was enacted in 2008. Recently however, EOIR and the Department of Homeland Security (DHS) have begun eroding the TVPRA's protections for many UCs.

Under a 2013 U.S. Citizenship & Immigration Services (USCIS) policy memorandum, children who had previously been designated as UCs by a federal agency, including those who had reached 18 years of age or reunified with a parent, retained that designation before the asylum office unless their UC status was affirmatively revoked.¹⁵ Children who had been designated as UCs could therefore be confident that they could have their cases heard before the asylum office initially, rather than before the immigration court presiding over their removal proceedings, and would retain UC protections throughout the duration of their case.

Beginning in 2017, DHS began recharacterizing UC status as fluid and subject to reassessment in a series of policy memoranda.¹⁶ DHS began taking the view that once a UC reaches eighteen years of age or reunifies with a parent or legal guardian, they cease to be a UC and are immediately ineligible for UC legal protections. *Id.* On October 16, 2018, the BIA published *Matter of M-A-C-O-*, which allowed immigration judges to take jurisdiction over applications filed by UCs after their eighteenth birthday.¹⁷

Following *Matter of M-A-C-O-*, USCIS issued a policy memorandum changing the asylum office's policies concerning jurisdiction over UC asylum.¹⁸ Beginning June 30, 2019, asylum offices are instructed to determine whether a UC applicant met all of the criteria of the UC definition *at the time of filing* their asylum application.¹⁹ If an applicant does not show they meet those criteria, because the applicant turned eighteen or because the asylum office determines that there is a parent or legal guardian available to provide care and physical custody, the asylum office will reject jurisdiction. As a result, such UCs will have to apply for asylum before EOIR. Moreover, these reassessments also threaten their other corresponding statutory protections, including the exemption from the one-year filing deadline.²⁰ The implementation of this policy memorandum has been temporarily enjoined by a federal court order until October 15, 2019, and litigation challenging it is ongoing.²¹

III. Exceptions to the One-Year Filing Deadline

There are two categories of exceptions to the one-year filing deadline: changed circumstances and extraordinary circumstances.²² The regulations provide a non-exhaustive list of changed and extraordinary circumstances.²³ Remember that your client demonstrating facts that constitute a possible extraordinary or changed circumstance does not automatically mean that an exception applies. You must show that such circumstances relate directly to the failure to file within the one-year period.²⁴ Moreover, even if changed or extraordinary circumstances are established, you must also file for asylum within a reasonable time, as discussed in further detail in Section II.D *infra*.

Additionally, because the circuit courts of appeal interpret one-year filing deadline exceptions differently, it is crucial to know the law in your circuit. For example, several circuits have held that they do not have jurisdiction to review an agency finding that the one-year bar applies.²⁵

Below are examples of how some of these exceptions can apply to youth asylum cases. While a UC may be able to qualify for any of the exceptions to the deadline, some are especially prevalent in youth asylum cases, notably the legal disability of infancy and the extraordinary circumstance of being an unaccompanied child.

A. Changed Circumstances

A material change in circumstances that affects the applicant's eligibility will excuse the one-year bar.²⁶ The regulations list three examples of changed circumstances: changes in the conditions prevalent in an applicant's country of nationality; changes in the applicant's own circumstances, such as changes in applicable U.S. law and activities the applicant became involved in outside their home country; and the loss of spousal or parent-child relationship with a principal asylum applicant.²⁷ However, this list is non-exhaustive.²⁸

1. Changes in the Applicant's Country of Nationality

While a drastic shift in country conditions such as a dictatorship coming to power or a declaration of war constitutes changed circumstances, less consequential changes may also satisfy this exception. The touchstone question is whether the change materially affects an applicant's asylum eligibility.²⁹

Several circuits, including the Second, Fourth, Sixth, and Ninth, have adopted a relatively expansive definition of changed circumstances.³⁰ Under this interpretation, changed circumstances do not require a new conflict or completely new development in an applicant's home country. The Sixth Circuit found that incrementally worsening conditions are sufficient to show changed circumstances insofar as they materially affect an applicant's asylum claim.³¹ Even where an applicant already had a possible asylum claim, the Ninth Circuit found that they are not required to file when their asylum claim is weak, but may wait until circumstances change and make relief substantially more likely.³² However, other circuits have interpreted this rule more narrowly.³³

If your client did not file within the one-year period, you should explore whether there have been changes in their country conditions. Even a worsening of the conditions that caused your client to leave their home country may constitute changed circumstances.

Example: Ricardo fled El Salvador after gang members attempted to forcibly recruit him. Even though he was apprehended in the United States, designated a UC, and placed in proceedings, he did not receive a court date and did not file an asylum application before the one-year deadline. Since Ricardo left, the security situation has worsened significantly as the gang has become more powerful and entrenched. Moreover, many children who were also being forcibly recruited but refused the gang's demands were killed in recent months. Several times, members of the gang have approached Ricardo's friends and relatives, demanding to know his whereabouts. Even though Ricardo previously fled the gang, the gang's increased power, its persecution of similarly situated children, and its attempts to locate him may constitute changed circumstances in his country of origin.

2. Changes in the Applicant's Own Circumstances

A change in the applicant's personal circumstances may also qualify as changed circumstances for purposes of the one-year filing deadline. Examples of changes in the applicant's own circumstances may include recent political activism or religious conversion.³⁴

Be mindful that this exception has been narrowly construed in several circuits. For example, continuing political activism in the United States that the applicant previously engaged in in their home country may not constitute changed circumstances. In *Mabasa v. Gonzales*, the Seventh Circuit found that renewed political activity after the applicant left Zimbabwe did not constitute changed circumstances, as it was the activity that caused his original flight.³⁵ Similarly, in *Ramadan v. Gonzales*, the Ninth Circuit found that the applicant's expression of political opinions in the United States on women's rights in Egypt were not changed circumstances, as she had already expressed them in Egypt.³⁶ However, there may be changed country conditions in such cases that would separately excuse the one-year filing deadline.

As children grow older, they may experience a change in their circumstances that affects their asylum eligibility. For instance, a child may come out as LGBTQ following their arrival in the United States.³⁷ A child may become more politically conscious and outspoken as they grow up. They may have been raised Muslim in an Islamic country, but converted to Christianity due to the influence of their foster family, which might be considered apostasy in their home country and result in severe persecution. As such, you should determine when your client's grounds for seeking asylum first arose, in order to determine whether it was due to a changed circumstance following their U.S. arrival.

Example: Angela, a transgender woman, arrived in the United States as a UC. During her adolescence in her home country, Angela had suffered discrimination and mistreatment after people in her community began to perceive her as gay, and she fled after receiving death threats. After she turned eighteen, Angela began transitioning by undergoing hormone therapy. Even though Angela had already faced persecution in the past, her transition constitutes changed circumstances, as it increases the likelihood of her facing future persecution in her home country.

3. Loss of Relationship to Principal Applicant

A minor who had previously been listed on a parent's asylum application who then loses the parent-child relationship through marriage, divorce, death, or attainment of age twenty-one may have a "changed circumstance" excusing the one-year filing deadline.³⁸ This last situation – that of "aging out," rarely occurs, as the Child Status Protection Act (CSPA) should prevent children from aging out of derivative asylee status, as long as the parent filed their application for asylum before the child turned twenty-one.³⁹

Example: Daniel is a derivative on his mother's asylum application. Daniel turned twenty-one while the application was still pending and got married a few months later. While CSPA prevents him from *aging out* of derivative status, he lost his derivative status by getting married. However, if Daniel is eligible for asylum, his loss of derivative status constitutes a changed circumstance and Daniel may file his own asylum application within a reasonable time after getting married.

B. Extraordinary Circumstances

Extraordinary circumstances are “events or factors directly related to the failure to meet the one-year deadline.”⁴⁰ The burden of proof is on the applicant to show that the circumstances were (1) not intentionally created, (2) directly related to the failure to file the application within the one-year period, and (3) that the delay was reasonable.⁴¹ As such, the extraordinary circumstances must arise during the one-year period when the asylum application would be timely.⁴²

The regulations list six examples of extraordinary circumstances that may excuse the one-year filing deadline.⁴³ Like the regulations’ list of changed circumstances, it is non-exhaustive.⁴⁴ These include serious illness or mental or physical disability, legal disability, ineffective assistance of counsel, maintaining lawful status, filing an asylum application prior to the one-year deadline that was rejected, and the death or serious illness or incapacity of the applicant’s legal representative or a member of their immediate family.⁴⁵ Below are some examples of extraordinary circumstances that appear most frequently in UC cases.

1. Serious Disability or Illness

A serious illness or disability can constitute an exceptional circumstance. USCIS requires that the serious illness or disability have occurred during the one-year filing period, but the exception encompasses conditions that began before that time.⁴⁶ The regulations specify that this exception includes any effects of persecution or flight from persecution, including physical injuries and psychological trauma.⁴⁷

When arguing that this exception applies to a child client, it is important to emphasize the heightened psychological impact that persecution has on a child.⁴⁸ Moreover, other harm suffered in transit or inside the United States could result in trauma as well, including separation from family members in the course of detention. The Asylum Officer Basic Training Court (AOBTC) points out that “separation from family can also greatly impact the psychological well-being of children.”⁴⁹

You should assess what impact the persecution or threat of persecution has had on your client. If your client was detained by DHS, you should submit a FOIA request for their records.⁵⁰ If your client was held in ORR custody, you should request their ORR file.⁵¹ These records may contain important evidence of physical and psychological harm suffered by your client. Additionally, if possible, you may want to obtain a medical or psychological evaluation of your client to demonstrate the extent of their illness, disability, or trauma. Such an evaluation can be a powerful means to overcome the one-year bar.

Example: Osvaldo arrived in the United States as a UC after fleeing severe persecution from gang members. Upon his arrival in the United States, he was unable to speak about his past persecution. After reaching adulthood, Osvaldo began receiving mental health services and was diagnosed with post-traumatic stress disorder (PTSD) dating back to the persecution he suffered in his home country. By showing that his PTSD prevented him from filing his asylum application in his first year, Osvaldo should be found to have demonstrated extraordinary circumstances.

2. Legal Disability

Legal disability is an important extraordinary circumstance for children’s asylum cases. Pursuant to the regulations, a child under the age of eighteen is considered to be under a legal disability.⁵² This is because minors are “generally dependent on adults for their care and cannot be expected to navigate adjudicatory systems in the same manner as adults.”⁵³ USCIS takes the position that as long as a child applies for asylum while still a minor, they should be found to have established both extraordinary circumstances and that they filed within a reasonable time.⁵⁴ If your client is under the age of eighteen, you should file before they reach their eighteenth birthday. If a child applies after reaching the age of eighteen, they must also show that they filed within a reasonable time after their eighteenth birthday, as discussed further below.

Example: Marta arrived in the United States when she was thirteen years old. After being apprehended as a UC and placed in Office of Refugee Resettlement (ORR) custody, she reunified with her mother. She applied for asylum as a UC three years after her arrival, but the asylum office declined to take jurisdiction over her case citing her reunification with her mother as ending her UC status. Although Marta has to make her claim before an immigration judge and is now subject to the one-year filing deadline, the fact that she is under the age of eighteen and filed her asylum case before her eighteenth birthday give her grounds to argue that there were extraordinary circumstances and that she filed within a reasonable time.

3. Maintaining Lawful Status

Maintaining a prior lawful status may constitute an extraordinary circumstance if it results in an applicant not filing an asylum claim. The regulations provide that extraordinary circumstances arise where the “applicant maintained Temporary Protected status, lawful immigrant or nonimmigrant status, or was given parole.”⁵⁵ Because the regulations predated the creation of Deferred Action for Childhood Arrivals (DACA), it is not clear whether DACA meets this definition.⁵⁶ You should check whether your client held any immigration status at any point during the one-year filing period.

Example: Alex was paroled into the United States as part of the Central American Minors parole program. The program was since terminated and Alex’s application to renew his parole was denied. Because Alex was previously given parole, he maintained lawful status during the parole period, and may file his asylum application within a reasonable time from the termination of his parole.

4. Death or Serious Illness or Incapacity

The death or serious illness or incapacity of an applicant’s legal representative or immediate family member may constitute extraordinary circumstances. In determining eligibility for this exception when it is claimed based on death of a family member, USCIS will consider both the blood relationship and the degree of interaction between the family member and the applicant.⁵⁷ For the purposes of this exception, an applicant’s legal guardian may also be considered a family member.⁵⁸

USCIS points out that minors “customarily leave immigration and other legal paperwork to older family members.”⁵⁹ As such, a death in the family may have an especially profound impact on a child’s ability to apply for asylum. If your client experienced a death in their family prior to the one-year filing deadline, especially if it

was a close relative or a caretaker, you should consider whether this played a role in their missing the filing deadline.

Example: Kimberly arrived in the United States as a UC before her aunt sponsored her release from ORR custody. After becoming her sponsor, Kimberly's aunt obtained a guardianship order to become Kimberly's legal guardian, which DHS interpreted as ending her UC status. Ten months after Kimberly's arrival in the United States, her aunt passed away. Because Kimberly's aunt was a close relative, caretaker, and legal guardian to Kimberly, she is likely to be considered an immediate family member and her death likely constitutes extraordinary circumstances, allowing her to overcome the one-year bar to filing for asylum.

5. Being an Unaccompanied Minor

According to pre-TVPR case law, being an unaccompanied minor constitutes an extraordinary circumstance.⁶⁰ As such, any minor who was properly designated as a UC during their one-year filing period may have experienced extraordinary circumstances should they subsequently become subject to the one-year deadline after losing UC status.

In addition to being the end of an extraordinary circumstance, losing UC status, either by reuniting with a parent or legal guardian or reaching the age of eighteen, may constitute a change in an applicant's personal circumstances. Because UC de-designations were rare until recently, there is no precedent concerning their impact on the one-year filing deadline. However, a loss of UC status does materially affect asylum eligibility, as UC status exempts UCs from the one-year filing deadline and safe third country bars and provides for asylum office initial jurisdiction, even in defensive cases. Losing UC status should arguably therefore constitute a change in personal circumstances under the regulations. The recent policy changes to UC asylum jurisdiction may also constitute a change in applicable U.S. law though there is no precedent on the issue.

Losing UC status should constitute an exception to the one-year filing deadline, because such a loss constitutes both a changed circumstance and marks the end of the extraordinary circumstance of being an unaccompanied minor. UCs should therefore be afforded a reasonable time following the event that led to the loss of UC status to file their asylum application.

Finally, it may even be possible to argue UCs are entitled to file a reasonable time following their official de-designation by a government agency or court, regardless of when they actually ceased to meet the UC definition, since their UC designation was maintained up until they were officially stripped of that status. However, recent EOIR rulings and DHS policy memoranda that characterize UC status as being fluid rather than remaining in place until an affirmative act of de-designation, complicate this argument.

Example: Sandra arrived at the U.S. border in order to seek asylum. Although her mother resides in the United States, Sandra was designated a UC and placed in Office of Refugee Resettlement (ORR) custody. Sandra's mother was not approved as a sponsor and Sandra remained in ORR custody for over a year. Finally, a family friend was able to sponsor Sandra's release. Sandra lived with the family friend for a few weeks before reuniting with her mother. At her next Master Calendar hearing, the Immigration Judge found that Sandra was no longer a UC because she was in her mother's care and said that she would be subject to the one-year filing deadline. However, because her being initially unaccompanied constitutes an

extraordinary circumstance, and because her loss of UC status may constitute changed circumstances, she should be afforded a reasonable time to file following her reunification with her mother.

C. Other Circumstances Not Enumerated in Regulations

Remember, there is no exhaustive list of what can constitute changed or extraordinary circumstances. Other possible reasons include severe family opposition, extreme isolation within a refugee community, profound language barriers, or profound difficulties in cultural acclimatization.⁶¹ It is important to note that all of these factors have an especially pronounced impact on children.

You should determine whether family opposition played a role in your client missing the one-year filing deadline. Because of children's reliance on adult family members, family opposition may make filing especially difficult for children. Family opposition may play a role in cases where family members are among your client's persecutors or where your client is claiming asylum based on a sexual orientation or gender identity that their family members do not accept.⁶²

If your client speaks an indigenous language, you should determine whether language barriers played a role in their not meeting the one-year filing deadline. An applicant being unable to speak English is generally not considered sufficient to constitute extraordinary circumstances.⁶³ However, there are other instances where language barriers may play a role in a determination finding extraordinary circumstances. A client who is only fluent in an indigenous language may face extraordinary language barriers as well as extreme isolation within the local refugee community.

The fact that the circumstances that prevented your client from filing within the one-year period are not listed in the regulations does not preclude them from constituting changed or extraordinary circumstances. Consider any additional factors that may have prevented your client from applying during the one-year period.

D. What is a Reasonable Time?

Even if extraordinary or changed circumstances exist, the one-year filing deadline is not permanently excused. An applicant must file within a reasonable period of time after such circumstances.⁶⁴ There is no set period that constitutes a reasonable time. Because it depends on individual circumstances, it is determined on a case by case basis.

The BIA has said that in many cases, a reasonable period is *less* than six months.⁶⁵ It has also said that in rare circumstances, a reasonable period may mean a delay of one year or more.⁶⁶ In evaluating whether a time period is reasonable, USCIS instructs asylum officers to consider "education and level of sophistication, the amount of time it takes to obtain legal assistance, any effect of persecution and/or illness, and any other relevant factors."⁶⁷ Furthermore, although an extraordinary circumstance that occurs after the one-year filing deadline cannot constitute an exception to the deadline, it is still relevant in determining whether an application was filed a reasonable period after a different changed or extraordinary circumstance.⁶⁸

Finally, where the one-year filing deadline is excused due to changed circumstances that were unknown to the applicant until after they occurred, the applicant's delayed awareness "shall be taken into account when determining what constitutes a 'reasonable period.'"⁶⁹ This is especially important to keep in mind if the

changed circumstance is the loss of UC designation. In such instances you may be able to argue that the loss of UC status was unknown to your client, especially if they were not affirmatively stripped of the UC designation until after filing their asylum application.

Even if an exception to the one-year filing deadline applies and your client's changed or extraordinary circumstances occurred or continued until recently, you should file their asylum application quickly. Remember that filing the application within six months of the changed or extraordinary circumstances is not an absolute defense to the one-year bar, as the BIA has held that the period may be shorter in certain circumstances. In any cases where an exception to the one-year filing deadline applies, you should be prepared to demonstrate that the application was filed within a reasonable time after the circumstances triggering the exception arose.

E. Mendez-Rojas Class Action

On March 29, 2018, the U.S. District Court for the Western District of Washington issued a decision in *Mendez Rojas v. Johnson*.⁷⁰ The court held that the government failed to provide notice of the one-year filing deadline to people who had been in DHS custody, in violation of the Immigration and Nationality Act, the Administrative Procedure Act, and the U.S. Constitution's due process clause.⁷¹ The court ordered the government to accept as timely all applications filed by class members.⁷² The district court order has been stayed pending appeal to the U.S. Circuit Court of Appeals for the Ninth Circuit.⁷³ However, pursuant to an interim stay agreement, the government must accept as timely all asylum filings from class members that are adjudicated during the stay.⁷⁴

There are two classes certified in the *Mendez Rojas* case. To be in either class, the individual must not have received a notice from DHS of the one-year filing deadline, and must either not have filed an asylum application, or have filed an asylum application more than one year after their arrival in the U.S. Additionally, to be a member of Class A, the person must have been or will be released from DHS custody after having been found to have a credible fear of persecution. For Class B, the person must: 1) have been or will be detained by DHS upon their arrival into the country; 2) express a fear of return to their home country to a DHS official; 3) have been or will be released from DHS custody without a credible fear determination; and 4) be issued an NTA.⁷⁵ Both classes cover people who are in removal proceedings as well as those who are not in removal proceedings. The interim stay agreement does not apply to individuals with a final order of removal, but those individuals are encouraged to contact class counsel for assistance, at mendezrojas@nwirp.org.

Because UCs are not subject to the one-year filing deadline, the protections conferred by *Mendez Rojas* class membership will only become important if a child is stripped of their UC designation and DHS alleges that they are subject to the one-year filing deadline. If this does occur, such an individual may be protected by *Mendez Rojas* by virtue of their membership in Class B.⁷⁶ To determine if your client is covered by Class B, evaluate whether they meet all of the requirements for class membership listed above. Often for UCs, this determination will hinge on whether they expressed a fear of return to their home country to a DHS official. Advocates are encouraged to argue that this provision should be applied liberally to children, who may struggle to articulate their fear, especially to a DHS official upon apprehension. Notably, while the interim stay agreement is in place, the government has agreed to "use a broad reading of the class definitions."⁷⁷ Further, pursuant to the interim stay agreement, absent contrary evidence such as DHS records, "credible testimony or a signed affidavit may be sufficient evidence to prove each element of class membership."⁷⁸

Additionally, some minors who were not initially designated UCs may also have strong claims to *Mendez Rojas* class membership. It is important to screen all youth clients who have missed their one-year filing deadlines to determine if they are class members. If so, you can file their asylum applications pursuant to class instructions.⁷⁹

End Notes

¹ 8 U.S.C. § 1158(a)(2)(E).

² 6 U.S.C. § 279(g)(2).

³ See Sec. John Kelly, “Implementing the President’s Border Security and Immigration Enforcement Improvements [sic] Policies” (Feb. 20, 2017); Mary Beth Keller, Chief Immigration Judge, EOIR, OPPM 17-03, “Guidelines for Immigration Court Cases Involving Juveniles, Including Unaccompanied Alien Children,” Dec. 20, 2017, <https://www.justice.gov/eoir/file/oppm17-03/download>; *Matter of M-A-C-O-*, 27 I&N Dec. 477 (BIA 2018); John Lafferty, Chief, USCIS Asylum Division, “Updated Procedures for Asylum Applications Filed by Unaccompanied Alien Children” (May 31, 2019).

⁴ For more information about asylum law generally, see *Essentials of Asylum Law* (ILRC 2018).

⁵ See § 604 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA).

⁶ In some circumstances the mailing date can be considered the filing date if the applicant provides “clear and convincing documentary evidence” of mailing the application during the one-year period. 8 C.F.R. § 208.4(a)(2)(ii).

⁷ 8 C.F.R. 208.4(a)(2)(ii).

⁸ 8 U.S.C. § 1158(a)(2)(B). The “clear and convincing” standard is met “where the truth of the facts asserted is highly probable.” USCIS RAI0: Asylum Division, Asylum Officer Basic Training Course: One-Year Filing Deadline, 6-7 (Mar. 23, 2009) (hereinafter “AOBTC”).

⁹ See 8 C.F.R. § 208.13(a); *Matter of S-M-J-*, 21 I&N Dec. 722, 724 (BIA 1997); AOBT: One-Year Filing Deadline, 7-8.

¹⁰ *Matter of F-P-R-*, 24 I&N Dec. 681 (BIA 2008) (left open the question as to whether an applicant could make a trip abroad “solely or principally intended to overcome the 1-year time bar”).

¹¹ AOBT: One-Year Filing Deadline, at 5; see also *Minasyan v. Mukasey*, 553 F.3d 1224 (9th Cir. 2009). Therefore, in the Ninth Circuit or before the Asylum Office, an applicant may file timely on the anniversary of their last arrival in the United States.

¹² See Michael McGoings, Chief Immigration Judge, OPPM 16-01: “Filing Applications for Asylum,” 2-3, Sept. 14, 2016, https://www.justice.gov/sites/default/files/pages/attachments/2016/09/14/oppm_16-01.pdf.

¹³ Brian M. O’Leary, Chief Immigration Judge, OPPM 13-03, 6, Dec. 2, 2013, <https://www.justice.gov/sites/default/files/eoir/legacy/2013/12/03/13-03.pdf>.

¹⁴ 8 U.S.C. § 1158(a)(2)(E).

¹⁵ Ted Kim, Acting Chief, Asylum Division, “Updated Procedures for Determination of Initial Jurisdiction over Asylum Applications Filed by Unaccompanied Alien Children” (May 28, 2013).

¹⁶ See Sec. John Kelly, “Implementing the President’s Border Security and Immigration Enforcement Improvements [sic] Policies” (Feb. 20, 2017).

¹⁷ *Matter of M-A-C-O-*, 27 I&N Dec. 477 (BIA 2018).

¹⁸ John Lafferty, Chief, USCIS Asylum Division, “Updated Procedures for Asylum Applications Filed by Unaccompanied Alien Children” (May 31, 2019).

¹⁹ *Id.* at 4.

²⁰ The ILRC has issued a practice advisory concerning *Matter of M-A-C-O-* and changes to UC asylum jurisdiction. ILRC, *Practice Advisory: Matter of M-A-C-O- and Jurisdiction over UC Asylum Claims* (June 2019) https://www.ilrc.org/sites/default/files/resources/matter_of_m-a-c-o_and_juris_over_uc_asylum_claims_-_june_2019_rp.pdf.

²¹ See USCIS, *J.O.P. v. U.S. Dept. of Homeland Security, et. al., Information*, <https://www.uscis.gov/legal-resources/legal-settlement-notice/jop-v-us-dept-homeland-security-et-al-information>.

²² 8 U.S.C. § 1158(a)(2)(D).

²³ See 8 C.F.R. § 208.4(a)(4), (5).

²⁴ See *Matter of Y-C-*, 23 I&N Dec. 286, 288 (BIA 2002).

²⁵ See, e.g., *Gomis v. Holder*, 571 F.3d 353, 358 (4th Cir. 2009); see also 8 U.S.C. § 1158(a)(3).

²⁶ 8 C.F.R. § 208.4(a)(4)(i).

²⁷ *Id.* at § 208.4(a)(4)(i).

²⁸ *Id.*

²⁹ See AOBT: One-Year Filing Deadline, at 9.

- ³⁰ See *Weinong Lin v. Holder*, 763 F.3d 244, 249 (2nd Cir. 2014); *Zambrano v. Sessions*, 878 F.3d 84, 88 (4th Cir. 2017); *Mandebvu v. Holder*, 755 F.3d 417-426-27 (6th Cir. 2014); *Vahora v. Holder*, 641 F.3d 1038, 1044 (9th Cir. 2011).
- ³¹ See *Mandebvu*, 755 F.3d at 428-28.
- ³² *Vahora*, 641 F.3d at 1044.
- ³³ See, e.g., *Luciana v. Att’y Gen. of the U.S.*, 502 F.3d 273, 277 (3rd Cir. 2007) (describing the changed circumstances exception as “narrow”).
- ³⁴ AOBTC: One-Year Filing Deadline, at 9.
- ³⁵ *Mabasa v. Gonzales*, 455 F.3d 740 (7th Cir. 2006).
- ³⁶ *Ramadan v. Gonzales*, 479 F.3d 646, 657-58 (9th Cir. 2007).
- ³⁷ Immigration Equality, Immigration Basics: The One-Year Filing Deadline, at 5.2.1.2, <https://www.immigrationequality.org/get-legal-help/our-legal-resources/immigration-equality-asylum-manual/immigration-basics-the-one-year-filing-deadline/#.XRKtsOhKiUk>.
- ³⁸ 8 C.F.R. § 208.4(a)(4)(i)(C).
- ³⁹ Pub. L. No. 107-208 (Aug. 6, 2002). The ILRC has published a practice advisory on CSPA in the asylum context. Immigration Legal Resource Center, Application of the Child Status Protection Act to Asylees and Refugees (May 2018), https://www.ilrc.org/sites/default/files/resources/applica_child_stat_asylees_refugees-20180521.pdf.
- ⁴⁰ *Id.* at § 208.4(a)(5).
- ⁴¹ *Id.*
- ⁴² See AOBTC: One-Year Filing Deadline, at 13.
- ⁴³ 8 C.F.R. § 208.4(a)(5).
- ⁴⁴ *Id.*
- ⁴⁵ *Id.*
- ⁴⁶ AOBTC: One-Year Filing Deadline, at 14.
- ⁴⁷ *Id.*
- ⁴⁸ See generally, AOBTC: Guidelines for Children’s Asylum Claims.
- ⁴⁹ *Id.* at 32.
- ⁵⁰ USCIS, Freedom of Information Act and Privacy Act, <https://www.uscis.gov/about-us/freedom-information-and-privacy-act-foia/uscis-freedom-information-act-and-privacy-act>.
- ⁵¹ Office of Refugee Resettlement, Requests for UAC Case File Information (Apr. 14, 2014), <https://www.acf.hhs.gov/orr/resource/requests-for-uac-case-file-information>.
- ⁵² 8 C.F.R. § 208.4(a)(5).
- ⁵³ AOBTC: Guidelines for Children’s Asylum Claims, at 46.
- ⁵⁴ AOBTC: The One-Year Filing Deadline, at 15.
- ⁵⁵ 8 C.F.R. § 208.4(a)(5)(iv).
- ⁵⁶ Additionally, because of its eligibility requirements, many DACA recipients may have to qualify for another exception to the deadline accounting for the time period before they received DACA. For more information on the one-year filing deadline as applied to DACA recipients specifically, see Catholic Legal Immigration Network, *Practice Advisory: Overcoming the One-Year Filing Deadline for Asylum for DACA Recipients* (2018) <https://cliniclegal.org/sites/default/files/DACA-and-the-One-Year-Filing-Deadline-.pdf>.
- ⁵⁷ AOBTC: One-Year Filing Deadline, at 14.
- ⁵⁸ *Id.*
- ⁵⁹ *Id.* at 11.
- ⁶⁰ *Matter of Y-C-*, 23 I&N Dec. 286, 288 (BIA 2002).
- ⁶¹ AOBTC: One-Year Filing Deadline, at 20.
- ⁶² Immigration Equality, Immigration Basics: The One-Year Filing Deadline, at 5.2.2.7, <https://www.immigrationequality.org/get-legal-help/our-legal-resources/immigration-equality-asylum-manual/immigration-basics-the-one-year-filing-deadline/#.XRKtsOhKiUk>.
- ⁶³ See *Toj-Culpatan v. Holder*, 612 F.3d 1088 (9th Cir. 2010).
- ⁶⁴ See *Matter of T-M-H- & S-W-C-*, 25 I&N Dec. 193,195 (BIA 2010).
- ⁶⁵ *Id.*
- ⁶⁶ *Id.*
- ⁶⁷ AOBTC: One-Year Filing Deadline, at 22-24.

⁶⁸ *Id.* at 23.

⁶⁹ 8 C.F.R. § 208.4(a)(4)(ii).

⁷⁰ *Mendez Rojas v. Johnson*, 2018 WL 1532715 (W.D. Wash. Mar. 29, 2018).

⁷¹ *Id.* at *5-14.

⁷² *Id.* at * 17.

⁷³ American Immigration Council, Court Decision Ensures Asylum Seekers Notice of the One-Year Filing Deadline and an Adequate Mechanism to Timely File Applications (Aug. 2, 2018),

https://www.americanimmigrationcouncil.org/sites/default/files/mendez_rojas_v_johnson_faq.pdf

⁷⁴ *Id.* at 1.

⁷⁵ *Id.*

⁷⁶ Since children who enter the United States as UCs do not receive credible fear interviews, they will generally not be members of Class A.

⁷⁷ August 2, 2018 Agreement in *Mendez Rojas v. Nielsen*, at 1.

⁷⁸ *Id.*

⁷⁹ For template notices of *Mendez Rojas* class membership, see American Immigration Council, Court Decision Ensures Asylum Seekers Notice of the One-Year Filing Deadline and an Adequate Mechanism to Timely File Applications (Aug. 2, 2018), https://www.americanimmigrationcouncil.org/sites/default/files/mendez_rojas_v_johnson_faq.pdf



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About the Immigrant Legal Resource Center

The Immigrant Legal Resource Center (ILRC) works with immigrants, community organizations, legal professionals, law enforcement, and policy makers to build a democratic society that values diversity and the rights of all people. Through community education programs, legal training and technical assistance, and policy development and advocacy, the ILRC's mission is to protect and defend the fundamental rights of immigrant families and communities.