



Asylum
Online Course

Module 6: Procedures

Hypotheticals

Faculty Response

Hypothetical:

Jose was a high school student in Venezuela when protests broke out against the autocratic and repressive government of Nicolas Maduro in 2017. Jose participated in several protests and spoke openly with friends and family about his opposition to the politics of the Venezuelan government.

In 2018, Jose decided to attend school in the United States and secured a student visa at the US Embassy in Caracas (which later closed because of US sanctions against the government of Venezuela). He entered the United States on August 5, 2018. He attended a US university for about one year but then dropped out because of mental health issues. He suffered from depression, which was exacerbated by the deteriorating human rights situation in Venezuela.

In January 2020, Jose decided that he could not return to Venezuela. He determined that he should apply for asylum.

Question A:

Where will the asylum application be filed? Who will adjudicate the application? When and where should supporting evidence be filed? What role will you play in advocating for a grant of asylum in this case?

Faculty Response:

Because Jose entered the United States without interacting with ICE or CBP or other immigration enforcement entities and has not been apprehended by ICE, you will file his asylum application "affirmatively." You will file the application by mail with the relevant service center after checking the USCIS website (Texas, Nebraska, California) - <https://www.uscis.gov/i-589>. For the initial filing, you will submit the I-589 and basic supporting evidence, such as an identification document and the US State Department human rights report. Generally, you will not file the remaining supporting evidence at the time of initial filing, because you will want to take additional time to prepare that evidence and also want it to be as updated as possible at the time of the final interview, which may not be scheduled for months or years.

The USCIS Asylum Office with jurisdiction over the area will adjudicate the case. That office will schedule an interview. Once the interview is scheduled, you should submit supporting evidence and

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briefing directly to that office, preferably two weeks in advance of the interview. Your role will be to prepare all of the evidence for submission, generally including a detailed client statement as well as personal corroborating evidence and country conditions materials. You will also likely wish to submit a letter brief in support of the application. You will then moot the client extensively in preparation for the interview.

At the interview, your role will mainly be as observer with the opportunity to step in as necessary to correct confusion or to clarify statements or misinterpretations. You have the opportunity by regulation to make a short closing statement at the end of the interview.

Question B:

When and how will the one-year filing deadline issue come up? How will you address it? What will be the next procedural stage if asylum is not granted initially on one-year-filing-deadline grounds?

Faculty Response:

The one-year filing deadline issue will not prevent filing of the application or scheduling of an interview. It will come up at the Asylum Office interview, however. You would be wise to submit evidence to address the issue in advance of the interview, possibly including a mental health evaluation. You would also want to include legal briefing on the issue with reference to caselaw and USCIS guidance relating to the exceptions to the one-year filing deadline relating to mental health issues and periods of time in student status. You would want to prepare your client to respond to questions about the one-year filing deadline during the interview, and you would want to include remarks in your closing statement.

If asylum is not granted at the Asylum Office because of the one-year filing deadline or any other issue, the case will be “referred” to the Immigration Court, since your client is not in status at the time of the interview. In Immigration Court, the asylum application will be renewed and will be adjudicated again de novo.

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