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UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
BOARD OF IMMIGRATION APPEALS

Amicus Invitation No. 16-06-09	
In Removal Proceedings	Case No.: Redacted

REQUEST TO APPEAR AS AMICUS CURIAE AND SUPPLEMENTAL BRIEF OF THE FEDERATION FOR AMERICAN IMMIGRATION REFORM

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I. INTEREST OF AMICUS CURIAE

On behalf of the Federation for American Immigration Reform (FAIR), the Immigration Reform Law Institute (IRLI) respectfully responds to the request by the Board of Immigration Appeals (BIA) on June 9, 2016 for supplemental briefing in this matter. FAIR is a nonprofit, public-interest, membership organization of concerned citizens and legal residents who share a common belief that our nation's immigration policies must be reformed to serve the national interest. Specifically, FAIR seeks to improve border security, stop illegal immigration, and promote immigration levels consistent with the national interest. The Board has solicited *amicus* briefs from FAIR for more than twenty years. *See, e.g.*, *In-re-Q- --M-T-*, 21 I. & N. Dec. 639 (B.I.A. 1996) (citing Timothy J. Cooney, Esquire, Washington, D.C., amicus curiae for FAIR and noting "The Board acknowledges with appreciation the brief submitted by amicus curiae.").

II. ISSUES PRESENTED

The *amicus* has provided supplemental briefing of the following issues for the BIA's consideration in the instant case:

- An asylum application may be considered after the one year filing deadline if the alien can establish "extraordinary circumstances." INA § 208(a)(2)(D). One such extraordinary circumstance is if the alien is under a legal disability during the one year period after arrival (*e.g.*, the alien was an unaccompanied minor) as long as the alien filed the application within a reasonable period given those circumstances. 8 C.F.R. § 1208.4(a)(5)(ii). The Act and regulations do not define "minor." How should this term be defined?

- Are there any circumstances when being under 21 years of age (even if not a minor) would constitute an extraordinary circumstance exempting someone from the one year deadline?
- *Matter of T-M-H- & S-W-C*, 25 I & N Dec. 193 (BIA 2010) sets out a framework for understanding a "reasonable period" after a changed circumstance excusing the one year filing deadline. What are the factors for consideration to determine a "reasonable period" after an alien ceases being excused on the basis of age?

III. SUMMARY OF THE FACTS

Respondent was born on June 21, 1989 and is a citizen of China. Respondent received a J-1 nonimmigrant visa and arrived in the United States on December 18, 2006 at the age of 17. Her visa expired in January 2007 and Respondent remained in the United States without legal status. Respondent did not file her I-589 application for asylum until she was 21 years old and had been in the United States for approximately 4 years.

IV. SUMMARY OF THE ARGUMENT

While the Immigration and Nationality Act (INA) does not provide a specific definition for the term minor, the BIA should interpret the term minor to include only individuals who are under the age of 18. Doing so would comport with the understanding of the term as used in other immigration contexts as well as with the broader federal use of the term. While the INA does define the term child, this definition should not be used to define who a minor is because the term child is defined by the relationship to either a parent or a guardian. The term minor is not attached to any other individual.

While the regulations allow for a delayed asylum application to be considered when changed or extraordinary circumstances exist, being under the age of 21 is not an extraordinary

circumstance. While being a minor may be an extraordinary circumstance, youth is not. Youth does not prevent an applicant from learning about the requirements for asylum and applying within the one year deadline.

Finally, determining whether an applicant has applied within a reasonable time following a delay is a discretionary decision. Because changed or extraordinary circumstances, by their definition, present unique and unforeseeable facts, it would be extremely difficult to create factors that must be considered when determining a reasonable delay. Instead, the BIA should consider the regulatory history of 8 C.F.R. § 1208.4 to find that while a six month delay may be reasonable, it is unlikely that a delay spanning years would be reasonable unless extremely rare circumstances existed which created the delay.

V. ARGUMENT

Under INA § 208(a)(1) an alien who is physically present or has arrived in the United States may apply for asylum in the United States. To be eligible for asylum, an alien bears the burden of demonstrating that the asylum application has been filed within one year of arriving in the United States. INA § 208(a)(2). If the alien does not file an application for asylum within the one year deadline, the application may still be considered if the alien can demonstrate a change in circumstances "which materially affected . . . eligibility *or* extraordinary circumstance relating to the delay." INA § 208(a)(2)(D) (emphasis added).

The agency regulation has provided guidance on how an adjudicator is to determine if the alien's tardy asylum application warrants exception from the one year filing requirement. *See generally* 8 C.F.R. § 1208.4. To determine if an alien's application which was filed more than one year after the alien's arrival into the United States can still be processed, the adjudicating agency or official will consider whether the applicant's delay falls within either the changed

circumstances or the extraordinary circumstances exceptions. The changed circumstances exception has two requirements: The existence of circumstances that materially affect the applicant's eligibility for asylum and that the application is filed within a reasonable period of time given those "changed circumstances." The extraordinary circumstances exception has three requirements: (1) Existence of an extraordinary circumstance that was not intentionally created by the alien; (2) a direct relationship between those circumstances and the alien's failure to file; and (3) the delay in filing was reasonable under the circumstances. 8 C.F.R. § 1208.4(a)(5).

A. The BIA Should Define the Term "Minor" to Apply Only to Individuals Who Are Under 18 Years Old.

Under the extraordinary circumstances exception, the regulation provides several examples of what the agency considers to be extraordinary circumstances. *Id.* A legal disability may be considered an extraordinary circumstance directly related to the alien's failure to meet the one year filing deadline. 8 C.F.R. § 1208.4(a)(5)(ii). An example of a legal disability under the regulation is an applicant who was an unaccompanied minor during the one year period following arrival in the United States. *Id.* While the INA does not define the terms unaccompanied minor or minor, the BIA should define minor as an alien who is under the age of 18 because of how the United States Citizenship and Immigration Services (USCIS), the agency charged with adjudication, uses the term minor. The INA has also acquiesced to the definition through the processes reserved only to those under the age of 18. While the INA does define the term "child," this definition does not suffice as a proxy for the definition of minor because of the practical uses of the term in the INA.

1. The BIA should accept USCIS's definition of a minor as an individual under the age of 18.

USCIS is the government agency charged with adjudicating asylum applications to ensure the alien applicant has met the necessary criteria to qualify for asylum under the statute. USCIS has instructed its asylum officers to define individuals under the age of 18 as minors. That policy creates a bright line, non-discretionary determination that once an applicant reaches the age of 18, the applicant is no longer considered a minor.

The USCIS training course defines three terms: Minor principal, unaccompanied minor, and unaccompanied alien child.[1] The first term, minor principal, is an alien applicant who is under 18 years of age when the asylum application is filed. *Id.* A minor principal files an application in his or her own name which is not tied to any parental or guardian relationship. The second term used in the training manual, unaccompanied minor, is the specific term used in 8 C.F.R. § 1208.4(a)(5)(ii). USCIS defined an unaccompanied minor as an alien under 18 years of age who has no legal guardian or parent in the United States. *Supra* note 1. The third term is unaccompanied alien child, which is formally defined in 6 U.S.C. § 279(g) as an alien child under the age of 18 who is not in legal status and is without a parent or guardian in the U.S. who is able to care for the alien child. *Id.*

Comparing the three terms, it becomes clear that the term minor is used to describe applicants under the age of 18. First, the term principal minor refers to an applicant under the age of 18 who independently applies for asylum. *Id.* By looking at the terms principal and minor separately to determine which portions of the definition apply to each work, the proper conclusion is that a minor is an individual under the age of 18.

[1] U.S. Customs and Immigration Services, Asylum Officer Basic Training Course Guildelines for Children's Asylum Claims 16-17, *available at* https://www.uscis.gov/sites/default/files/USCIS/Humanitarian/Refugees%20%26%20Asylum/Asylum/AOBTC%20LeLess%20Plans/Guidelines-for-Childrens-Asylum-Claims-31aug10.pdf (Sept. 1, 2009).

The training manual determined that the term unaccompanied minor can be used interchangeably with the term unaccompanied alien child. *Id.* USCIS uses the term unaccompanied in both definitions. In 8 U.S.C. § 279(g), the term unaccompanied references an alien child's independent status, where the alien child does not have a parent or a legal guardian within the United States. Therefore, the terms minor and alien child both refer to the age limitation. Under 8 U.S.C. § 279(g), an alien child must be under the age of 18. Because USICS has stated in the training manual that unaccompanied minor and unaccompanied alien child are interchangeable, the term unaccompanied minor would necessarily adopt the 18 year old age limitation of the term unaccompanied minor child.

Moreover, USCIS has independently defined the term minor for its uses. When defining minor and unaccompanied minor, in both cases USCIS requires that the alien child be under 18 years of age.[2] This definition, found on the USCIS website, does not contain any modifiers or exceptions to the general definition. USCIS clearly finds that to be a minor, one must be under the age of 18. Each definition found in the training manual as well as the general definition found on the USCIS website consistently use the term minor to describe an individual under 18 years of age. Therefore, the BIA should find that to be considered a minor, an applicant must be under 18 years old.

2. The INA has recognized a change in status from a minor to an adult occurs at 18 years of age.

While the term "minor" has not been defined in the INA, the INA has, to some degree, recognized the use of 6 U.S.C. § 279(g). In 8 U.S.C. § 1232, Congress addressed the trafficking of alien children. Section 1232 acknowledges that its policies within the section are to remain

[2] U.S. Citizenship & Immigration Services, *Minor Children Applying for Asylum by Themselves*, https://www.uscis.gov/humanitarian/refugees-asylum/asylum/minor-children-applying-asylum-themselves (last visited June 20, 2016).

consistent with 6 U.S.C. § 279 - the section that defines unaccompanied alien child. This section also recognizes that once the "minor" reaches 18, their custody is transferred from the Department of Health and Human Services ("HHS") to the Department of Homeland Security. § 1232(b)(1)(c)(2)(A).

The INA therefore recognizes that when an alien reaches the age of 18, the alien's status changes from minor to adult and the alien is treated differently when being housed and processed. When housing a minor, HHS is to consider the best interest of the child and review the housing accommodations monthly. *Id.* Once the alien turns 18, the extra considerations afforded to an alien under 18 disappear and the alien is treated like an adult. By incorporating the definition from 6 U.S.C. § 276(g) into § 1232, the INA has accepted the definition of unaccompanied alien child. The incorporation recognizes that once an alien reaches the age of 18, special considerations given to minors no longer apply.

Because the INA does not define the term minor, the definition used in different areas of the law provides insight as to how the term is to be interpreted. Other federal rights, responsibilities, and statutes recognize that at age 18, an individual is no longer a minor. For example, the U.S. Constitution recognizes that at 18, citizens are eligible to vote in elections, thereby giving citizens over the age of 18 the privilege of selecting elected officials, U.S. Const. amend. XXVI, § 1, and males must register for the Selective Service once they turn 18 years of age, 50 U.S.C. 3801, *et seq.* In federal criminal law and procedure, the term minor is also used to identify a person under the age of 18. 18 U.S.C. § 2256(1). The Federal Bureau of Investigation has stated that unless otherwise stipulated, federal law defines the term minor as an individual under the age of 18.[3] These examples from contexts both inside and outside

[3] Federal Bureau of Investigation, Violent Crimes Against Children: Federal Statutes Relating to Crimes Against Children, https://www.fbi.gov/about-us/investigate/vc_majorthefts/cac/federal-statutes (last visited June 17, 2016).

immigration law support the conclusion that the accepted definition of a minor is an individual under the age of 18 years.

3. The INA's definition of "child" is inapplicable to the Respondent's case.

The only evidence to controvert that the definition of minor requires the individual to be under the age of 18 is the INA's definition of a child. The INA defines a child as someone under the age of 21. *See generally* INA § 101(b) & (c). Respondent argues that the BIA should adopt 21 years old as the appropriate age limit for a minor so that a child and a minor are defined synonymously under the INA. Respondent's argument, however, ignores the fact that the INA application process treats a minor differently than a child.

The INA uses the term child when an alien is applying for asylum *with* a guardian or parent. INA § 208(b)(3) ("An unmarried alien who seeks to accompany, or follow to join, a parent granted asylum . . . and who was under 21 years of age . . . shall continue to be classified as a child. . . ."). The definition of child does not acknowledge applicants under 21 years of age who apply *without* a family member or guardian as the principal applicant or a child.

Conversely, use of the term minor, as detailed above, always relates to an individual under the age of 18 who is the *principal* of the asylum application. A principal minor comes to the United States without a parent or guardian on the application. An unaccompanied minor, also known as an unaccompanied minor child, comes to the United States without a parent or guardian to take custody of the minor. Each of these terms recognizes that a minor is an individual under 18 years of age, and that the minor—not a parent—is the person filing the asylum application.

In the instant case, Respondent is properly classified as a minor, but not as a child. She came to the United States without a parent or guardian. Her asylum application does not depend

on any family relationship; she is the principal of the application. As USCIS has determined, a principal minor applicant is required to be under the age of 18. Because Respondent was 21 when she filed her asylum application, she is no longer a principal minor or generally, a minor.

B. No Circumstance Exists Where Being Under 21 Years of Age, In and Of Itself, Would Constitute an Extraordinary Circumstances Exception from the One year Filing Deadline.

To be exempt from the one-year limit, the events delaying the alien's application must constitute extraordinary circumstances. The mere existence of extraordinary circumstances is not sufficient to grant an exception to the deadline, as the extraordinary circumstance must directly relate to the applicant's reasonable delay. First, being under the age of 21 is not an extraordinary circumstance that can fulfill the first element of the exception. Second, an applicant could not show that merely being under the age of 21 is directly related to a delay in filing an asylum application.

1. Being under the age of 21 should not fulfill the statutory definition's first requirement of being extraordinary.

The regulation provides an illustrative list of circumstances that *may* be considered extraordinary. 8 C.F.R. §1208.4(a)(5). The list is neither comprehensive[4] in its consideration of circumstances that may be extraordinary, nor are the events listed guaranteed to be found conclusively extraordinary by an adjudicator. *See* 65 FR 67121-01 (2000). An adjudicator has discretion to determine if the events proposed by the alien are in fact extraordinary circumstances that are related to the alien's reasonable delay in filing an asylum application. "Any such factor or group of factors must have had a severe enough impact on the applicant's function to have

[4] In addition to the possible circumstances listed in the regulation itself, USCIS has provided additional grounds or events that may qualify as extraordinary circumstances. This list includes: "severe family or spousal opposition, extreme isolation within a refugee community, profound language barriers, or profound difficulties in cultural acclimatization. *U.S. Citizenship and Immigration Services*, Asylum Officer Basic Training: One-Year Filing Deadline 20, *available at* https://www.uscis.gov/sites/default/files/USCIS/Humanitarian/Refugees%20%26%20Asylum/Asylum/AOBTC%20Lesson%20Plans/One-Year-Filing-Deadline-31aug10.pdf.

produced a significant barrier to timely filing."[5] To warrant a favorable exercise of discretion from the adjudicator, the circumstances must be beyond the alien's control.[6]

The first prong requires an extraordinary circumstance, which cannot be intentionally created by the alien. 8 C.F.R. §1208.4(a)(5). Extraordinary circumstances are defined as "[a] highly unusual set of facts that are not commonly associated with a particular thing or event." Black's Law Dictionary (10th ed.).

While a person's age, specifically being under 21 years old, is not a condition created by the alien, it is also not an extraordinary circumstance. Age and aging are not unique or "highly unusual" occurrences. It is a human condition that affects every person. Age is a yearly milestone of human existence that does not come as a surprise each year. Indeed, age is inapposite to the idea of extraordinary circumstances. Changing ages each year is a foreseeable event that every person experiences not just once, but every single year. Therefore, merely being under 21 years old logically cannot not qualify as an extraordinary circumstance.

If the BIA were to find that being under the age of 21 was an extraordinary circumstance, every alien under this threshold age could seek exception under the regulation. The regulatory history of the regulation advocates for a case-by-case analysis of whether an individual's circumstances are truly extraordinary and warrant exception from the filing deadline. *See* 65 FR 76121-01. Adjudicating extraordinary circumstance claims based upon age would create a bright line rule upon which exception could be taken. Creating a bright line rule would completely disregard the intent of analyzing each case on its facts rather than providing blanket exceptions. *See id.*

[5] *Id.*
[6] U.S. Citizenship and Immigration Services, PM-602-0097, Guidance on Evaluating Claims of "Extraordinary Circumstances" for Late Filings When the Applicant Must Have Sought to Acquire Lawful Permanent Residence Within 1 Year of Visa Availability Pursuant to the Child Status Protection Act, at 6 (2015).

This bright line rule application would completely disregard the legal definition of an "extraordinary circumstance," which requires uniqueness and individualized circumstances. *See* Black's Law Dictionary. Extraordinary circumstances are individualized events that require case-by-case individualized analysis. By treating over-18-but- under-21as an independent factor, the BIA would replace the current individualized process with a presumption of extraordinary circumstance based upon age.

Being under the age of 21 can also be distinguished from the legal disability of being an unaccompanied minor, which the regulation acknowledges as a circumstance that *may* be considered extraordinary. USCIS has special training and procedures for processing an unaccompanied minor applicant. *See supra* Part III.A.2. Principal applicants over 18 but under 21 are not treated any differently than alien applicants who are over 21. There is no special status attributed to this age group. Because being under 21 does not carry any procedures or status different from all other adult principal applicants, it should not be considered an appropriate basis for an extraordinary circumstance. The BIA should find that under no circumstances could being under 21 create extraordinary circumstances. To find otherwise would contradict the definition of extraordinary circumstances.

2. Because an applicant under 21 is not prevented from filing an asylum application, age cannot be directly related to the delay.

The second prong of the extraordinary circumstances analysis considers how the extraordinary circumstances *relate to the delay* in application. The applicant must demonstrate a direct relation between the extraordinary circumstances, and delay that has prevented the applicant from filing a timely application. *See Barry v. Holder*, 361 F. App'x 268, 269 (2nd Cir. 2010) (finding that the applicant's PTSD was not directly linked to her late asylum application). It is not enough that an extraordinary event or circumstance exist, that extraordinary

circumstance must directly link to the filing delay. *Id.*; *see also In re A-M-*, 23 I. & N. Dec. 737, 738-739 (B.I.A. 2005) (finding that a bombing in the applicant's home country that is not directly related to the delay does not qualify under the extraordinary circumstances exception). "[T]he alien [] has the burden of establishing the existence of the claimed circumstance and that *but for* that circumstance, the application would have been filed within the year." 62 FR 10312-01 (Mar. 6, 1997).

In *In Re Y-C-*, the BIA considered whether an unaccompanied minor who had missed the one year deadline could still file an asylum application due to extraordinary circumstances. 23 I. & N. Dec 286 (BIA 2002). The applicant entered the United States as an unaccompanied minor and was detained more than a year after his arrival at which point he was released into the custody of his uncle. *Id.* at 288. The BIA performed an individualized analysis of the case and stated that the applicant's entry as an unaccompanied minor did not automatically establish a basis for extraordinary circumstances. *Id.* at 288. The BIA found that it was not just merely his status as an unaccompanied minor that permitted him to file his application late; rather, it was a combination of his status and the delays of the Immigration Judge in setting a hearing date that directly related to his delay in filing an asylum claim. *See id.* at 288, 290.

As *In Re Y-C-* found, being an unaccompanied minor does not automatically qualify as extraordinary circumstances even though it is listed as a legal disability within the statute itself. The BIA still tied the legal disability of being an unaccompanied minor to another event (the delayed hearing) to create extraordinary circumstances. If the BIA still required some other event or circumstance to raise the status of unaccompanied minor to the level of extraordinary circumstance, there is no support to find being under the age of 21 will qualify as an extraordinary circumstance. In *In Re Y-C-*, the status of being an unaccompanied minor added to

a favorable discretionary finding. However nothing about the status is unique, unusual, or inhibits an alien from filing a timely asylum application. Therefore, the BIA should find that being under the age of 21 does not directly relate to a delayed application filing.

C. Determining If A Delay Is Reasonable Requires a Discretionary Decision; However, Regulatory History and Precedent Provide Appropriate Guidelines To Provide Categories of Length of Delay and If Such Delays Are Likely to Be Found Reasonable.

The final prong of analysis under both the changed circumstances exception and the extraordinary circumstances exception is that the applicant files an asylum application "within a reasonable period of time" under the circumstances. *See* §§ 1208.4(a)(4)(ii) & 1208.4(a)(5). It is not sufficient that an extraordinary or changed circumstance exist that delays the alien in filing an application; the delay in filing must also be reasonable under the circumstances. § 1208.4(a)(5). The regulation does not provide a clear formula of how a reasonable time period should be analyzed. *See id.* Determining that a reasonable delay is due to relevant circumstances is very fact-intensive, and allows the adjudicator discretion in determining both if there is an extraordinary circumstance, and if the delay in filing due to those extraordinary facts was reasonable. *See* 65 FR 76121-01, 76123-24, *see also Y-C-*, 23 I. & N. Dec. 286, 288 (B.I.A. 2002).

Regulation has recognized that circumstances may exist where a delay under six months is reasonable. *See* 65 FR 76121-01 ("Shorter periods of time [under 6 months,] would be considered on a case-by-case basis, with the decision-maker taking into account the totality of the circumstances."). In *Matter of T-M-H- 7 S-W-C-*, the BIA considered the reasonableness of a one-year delay in filing an asylum application. 25 I. & N. Dec. 193 (B.I.A. 2010). The aliens, who were natives of China, filed an asylum application approximately one year after the birth of their second child. *Id.* The aliens argued that the delay after the birth of the child was

reasonable based upon changed circumstances. *Id.* The BIA found that an *automatic* grant of a one year extension would be improper but that some rare situations may require a delay of more than a year. *Id.* at *3. The length of delay requires a factual analysis into reasonableness. *See id.*

In *Abankwah v. Lynch*, the Second Circuit stated that a seven year delay in filing for an alien who suffered from PTSD is unreasonable. *See* 632 F. App'x 670, 673 (2nd Cir. 2015). In *Apriyandi v. Holder*, the Second Circuit explained that they did not have the jurisdiction to disturb the BIA's determination that the Respondent's five year delay in applying for asylum was due to purported "extraordinary circumstances." 573 Fed. App'x 43, 44 (2nd Cir. 2014). The Respondent had arrived in the United States at the age of 19 but did not apply for asylum until age 24, blaming his "youth and worries about his mother" as extraordinary circumstances. *Id.*

No case or commentary provides a perfect formula for determining what a reasonable delay is, or even a list of factors for consideration by the BIA. The adjudicator must determine reasonableness on a case-by-case basis. Definition of a reasonable delay is a discretionary determination that varies because of the nature of the factual inquiry required for each case. To be sure, an extraordinary circumstance is an unusual and unique set of facts, but three limitations on what constitutes a reasonable amount of time can be deduced from the regulatory history and precedent: (1) A six-month delay is a reasonable delay; (2) a delay between six months and one year is neither categorically reasonable nor unreasonable; and (3) delays of a year or more are rarely found reasonable.

Applying these considerations, Respondent in the instant case did not file her asylum application in a reasonable amount of time. Respondent entered the United States on a J-1 visa, which expired in January 2007. As the regulatory history states, an individual whose status has

expired may wait a reasonable amount of time, under six months, to determine if country conditions will improve. *See* 65 FR 76121. However, Respondent did not filed her application until she was 21 years old, approximately 3.5 to 4 years after her J-1 visa expired.

It is also significant that she came to the United States in a proper legal status after applying for a J-1 visa. Respondent successfully navigated the immigration system to attain that legal status. She had adequate knowledge of the immigration system sufficient to apply for a J-1 visa. Her relative youth thus cannot be used to explain away the multi-year delay in applying for asylum. Respondent's delay exceeded the six month reasonable delay category. Considering Respondent's knowledge of the U.S. immigration system, her delay was unreasonable. 65 FR 76121-01.

For delays between six months and one year, an adjudicator has discretion to consider the facts underlying the delay to determine if the delay is reasonable. Beyond concluding that an automatic one-year delay is against the regulation's policy, not much is known about what considerations are to be given. *Matter of T-M-H- 7 S-W-C-*, 25 I. & N. Dec. 193 (B.I.A. 2010). However, the instant case does not present facts that would require an analysis of what facts should be considered because Respondent's delay was over the six months to one year range.

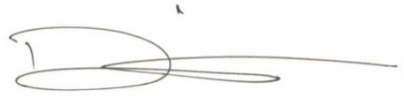
Respondent's delay falls into the over a year category and does not present rare circumstances that may excuse such tardiness. She had several years after the expiration of her J-1 visa and after her eighteenth birthday in which to file an asylum application. While rare cases permit a delay of over a year, it is unlikely that being over 18 and under 21 warrant an extraordinary circumstances finding, nor is a delay of multiple years reasonable for age considerations.

VI. CONCLUSION

The BIA should interpret the statutorily undefined term minor to mean an individual under 18 years of age. Regardless of the age limitation adopted by the BIA, being under the age of 21 does not provide an extraordinary circumstance that would excuse a delay in an alien filing an asylum application. Finally, determining what is considered a reasonable delay requires a discretionary decision by the BIA, as each set of facts will have different considerations due to the nature of changed or extraordinary circumstances. While it requires a discretionary determination, the regulatory history of § 1208.4 as well as precedent provides that a six month delay is reasonable. However, a multiple year delay will not be acceptable except in extremely rare circumstances.

In the instant case, Respondent was over 21 years of age and had been in the United States for four years when she finally decided to apply for asylum. Respondent was not a minor when she applied for asylum, nor does age create extraordinary circumstances because each age is a milestone reached by all people. As such, her multi-year delay in filing an asylum application is not excuseable as a rare occurrence that would excuse such a long delay.

Respectfully submitted,



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