



Home Office

# Evidential flexibility: points-based system

Version 9.0

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# About this guidance

This guidance tells you how to apply the evidential flexibility policy for applications made under the points-based system which is set out in [paragraph 245AA](#) of the Immigration Rules. It replaces all previous instructions and guidance on evidential flexibility.

## Contacts

If you have any questions about the guidance and your line manager or senior caseworker cannot help you or you think that the guidance has factual errors then email the Administrative Policy team.

If you notice any formatting errors in this guidance (broken links, spelling mistakes and so on) or have any comments about the layout or navigability of the guidance then email the Guidance Rules and Forms team.

## Publication

Below is information on when this version of the guidance was published:

- version **9.0**
- published for Home Office staff on **December 2018**

## Changes from last version of this guidance

Changes made to reflect revised Immigration Rules on Evidential Flexibility made in October 2018, and the new UK Visa and Citizenship Application Service and Service Support Centre processes.

### Related content

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# When evidential flexibility applies in PBS applications

This section tells you about the circumstances when you may apply flexibility around specified evidential requirement as stated in [paragraph 245AA of the Immigration Rules](#).

The requirements of each PBS route, including the evidence which must be submitted, are set out in the Immigration Rules. This means applicants should provide all information and evidence on which they rely to support their application at the outset of the process, but they may be asked to provide further evidence at their service point appointment. However, if it is identified at the consideration stage that the applicant made an error or omission with the supporting evidence they provide, then you should contact them and invite them to provide additional information as set out in this guidance.

The circumstances when a decision maker can request additional information are set out in the evidential flexibility rule in paragraph 245AA in part 6A of the Immigration Rules.

[Paragraph 245AA](#) only applies to specified documents. Specified documents are route specific and are documents the applicant must provide in order to meet the requirements of the Rules.

Additional information can be requested as set out in [paragraph 245AA\(b\)](#). This is where:

- evidence is missing – for example, an English language certificate
- parts of a set of documents are missing – for example, pages of a bank statement
- evidence has been submitted but is in the wrong format – for example, where a document should have been submitted on letterheaded paper
- evidence does not contain all of the specified information – for example, if an employer's letter has been provided that does not confirm the applicant's gross annual salary or that the employer needs to employ the applicant in their current role for the foreseeable future
- a Confirmation for Acceptance of Studies (CAS) or Certificate of Sponsorship (CoS) containing minor errors or missed fields where you can quickly call or contact the sponsor to clarify

If specified evidence does not include all the specified information, you do not need to write to an applicant where the missing specified information can be obtained from another source such as:

- other evidence submitted with the application
- the website of the organisation which issued the evidence

- the website of the appropriate regulatory body, for example, the Financial Conduct Authority

You must write out and request missing specified evidence and there are no other grounds which would lead to the application being refused. The request should set a timeframe for receipt of the missing evidence of 10 working days of the date of the request. You do not have to write more than once to ask for missing evidence, and, if you have written once and the applicant has failed to provide the requested evidence within the timeframe given you should normally refuse the application.

You may phone the applicant for minor missing information, such as missing references. For example, where there is a missing universal job match number or where all the Secure English Language Test (SELT) details have been completed but have omitted the unique reference number.

You can also apply the same approach to evidential flexibility where there is an error or omission in the evidence, but it is not specified evidence under the route. For example, proof of relationship with a dependant is not specified evidence but is required before a decision can be made on whether to grant leave to a dependant.

If the application falls for refusal for a reason which could not be addressed by requesting additional information, for example:

- on genuineness grounds
- where an application does not meet the other requirements in the rules
- where it will be refused under general grounds for refusal

then you must not request further evidence under [paragraph 245AA](#). If you are unsure, discuss this with your senior case worker or line manager.

If you decide that evidential flexibility does not apply to the case, you must accurately and fully record on the caseworking system:

- what evidence or information is missing
- whether evidential flexibility has been applied and if not, why not

You must explain in the decision letter why no request for further information has been made. Suggested wording for your decision letter can be found in the [deciding the case](#) section of this guidance.

## Example scenarios where a decision maker should apply evidential flexibility

This is not an exhaustive list.

**Example 1: where a specified piece of evidence has been omitted and you know it exists**

An application has been made under Tier 4 of the Immigration Rules and the CAS confirms that the applicant has passed the relevant English Language requirements. The CAS contains all the required detail and the application contains all the evidence required by the Immigration Rules except for a copy of the English Language Certificate. You have assessed the case and believe that the applicant meets all the other requirements of the relevant Immigration Rules including the genuine student rule.

In this scenario because the applicant otherwise meets the requirements and the CAS indicates that an English Language certificate is available then you should apply evidential flexibility and request the missing English Language certificate from the applicant.

**Example 2: where a specified piece of evidence has been omitted and you are not certain whether it exists**

An application has been made under Tier 4 and the applicant meets the requirements of the Rules but has not provided the specified evidence in relation to finance. For example, where there are one or more bank statements missing. You have assessed the application and believe the applicant meets all the other requirements of the relevant Immigration Rules.

Even if you are not certain the evidence exists, for example, if the missing bank statement is from the end of the series covering the relevant time period, you should employ evidential flexibility and request the missing evidence in relation to finance.

**Example 3: where the specified evidence contains minor mistakes**

An application has been made under Tier 2 (General) of the Immigration Rules. The applicant has submitted all the correct documentation and falls to be issued but the Certificate of Sponsorship contains a minor error and does not include details of the Universal Jobs Match reference number. In this case you should apply evidential flexibility and contact the sponsor and ask them to provide details of the reference number.

**Example scenarios where a decision maker should not apply evidential flexibility**

This is not an exhaustive list.

**Example 1: the application falls for refusal under other grounds of the Immigration Rules**

An application has been made under Tier 4 of the Immigration Rules and the CAS confirms that the applicant has passed the relevant English Language requirements. The CAS contains all the relevant detail as required and the application contains all the evidence required by the Immigration Rules except for a copy of the English Language Certificate. However, you have assessed the case and having carried out an interview you have decided that the applicant does not meet the requirements of

the genuine student rule. In this case you do not need to apply evidential flexibility and the refusal notice should explain why you have decided not to do this.

### **Example 2: the applicant will be refused under the general grounds for refusal**

An application has been submitted under Tier 2 of the Immigration Rules. The applicant has provided some of the specified evidence but has not provided a complete set of bank statements. The applicant has provided false documents as part of their evidence and will therefore be refused under the general grounds for refusal. You do not need to apply evidential flexibility and the refusal notice should explain why you have decided not to do this.

### **Example 3: the applicant does not meet the financial requirements**

An application has been submitted under Tier 4 of the Immigration Rules. It contains some of the required financial evidence but some bank statements are missing. However, the information on the application form and other evidence provided show that the correct level of finances have not been held for the length of time specified by the financial rules. You do not need to write out speculatively to search for different evidence where the applicant has provided evidence that shows they do not meet the requirements. If there is nothing in the application to suggest the applicant has any other finances, for example in a separate account, you do not need to apply evidential flexibility and the refusal notice should explain why you have decided not to do this.

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# Entry clearance applications

This section tells you about the process of requesting additional information on application submitted outside of the UK.

## Process to request information

To request additional information you must contact either the applicant or representative or sponsor by email using the email address or telephone numbers provided on the application form or Certificate of Sponsorship or Confirmation for Acceptance of Studies. If you contact them by email you must use the [standard email template](#). If you contact them by telephone you should note this on the relevant caseworking system case notes. If you need to contact the applicant by email to request sensitive personal information you must follow the process outlined below.

When requesting information under evidential flexibility you must tell the applicant to provide the requested information within 10 working days. If any additional information has been received within 10 working days you must take this into account when deciding the case.

If you do not receive any additional information within the 10 day deadline, you should make a decision on the basis of the available information.

You do not have to write more than once to ask for missing evidence, and, if you have written once and the applicant has failed to provide the requested evidence you should normally refuse the application.

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# In-country applications

This section tells you about the process of requesting additional information on an application submitted where the applicant is in the UK.

## Applications made where an applicant attends a UK Visa and Citizenship Application Services point (UKVACS)

Applications made where an applicant attends a UKVACS will be reviewed by the commercial partner against an Access UK checklist of mandatory evidence required (for example, evidence required for a valid application under paragraph 34 of the Immigration Rules) whilst the applicant is present. The commercial partner will tell the applicant whether all mandatory evidence has been provided and ask the applicant to return with missing mandatory evidence or use the self-load functionality to provide the missing mandatory evidence the same day. If an applicant cannot provide the missing evidence that day they must be given the opportunity to supply the evidence under evidential flexibility as set out in this guidance.

The applicant will also be asked to scan and upload their supporting evidence. Applicants can pay for an added value service where the commercial partner will check the supporting evidence against the checklist provided to the applicant and scan upload this for the applicant.

All the supporting evidence provided by the applicant will then be sent to UKVI. The UKVI decision maker must consider the application and assess the evidence and contact the applicant when you conclude that evidential flexibility should be applied in accordance with the process set out in this guidance. The commercial partner is not responsible for requesting missing evidence even where they have checked it as part of the added value service.

## Requesting further information by email

You can make your request for additional information using the contact details provided by the applicant on their application. This can be by email (unless the applicant has said they do not want us to contact them by email) or by post. If the applicant has a representative you must inform the applicant that the request for additional information will also be sent to their representative by email.

When making this request by email you must use the [standard email template](#).

You must send all emails from the team mailbox, not your personal mailbox. This allows others to access any responses in your absence. You must save a copy of the email you sent in the team mailbox so colleagues can see what details you have requested.

You must note the following details on the caseworking system:

- the information requested

- any emails sent including your name the date and the content of the email

This is to show that [paragraph 245AA](#) has been correctly applied.

If you cannot contact the applicant or their representative by email, because, for example, emails have bounced back as undelivered, you must send them an ICD.5114 detailing the information you require and record the issues you had contacting them on the caseworking system.

## Use of email for requesting sensitive personal information

This is information that the law categorises as either special category data, or information relating to criminality.

In some cases, you may need to contact an applicant to request sensitive information, for example if you are asking:

- about specific medical conditions or for certain types of medical records where your question would identify the type of consultant or medical practitioner they are relying on
- questions concerning race or ethnic origin
- for records relating to criminal convictions

In these circumstances you should contact the applicant by telephone to confirm whether they are content to use email for this purpose.

If you are not certain whether the information you are requesting is sensitive, speak to a senior caseworker in the first instance. All information shared over email must be done in line with Home Office guidance on sharing information securely.

## Requesting further information by post

When contacting the applicant by post you must send them an ICD.5114 or the request for Further Information template on Atlas detailing the information you require and record the issues you had contacting them on the caseworking system. You must send this to an address they have provided for correspondence. When there is a representative on the caseworking system you must also send the letter to them.

You must note the following details on the caseworking system:

- the information requested
- the address where the further information request was sent
- when the letter was posted

You must do this to evidence that [paragraph 245AA](#) and this guidance has been followed correctly.

## After a request has been made

You must normally put the case in the brought forward (BF) for 13 working days from the date of the email or written request unless there are exceptional circumstances. For example, there is a postal strike which means that you should put the case in BF for longer. The additional time, on top of the 10 days specified in the Immigration Rules, is to allow for evidence to move from workflow to the decision-making team. The extra time is not an extension to the time for the applicant.

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# Deciding the case

When making a decision on a case you must show, on the caseworking system and in your decision letter that you have fully considered [paragraph 245AA](#). This is particularly important if you have decided not to make a request for further information. In your refusal notice you must set out how you have tried to contact the applicant or their representative and the response, if any, they provided.

The below wordings for decision letters are not an exhaustive list of possible scenarios. You must amend these paragraphs so that they accurately reflect the facts of the case that you are dealing with.

## **Option 1: evidence provided does not meet the substantive requirements of the Immigration Rules**

In making the decision to refuse your application I have considered whether evidential flexibility applies as set out in paragraph 245AA of the Immigration Rules. Additional information is not requested where that information would not change the decision. You have not met the requirements of the Immigration Rules for the reasons explained above. As additional information would not change the decision I did not request any additional information in relation to your application before making the decision.

## **Option 2: information requested, but no response received**

In making the decision to refuse your application I have considered whether evidential flexibility applies as set out in paragraph 245AA of the Immigration Rules. On (case worker to insert date), we wrote to you and/or your representatives (delete as appropriate) to request additional information. You were given the opportunity to provide the missing evidence but we received no response to that request. Therefore, your application has been considered based on information already submitted.

## **Option 3: information requested, but provided information does not meet the requirements of the Immigration Rules**

In making the decision to refuse your application I have considered whether evidential flexibility applies as set out in paragraph 245AA of the Immigration Rules. On (case worker to insert date), we wrote to you and/or your representatives (delete as appropriate) to request additional information. On (case worker to insert date) you provided (case worker to list evidence received). This has been considered, but for the reasons explained in this letter you do not meet the requirements of the Immigration Rules.

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# Template for making requests under paragraph 245AA by email

We are considering your/your client's/your sponsored person's application and need some further information. Please can you provide the following documents within 10 working days of this request:

- Insert required documents here

If we do not receive the documents by this deadline we will make a decision on the information we already have. We recommend that you send the requested documents either electronically to the email address provided, or if by post, by guaranteed next day delivery to ensure they arrive in time.

You must send your response to:

- Insert address here

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