

**CHAPTER 1  
SECTION 5****SECTION 3C OF THE IMMIGRATION ACT 1971  
(AS AMENDED)****THE VARIATION OF LEAVE ORDER (VOLO)**  
from The Immigration Directorates' Instructions, May 1998

**THIS INSTRUCTION IS NOW OBSOLETE, AND IS PROVIDED FOR INFORMATION ONLY**

**1. INTRODUCTION**

It is often not possible to decide an application for an extension of leave until after that period of leave has expired. To avoid the difficulties this could create, the Immigration (Variation of Leave) Order, 1976 (Statutory Instrument 1976 No. 1572) came into force on 27 September 1976. Its effect is to protect the appeal rights of people where the application was submitted "in time" (i.e. before the expiry of leave) but is not decided until after the period of leave has expired. The Order (VOLO) automatically extends the leave of a person who has made an "in-time" application from the date of the expiry of substantive leave until 28 days after the date on which his application is decided.

**1.1. Subsequent statutory instruments**

- The Immigration (Variation of Leave) (Amendment) Order 1989 (Statutory Instrument 1989 No. 1005) came into force on 8 July 1989; it has the effect of extending an applicant's leave until 28 days after the withdrawal of his application.
- The Immigration (Variation of Leave) (Amendment) Order 1993 (Statutory Instrument 1993 No 1657) came into force on 26 July 1993. It has the effect that where a person's leave has been curtailed by virtue of Section 7(1) of Asylum and Immigration Appeals Act 1993, the extension under VOLO shall not have effect beyond the date to which the leave is curtailed. This Order applies only where the person has claimed asylum.

**NOTE:** The extension of leave under VOLO operates without any endorsement of the passport or travel document, or the need to give any other notice in writing to the applicant.

**2. FIRST APPLICATIONS****2.1. Key points**

- VOLO only applies where an application for extension of stay is made before the expiry of the person's leave;
- it extends the person's leave and any conditions attached to that leave until 28 days after the date of decision or until 28 days after the application is withdrawn;
- VOLO does not apply if an application is refused where there are more than 28 days of the existing leave remaining;
- VOLO does not apply where a person's limited leave has already expired at the time of the application.

### **3. SECOND AND SUBSEQUENT APPLICATIONS**

#### **3.1. Applications lodged during the currency of limited leave**

If two or more applications are made during the currency of leave to enter or remain, each application will attract an extension of leave under VOLO. However, if the applications are not all resolved in the same refusal notice, the final 28 days of VOLO will be triggered by the decision to refuse the final outstanding application.

#### **3.2. Applications lodged during leave under VOLO**

When a second or further application is made during leave already extended by VOLO (ie when an "in time" application has been made but has not been resolved and the leave has expired, or where an "in time" application has been refused or withdrawn), the "key points" below apply.

#### **3.3. Key points**

- Although the second application will be "in time", the leave extended by VOLO on the first application cannot be extended further by the second application, unless the applicant has other non-VOLO leave;
- if the first application was refused, a right of appeal against refusal of the second application will only arise if it is decided, refused, appeal rights notified and an appeal lodged during the extension under VOLO by virtue of the first application;
- if the initial application was withdrawn, the extension of leave under VOLO will end 28 days from the date of withdrawal. If the decision to refuse the second application is made and an appeal lodged within the 28 days then there will be a right of appeal. If, however, the decision to refuse the second application is not made until the 28 days has lapsed, then there will be no right of appeal.

### **4. RIGHT OF APPEAL IN SECOND APPLICATIONS**

When considering two applications, where:

- the first was submitted during substantive leave and leave has been extended under VOLO, and
  - the second was submitted during the leave as extended by VOLO,
- the normal practice should be to decide both applications at the same time, giving the applicant the right of appeal in respect of both applications if they fall for refusal.

There may, however, be circumstances in which it is not possible to do so or where it may be right to decide the first application because the second application may require further detailed enquiries to be made before a decision can be made.

## **5. WITHDRAWAL OF FIRST APPLICATIONS**

### **5.1. Return of passport for travel**

Where an applicant requests the return of his passport for travel outside the common travel area, the application for variation of leave shall (provided it has not been determined) be treated as withdrawn as soon as the passport has been returned in response to that request. VOLO will end 28 days later. (Paragraph 34 of HC 395 refers). It is normal practice to endorse a passport with 28 days VOLO leave, before return, when an application is withdrawn for travel, provided that the application was made "in time". The withdrawn application should be notified on INDECS using result code 7 and category code X1.

### **5.2. Withdrawal of first application (not travelling)**

Where an applicant who is not travelling, makes a clear, unambiguous request for consideration of the first application to be discontinued, VOLO leave will terminate 28 days after the date of withdrawal of the first application. If such a request is ambiguous, clarification that the application is being withdrawn should be sought. Only once a clear, unambiguous request has been made can the VOLO leave period be allowed to continue. Where such notification is given by post, the date of postage is when the application is withdrawn and the last 28 days of VOLO leave are triggered by that date. Any second application will only attract a right of appeal if the decision is taken, appeal rights notified and an appeal lodged during the extension under VOLO. The withdrawn application should be notified on INDECS using result code 7 and category code X1.

### **5.3. Subsequent applications**

A second or third application should not automatically be regarded as a request to withdraw the first application, unless this is clearly intended by the applicant. In cases of genuine doubt further clarification may be sought, but generally caseworkers should proceed to decide all outstanding applications at the same time wherever possible.

It should not be assumed that an applicant wishes to withdraw an initial application simply because it appears incompatible with a subsequent application, for example, if a person submits an application to remain as a spouse of a person settled in the United Kingdom, after an initial application to remain as a visitor. Caseworkers should always be careful to distinguish between a fresh application, an enquiry about a possible application, or a letter which merely advises of a change of circumstances, for example where a student has completed the part of the course for which he originally applied for an extension of stay and wishes the same application to be considered in relation to the next part of the course.

## **6. WITHDRAWAL OF DECISIONS**

Refusal decisions on applications for a variation of leave which trigger the final 28 days of leave under VOLO can be formally withdrawn by letter. Such a withdrawal will have the effect of re-activating VOLO leave retrospectively so as to run until 28 days after the notice of a fresh decision is served. Consequently when an "incorrect" decision has been taken it is possible to formally withdraw the decision and serve a fresh decision either at the same time or at a later stage. That decision will attract a right of appeal and trigger the final 28 days of VOLO. For further advice, see Chapter 9, Section 1, "Adverse Decisions - General Guidance", paragraph 14.2, "Mistaken grounds".

## **7. APPLICANTS' STATUS WHILE SUBJECT TO LEAVE UNDER VOLO**

Where an applicant's leave has been extended by VOLO and he inquires whether he may work or set up in business pending a decision on his application, he should be advised that the order extends both the time limit and any conditions attached to his stay.

A person whose previous leave was subject only to a time limit, ie. Code 1, may work or set up in business while his application is under consideration, but he should be advised that this does not necessarily mean that an application to remain for such a purpose will be granted.

When leave under VOLO has expired, the person is no longer subject to any conditions.