



# **PBS PROCESS INSTRUCTION**

## **EVIDENTIAL FLEXIBILITY**



# EVIDENTIAL FLEXIBILITY

## Introduction

In response to significant feedback from the caseworking teams, as well as from our customers, from August 2009 a flexible process was adopted allowing PBS caseworkers to invite sponsors and migrants to correct minor errors or omissions in applications both main and dependant submitted under Tiers 1, 2, 4 and 5.

The instruction enabled caseworkers to query details or request further information, such as a missing wage slip or bank statement from a sequence. Three working days was given to the customer to provide the requested information.

This instruction only applied to cases which would be refused solely on the absence of a piece of evidence or information. Where the application would fall for refusal even if the missing evidence was submitted, a request to submit this further information would not be made.

The introduction of this instruction resulted in a reduced refusal rate. However, those that fell for refusal where multiple pieces of information were missing were often successful on appeal.

Following analysis of allowed appeals and feedback from the National Audit Office (NAO) and Chief Inspector (CI), the original Evidential Flexibility instruction has been reviewed to meet the recommendations put forward in these reports whilst continuing to provide improved levels customer service.

As such, there have been two significant changes to the original Evidential Flexibility instruction:

- 1) The time given to applicants to produce additional evidence has been **increased from three working days to seven working days**; and
- 2) There is **now no limit on the amount of information that can be requested from the applicant**. However, requests for information should not be speculative, we must have sufficient reason to believe that any evidence requested exists.

The evidence requested must only relate to the attributes, not general immigration issues or validation.

## NOTE:

**Although deadlines will be given for customers to respond to our request for further information, if additional information is received within UKBA (not necessarily by the relevant case owner) prior to the case being despatched this must be taken into account by the caseworker. This applies even if a refusal decision has been completed but the case has not been despatched on CID.**

# EVIDENTIAL FLEXIBILITY

## Procedure

This procedure describes the steps to take when an application has missing evidence or there is a minor error.

Step	Action
1	<p>Is there missing evidence, or evidence that is not in an acceptable format?</p> <p><b>If:</b></p> <ul style="list-style-type: none"> <li>• <b>Yes</b> – Go to step 2</li> <li>• <b>No</b> - The case should be considered as normal. The Evidential Flexibility instruction should not be applied.</li> </ul>
2	<p>Would the application fall for refusal even if the missing information was provided, or minor error corrected?</p> <p><i>An example of this may be where the applicant has failed to provide sufficient evidence to demonstrate that they meet the requirements of the Maintenance (funds) attribute, but in addition has not declared on their application that they have a conviction which is not spent.</i></p> <p><i>Additionally, if there are any reasonable doubts over the information currently held that would cause caseworkers to seek further verification, this should take place prior to any request for further evidence. This also applies where the application hits a risk profile.</i></p> <p><b>If:</b></p> <ul style="list-style-type: none"> <li>• <b>No</b> - Go to step 3</li> <li>• <b>Yes</b> - Evidence cannot be requested. The application should be <u>refused</u>. All grounds should be included including any attributes where there was any missing evidence or minor errors.</li> </ul>
3	<p>We will only go out for additional information in certain circumstances which would lead to the approval of the application.</p> <p>Before we go out to the applicant we must have established that evidence exists, or have sufficient reason to believe the information exists.</p> <p>Examples include (but are not limited to):</p> <ol style="list-style-type: none"> <li>1) bank statements missing from a series;</li> <li>2) evidence that specific qualifications have been provided previously (either from reviewing CID, or a legacy application, such as globe);</li> <li>3) evidence detailed on a CAS/ COS is missing; and</li> <li>4) named deposits on bank statements from an employer, but no wage slips provided.</li> </ol> <p>The evidence listed in <a href="#">Annex A</a> is not exhaustive, but provides caseworkers with guidance as to the circumstances when evidence can be requested.</p>

# EVIDENTIAL FLEXIBILITY

	<p>Is the caseworker satisfied that the evidence, which is missing exists, or has sufficient reason to believe that it exists?</p> <p><b>Please note:</b> Multiple pieces of evidence can be requested</p> <p><b>If:</b></p> <ul style="list-style-type: none"><li>• <b>Yes</b> - Go to step 5</li><li>• <b>No</b> - Evidence cannot be requested. The application should be <u>refused</u>. All grounds should be included including any attributes where there was any missing evidence or minor errors.</li><li>• <b>Unsure</b> - Go to step 4</li></ul>
4	<p>If the caseworker is unsure as to whether the evidence exists, they should discuss the issue with their &lt;out of scope&gt; senior manager.</p> <p>Where there is uncertainty as to whether evidence exists, benefit should be given to the applicant and the evidence should be requested.</p> <p>Is the &lt;out of scope&gt; senior manager satisfied that the missing evidence exists, or has reasonable grounds to believe that it exists?</p> <p><b>If:</b></p> <ul style="list-style-type: none"><li>• <b>Yes, or unsure</b> - Go to step 5</li><li>• <b>No</b> - Evidence cannot be requested. The application should be <u>refused</u>. All grounds should be included including any attributes where there was any missing evidence or minor errors.</li></ul> <p>Notes should be added to CID to explain why Evidential Flexibility was not applied.</p>
5	<p>The caseworker must contact the applicant / rep / sponsor initially by telephone.</p> <p>The applicant / rep / sponsor should be informed that they have a maximum of seven working days to respond i.e. the missing information should be with the UKBA within this timeframe.</p> <p>We will use the date of receipt at UKBA if this cannot be established then evidence of the date of postage should be considered.</p> <p>We strongly recommend that the information requested be sent by next day special delivery.</p> <p>Original documentation must be provided – we will not accept faxed, scanned or photocopied docs.</p> <p>Go to step 6</p>

# EVIDENTIAL FLEXIBILITY

6	<p>When attempting to contact the applicant / representative / sponsor by phone, caseworkers should normally make no more than two attempts using the relevant telephone number (s). If an applicant has a representative the caseworker should initially contact them rather than the applicant.</p> <p>Each time and date of call, and the relevant number contacted should be recorded on CID as if the case is eventually refused, these details will need including in the Immigration History section of the refusal notice.</p> <p>Where ever possible, caseworkers should speak directly to a relevant person, rather than leave a message.</p> <p>Where an email address is held for the applicant / representative / sponsor the telephone call should be followed up by email. As part of the telephone conversation, you should clarify the email address, or if one was not provided as part of the application, ask the applicant / representative / sponsor to provide one (if one exists).</p> <p>Note that there are particular points that need to be made to the applicant / representative / sponsor when requesting further information, these are in <a href="#">Annex B</a>.</p> <p>Additionally please see <a href="#">Annex C</a> "lines to take" document which should answer common questions caseworkers may be asked in response:</p> <p>Have two attempts been made?</p> <p><b>If:</b></p> <ul style="list-style-type: none"><li>• <b>Yes – &lt;out of scope&gt; is satisfied an appropriate number of attempts have been made – go to step 8</b></li><li>• <b>Yes – &lt;out of scope&gt; is not satisfied an appropriate number of attempts have been made - Take action as directed by &lt;out of scope&gt; Senior Caseworker</b></li><li>• <b>No - Go to step 7</b></li></ul>
7	<p>Continue attempting to phone customer.</p> <p>Ensure that all contact numbers available are used and that where multiple attempts are required the calls are made at different times of the day (e.g. do not make two attempts 15 minutes apart)</p> <p>Return to step 8</p>
8	<p>Where verbal contact with the applicant / representative / sponsor has been made by phone, you must followed this up via an email.</p> <p>Has the applicant supplied an email address</p> <p><b>If:</b></p> <ul style="list-style-type: none"><li>• <b>Yes – Go to step 9</b></li></ul>

# EVIDENTIAL FLEXIBILITY

	<ul style="list-style-type: none"> <li>• <b>No</b> - Go to step 10</li> </ul>
9	<p>When attempting to contact the applicant / representative / sponsor by email, one attempt to each available address can be made. Care should be taken to ensure the correct email address is used.</p> <p>Details of the information that has been requested along with details of any emails sent should be recorded on CID, with copies of emails sent and received printed off and stored with the case file. If the case is eventually refused, these details will need including in the Immigration History section of the refusal notice and copies of emails would be included in any bundle.</p> <p>All emails should be sent via the team mailbox, not from an individual's personal mailbox. This allows other team managers and caseworkers to access any responses in the case owner's absence.</p> <p>Caseworkers should refer to the standard email / letter templates in <a href="#">Annex D</a> when contacting to customers.</p> <p>For Employment Route colleagues it is important that you include (EV) after your team name. This allows ERWT colleagues to sift out this post and ensure that it is prioritised.</p> <p>Additionally please see the <a href="#">Annex C</a> "lines to take" document which should answer common questions caseworkers may be asked in response:</p> <p>Have the email(s) bounced back / been returned as undeliverable?</p> <p><b>If:</b></p> <ul style="list-style-type: none"> <li>• <b>Yes</b> – Go to step 10</li> <li>• <b>No</b> - Go to step 14</li> </ul>
10	<p>Have you been able to contact the applicant / representative / sponsor by telephone?</p> <p><b>If:</b></p> <ul style="list-style-type: none"> <li>• <b>Yes</b> – Go to step 12</li> <li>• <b>No</b> - Go to step 11</li> </ul>
11	<p>As we have been unable to contact the applicant / representative / sponsor by telephone and email, we should issue them with a letter confirming the information that is required.</p> <p>It should be noted that if a letter is sent, the <b>seven day deadline starts from the date of the letter</b> (even if the caseworker has tried to contact the customer via other methods prior to this).</p> <p>Go to step 13</p>

# EVIDENTIAL FLEXIBILITY

12	<p>As we have been unable to follow up telephone contact with the applicant / representative / sponsor by letter, we should issue them with a letter confirming the information that is required.</p> <p>It should be noted that if a letter is sent, the <b>seven day deadline starts from the date of the telephone call</b> to the applicant / representative / sponsor to request the information.</p> <p>Go to step 13</p>
13	<p>When attempting to contact the applicant / representative / sponsor by post, one attempt to the contact address stated on the application form can be made. Care should be taken to ensure the correct address is used.</p> <p>Details of any letter sent should be recorded on CID and copies of letters sent and received should be printed off and stored with the case file. If the case is eventually refused, these details will need including in the Immigration History section of the refusal notice and copies of letters would be included in any bundle.</p> <p>All letters should be sent via 1st class post.</p> <p>Caseworkers should refer to the standard email / letter template in <a href="#">Annex D</a> when contacting customers. The contents of this template should be copied into an &lt;out of scope&gt; to ensure that a record of this contact is kept on the system. Caseworkers should ensure that the telephone number included on the letter is correct.</p> <p>Tier 1 and 4 – Immigration Enquiry Bureau = 0870 606 77 66 Tier 2/5 – Customer contact Centre = 0114 207 4074</p> <p>For Employment Route colleagues it is important that you include (EV) after your team name. This allows ERWT colleagues to sift out this post and ensure that it is prioritised.</p> <p>Additionally please see the <a href="#">Annex C</a> “lines to take” document which should answer common questions caseworkers may be asked in response:</p> <p>Go to step 14</p>
14	<p>The case should be placed in BF for <b>nine working days</b> following existing procedures. <b>Note that two further working days have been added to allow for the movement of evidence from workflow to the case working teams.</b></p> <p>Each operational Tier has a specific <b>Evidential Flexibility BF spreadsheet</b> to recorded cases of this type. <b><u>This must be completed fully and care taken to ensure details are correct.</u></b></p> <p><i>The information contained on the Evidential Flexibility BF spreadsheet will be reviewed and reported on to identify the success of the instruction and to determine</i></p>

# EVIDENTIAL FLEXIBILITY

	<p><i>whether future amendments should be made.</i></p> <p>Go to step 15.</p>
15	<p>After nine working days (with the day of contact starting as day one), have elapsed since the customer was contacted (either spoken to verbally on the telephone, time email was sent or time the letter was sent), the case should be taken out of BF and reassessed.</p> <p>If a caseworker receives all of the requested information / evidence before the nine days have elapsed, the case should be considered immediately.</p> <p>Caseworkers should take care to check CID comments to see if additional information has been received.</p> <p>Has the relevant information been received by UKBA?</p> <p><b>If:</b></p> <ul style="list-style-type: none"> <li>• <b>Yes</b> - Go to step 16</li> <li>• <b>No and contacted by phone/email</b> - Go to step 16</li> <li>• <b>No and contacted solely by letter</b> - Go to step 17</li> </ul>
16	<p>If the information is with UKBA but not yet with the relevant caseworker, hold the case until post received.</p> <p>Case should then be considered as normal, including any additional information supplied.</p> <p>If the case is to be refused, all attempts to contact the applicant and any responses they gave should be included in the immigration history (SP4 section of the refusal notice) e.g.</p> <p><b>On (enter date and time if phone contact) we contacted you by telephone/email/letter and requested (enter details of required evidence).</b></p> <p><b>On (enter date) we received (enter full details of information received) and have used this when considering your application for leave to remain.</b></p> <p>Any written forms of contact and any written responses should be included in any bundle that needs creating.</p> <p>Caseworkers must ensure that the BF sheet is fully updated when the case is closed.</p> <p><b>Note: If any additional evidence is received after the deadline but prior to the case being despatch on CID, this information will need to be considered by the caseworker and the case reassessed.</b></p>



# EVIDENTIAL FLEXIBILITY

17	<p>The case should be referred to &lt;out of scope&gt; Senior Caseworker for a decision to be made on what action should be taken.</p> <p>Should case be considered on the evidence currently available?</p> <p><b>If:</b></p> <ul style="list-style-type: none"><li>• <b>No</b> – Go to step 18</li><li>• <b>Yes</b> - Go to step 19</li></ul>
18	Take action as directed by <out of scope> Senior Caseworker.
19	<p>Case should then be considered as normal on the evidence held by UKBA.</p> <p>All attempts to contact the applicant and any responses they gave should be included in the immigration history (SP4 section of the refusal notice) e.g.</p> <p><b>On (enter date and time if phone contact) we contacted you by telephone / email / letter and requested (enter details of required evidence). No response was received.</b></p> <p><b>or</b></p> <p><b>On (enter date and time if phone contact) we contacted you by telephone / email / letter and requested (enter details of required evidence). You advised UKBA that you were unable to provide the required information.</b></p> <p>Any written forms of contact and any written responses should be included in any bundle that needs creating.</p> <p>Caseworkers must ensure that the BF sheet is fully updated when the case is closed.</p> <p><b>Note: If any additional evidence is received after the deadline but prior to the case being despatch on CID, this information will need to be considered by the caseworker and the case reassessed.</b></p>

**Conclusion**            The Evidential Flexibility instruction has been applied and the case has been decided.

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# EVIDENTIAL FLEXIBILITY

## Annex A

### Evidential flexibility - Documents which it maybe appropriate to request for each Tier

#### Tier 1 – All case types

- Qualification (T1 General and Post Study Work) –
  - missing academic certificate
  - details of the date of award missing
  - evidence that is copied instead of an original
  - legacy systems / previous applications indicate that the qualification exists
- Previous Earnings (T1 General) –
  - missing wage slips
  - missing bank statements from a series
  - evidence that is copied instead of an original
  - bank statements not in the desired format
- English Language (T1 General and Entrepreneur) –
  - missing English language certificates
  - missing academic certificates
  - evidence that is copied instead of an original
  - legacy systems / previous applications indicate that the qualification / evidence exists
- Maintenance (T1 General, Post Study Work and Entrepreneur)
  - missing bank statements from a series
  - missing information from bank letters
  - evidence that is copied instead of an original
  - bank statements not in the desired format
- T1 Entrepreneur
  - missing information from the required letters / documents
  - evidence that is copied instead of an original
- T1 Investor
  - missing information from the required letters / documents
  - evidence that is copied instead of an original
- **Tier 2/5 – All casetypes**
  - Maintenance
    - missing bank statements from a series
    - missing information from bank letters
    - evidence that is copied instead of an original
    - bank statements not in the desired format
  - Qualification
    - missing academic certificates
    - details of the date of award missing

# EVIDENTIAL FLEXIBILITY

- evidence that is copied instead of an original
- legacy systems / previous applications indicate that the qualification exists
- English Language –
  - missing English language certificates
  - missing academic certificates
  - evidence that is copied instead of an original
- Certificate of Sponsorship
  - missing SOC code from the CoS
  - obviously incorrect SOC on the CoS
  - CoS not provided but employer is approved on metastorm
  - Information missing from the CoS
- **Tier 4 – all casetypes**
  - Maintenance
    - Missing bank statements from a series
    - Missing information from bank letters
    - Evidence that is copied instead of an original
    - Bank statements not in the desired format
    - Third party maintenance information missing
    - Missing Birth Certificate needed as evidence of relationship with Sponsor.
  - CAS
    - Evidence of progress detailed on CAS, but missing from application
    - CAS not provided but Educational Provider is an approved Sponsor.
    - Evidence used to assess suitability for course not included
    - ATAS certificate not provided
- **Dependants – all Tiers**
  - Evidence of Relationship
    - No evidence of relationship, eg Birth Certificate, Marriage Certificate.
  - Maintenance
    - missing bank statements from a series
    - missing information from bank letters
    - evidence that is copied instead of an original
    - bank statements not in the desired format

# EVIDENTIAL FLEXIBILITY

## Annex B <out of scope>

### EVIDENTIAL FLEXIBILITY CASE WORKING PHONE SCRIPT

## Annex C

### Standard lines to take regarding Evidential Flexibility caseworking instruction.

- Who does this new instruction apply to?

The instruction applies to any Tier 1, 2, 4 or 5 migrant application which is under consideration as of 28 March 2011, as well as any applications submitted on or after this date. This instruction applies to main applicants and their associated dependants regardless of whether the dependant applies separately at a later date.

- I cannot provide the document within the time allowed / Why won't you give me more time to provide the evidence?

We will allow up to 7 working days. If we have not received the evidence requested within this time, a decision will be made based on the evidence provided with the application form. The guidance clearly states what evidence should have been provided originally in support of an application. We are not able to hold cases open for extended periods.

- Does the information you require need to have been sent within the 7 working days, or does it need to have been received within the 7 days?

The information required must have been received by the UKBA within the 7 working days, starting from today. We therefore strongly recommend you send the evidence by special next day delivery.

- Can I get back to you with the recorded/special recorded delivery reference number?

This shouldn't be necessary. You will be able to track for yourself whether what you have sent has arrived with UKBA.

- Reps/Sponsor/Applicant telephones to complain about cases which were previously refused on the same basis

As of 28 March 2011 we will request specific documents if they have been omitted from the application, for cases currently outstanding as of this date, or received on or after this date.

Please note any applications which were decided before the above date were considered against the operational procedures in place at the time.

As the Points Based System continues to bed in we will, where appropriate and practicable, endeavour to contact customers to correct minor omissions or errors in their applications.

# EVIDENTIAL FLEXIBILITY

Applications can only be considered in accordance with the policy and operational procedures in force at the time of consideration. The UKBA reserves the right to change these.

- A rep/sponsor/applicant telephones to ask why we are asking for certain documents and not others

Where appropriate and practicable we will endeavour to contact customers to correct minor omissions or errors in their applications. However, there are certain requirements which must be met for a PBS application to be considered valid, which includes provision of key mandatory documents, such as the passport.

The requesting of Mandatory documentation or information to make an application valid is governed by .

- Can the applicant drop the document requested off at the PEO?

No. We strongly recommend you send the evidence required by special next day delivery.

- Can I arrange a courier to deliver the required information

No. We strongly recommend you send the evidence required by special next day delivery.

- Can I fax the evidence to you?

In line with published guidelines we only accept original documentation.

- You previously refused my application on missing information so I re applied with the correct information. Can I have a refund for the case you refused as you did not give me a second chance to provide the information?

Unfortunately not. As of 28 March 2011 we will request specific documents if they have been omitted from the application, for cases currently outstanding as of this date, or received on or after this date.

Please note any applications which were decided before the above date were considered against the operational procedures in place at the time.

As the Points Based System continues to bed in we will, where appropriate and practicable, endeavour to contact customers to correct minor omissions or errors in their applications.

Applications can only be considered in accordance with the policy and operational procedures in force at the time of consideration. The UKBA reserves the right to change these.

- I have an outstanding appeal for a case that was refused on this basis. Will you reconsider?

# EVIDENTIAL FLEXIBILITY

No. The case was considered on the evidence and operational procedures in place at the time of application, therefore we will not reconsider on this basis.

Applications can only be considered in accordance with the policy and operational procedures in force at the time of consideration. The UKBA reserves the right to change these.

- I have forgotten where I should send my documentation?

The request for further information will have been followed up in writing via email where an email address has been provided. You should check this for details of where to send the information to.

# EVIDENTIAL FLEXIBILITY

## Annex D

### Email / Letter template (evidential flexibility)

Dear **Mr / Mrs / Miss / Ms / Dr** [Insert name],

Re: [Applicant name] [country] [DoB]: Home Office reference: [insert reference number]

Thank you for **your / your client's / your clients'** application(s), which **is / are** currently being considered. Please note that we have identified a minor omission with regards to the evidence that has been submitted.

We are therefore asking you to submit [Caseworker to select relevant document(s) From **Annex A** and give specific details where appropriate, e.g. page 3 of the bank statements was not provided. Remember you are not limited to requesting one piece of information]

Please note that we are only able to accept the original document(s) received within UK Border Agency within 7 working days of this **email / letter**. We therefore strongly recommend that you send the document(s) by special next day delivery. No further extension will be given if the requested information is not provided within the seven days.

Please send this to the following address:

[Insert Caseworker Name]  
Tier (1,2&5, 4) – (team name) (EV)  
Vulcan House – (Steel/Iron)  
North East, Yorkshire and Humber Region  
UK Border Agency  
PO Box 3468  
Sheffield  
S3 8WA

If you have any further questions in relation to this request please contact our Immigration Enquiry Bureau on 0870 606 7766.

Yours sincerely,

[Insert Caseworker Name]

## Document Control Record

### 1. Document Details:

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Page 15 of 17

DOCUMENT IS ONLY VALID ON DAY OF PRINTING

# EVIDENTIAL FLEXIBILITY

<b>Author:</b>	<out of scope>
<b>Author's Contact Details</b>	<out of scope>
<b>Business Prime</b>	<out of scope>
<b>Business Prime Contact Details</b>	<out of scope>

## 2. Version History:

Only the latest three versions need to be shown in the table below

<b>Version Number</b>	<b>Date (DD-MM-YY)</b>	<b>Changes Implemented</b>
<b>1.1</b>	<b>14.06.11</b>	<p><b>Introduction-</b> removed 'The following guidance should be used in conjunction with the <a href="#">Evidential Flexibility Caseworker Instruction</a>'</p> <p><b>Step 1</b> -Amended from</p> <ul style="list-style-type: none"> <li>• <b>Yes</b> – The case should be considered as normal. The Evidential Flexibility instruction should not be applied</li> <li>• <b>No</b> - Go to step 2 to               <ul style="list-style-type: none"> <li>• <b>Yes</b> – Go to step 2</li> <li>• <b>No</b> - The case should be considered as normal. The Evidential Flexibility instruction should not be applied</li> </ul> </li> </ul> <p><b>Step 3</b> - Added- '/ COS' - removed attachment 'Documents which it maybe appropriate to request for each Tier' and placed in Annex A</p> <p><b>Step 6</b> -removed attachment '<u>CASE WORKING PHONE SCRIPT</u>' and placed it in Annex B -removed attachment 'Standard lines to take regarding Evidential Flexibility caseworking instruction' and placed in Annex C</p> <p><b>Step 9</b> - removed attachments for email examples and placed in Annex D - removed attachment 'lines to take' and referred to Annex C</p> <p><b>Step 13</b></p>



# EVIDENTIAL FLEXIBILITY

		- removed attachments for letter examples and referred to Annex D - removed attachments for 'lines to take' and referred to Annex C
<b>1.0</b>	<b>28/03/2011</b>	<b>New document</b>

### 3. Latest Version Approved By:

<b>Name</b>	<b>Date</b>
Out of scope	15/06/11
<Redacted – Exemption section 40>	