

OPI 319: Evidential Flexibility update

Summary

This OPI supersedes OPI 260 which was issued on Evidential Flexibility in July 2011 and is to provide clarity for Entry Clearance Officers in considering applications to ensure that evidential flexibility is applied consistently in all PBS applications.

Key points:

Applies to all categories of PBS applications.

This is not ECO discretion the required points must be met in all cases,

But where there is reason to believe that the applicant will meet the required points and has omitted to submit a required document e.g. submitted a copy and not the original, the ECO can contact the applicant to provide the original.

General

An OPI was issued in July 2011 following the Chief Inspectors review of the Points Based System when he recommended that a "pragmatic approach" needs to be taken in deciding applications where there were minor omissions in documentation or information and implement this consistently at all locations worldwide. These revised instructions are to ensure that a consistent approach in decision making is adopted across all case working units both in the UK and overseas.

Essentially:-

Where the points are not met, but there is reason to believe that the applicant would meet the rules if they were given the opportunity to correct an omission, you should request the missing documentation. **But** if the application would still fall for refusal even if the minor omission was corrected, you should not request additional documentation.

Process:-

The ECO should contact either the applicant/rep or sponsor by telephone or email depending on regional variations.(Hubs/Spokes) You should allow a maximum of 7 working days for the information to be couriered. If there has been no response, and the requested information has not been received, after 10 days the case should be discussed with the ECM and if satisfied that appropriate attempt has been made to contact the applicant and there has been no response from the applicant the application should be refused.

A record of the attempt to contact the applicant and the method used must be updated on Proviso. The details can then be highlighted in the refusal wording. e.g. "On (enter dates and times) we tried to contact you/ we contacted you, by telephone/email/letter and requested (enter details of required evidence).

Email details taken from VAF forms can be taken as verified and used to contact applicant/rep/sponsor. Spelling mistakes etc (such as a miss spelt name or error in passport number) may be clarified via email or phone call or ignored if posts are confident that it is a genuine error and no identity fraud is taking place.

If several documents/evidence are missing from the application post would need to consider if a fresh application should be made rather than use evidential flexibility. If the decision is that even with the missing evidence submitted, the application falls for refusal the evidence should not be requested and the application refused.

You must not seek information which is not required by the guidance. The applicant/sponsor only has to satisfy the requirements as set out in the relevant PBS tier guidance.

[Examples of cases.](#)

[Examples of types of documents that can be requested.](#)

Contact <Redacted – Exemption section 40>

22 March 2012