



Patel guidance – step by step guide

The revised *patel* guidance is to be applied retrospectively to applications made on or after 9 July 2012 (the date paragraph 245ZX(m) of the Immigration Rules was introduced).

For the applicant to benefit from this revised instruction, caseworkers must confirm the application:

- has been made on or after 9 July 2012
- is not out of time by 28 days or more, and
- must not have already been considered with the decision notification issued.

If the application falls for refusal on general grounds, begin with step 1, otherwise proceed to step 2.

Step	Action
1.	<p>Before they consider an application the caseworker will have followed the usual procedures for:</p> <ul style="list-style-type: none"> • risk profile • verification checks • standard checks • eligibility checks, and • identity checks. <p>If, whilst carrying out these checks, the caseworker identifies that the application will fall for refusal under 322(1A) (on the basis of false representations, false documents or information submitted in relation to the application) the case should be refused outright on this basis.</p> <p>As 322(1A) is a mandatory ground for refusing an application, it would not be appropriate to provide the opportunity for the applicant to vary the grounds of their application.</p> <p>However, if the application falls to be refused under 322(2) to 322(12), or does not fall for refusal on general grounds, full consideration of the application is required, and caseworkers should deal with the case as set out below.</p> <p>The caseworker must check the:</p> <ul style="list-style-type: none"> • date the application was submitted, and

	<ul style="list-style-type: none"> • applicant has not overstayed for a period of 28 days or more from the date the previous leave to enter/remain expired. <p>If the application was submitted 28 days or more after the expiry of the applicant's leave then the caseworker should proceed to step 2.</p> <p>If the application was submitted before the applicant has overstayed for 28 days or more then the caseworker should proceed to step 3.</p>
2.	<p>If the applicant has overstayed for 28 days or more, the application will fall for refusal under 245ZX(m) of the Immigration Rules.</p>
3.	<p>Although the applicant's leave has expired, they have not overstayed for 28 days or more, and therefore still have a valid CAS. In these cases, we will delay consideration of their application for a period of 60 days to allow them to obtain a new CAS and to submit a request to vary the grounds of their original application.</p> <p>The caseworker must write to the applicant using ICD.4500 and information leaflet ICD.4499 to explain their previous sponsor has surrendered their licence or had their licence revoked and that they have 60 days to either:</p> <ul style="list-style-type: none"> • leave the UK, or • find a new sponsor, obtain a new CAS and submit all of the required documents to show that they meet the requirements of the Immigration Rules. <p>The applicant's new sponsor will need details of the applicant's passport and will need to retain a copy of it for their records, caseworkers will take a copy of the passport and endorse it with a 'UKBA Certified Copy' stamp. This certified copy will then be returned to the applicant along with the letter.</p> <p>If the applicant decides to obtain a new CAS and vary the grounds of their initial application, they need to submit fresh supporting information and documentation showing they meet the requirements of the Immigration Rules in place on the date the request to vary is submitted.</p> <p>The caseworker must use the date of the original application for the purpose of determining continuity of leave and whether the applicant is covered by 3C leave.</p> <p>The caseworker will need to calculate the end date of the 60 day period and include it in the letter to the applicant.</p> <p>In the letter to the applicant the caseworker must explain that the applicant will be required to complete a fresh Tier 4 General Migrant application form as the information provided on the previous form is no longer valid. The letter must ask the applicant to return the variation request directly to the caseworker.</p> <p>The caseworker must send the letter either to the applicant directly or to their immigration adviser or solicitor if applicable. Caseworkers must take care to be</p>

	<p>sure the letter is not sent to the previous educational sponsor.</p> <p>Once the letter has been completed and the documents are ready to be despatched, the caseworker must print off two copies - one for the applicant and another to keep on file. The caseworker must enclose a green return address label with the letter so that the response is directed appropriately.</p> <p>The caseworker must despatch the envelope containing the letter and the other documents to the applicant and the case can be placed into the brought forward (BF) hold for a period of 65 days to allow for the submission of documents at the end of the 60 day period.</p> <p><u>PEO caseworkers only:</u></p> <p>You must follow the normal arrangements for extending cases that operate in your office. Seek the advice of your senior case worker if required.</p> <p>Go to next step.</p>
4.	<p>Once the 65 day period has passed, the caseworker must check whether the applicant or their representative has submitted a response to the enquiry.</p> <p>If no response is received, the caseworker should go to step 5.</p> <p>If a response is received, the caseworker should go to step 6.</p>
5.	<p>As no response has been received within the specified period, the caseworker must consider and decide the application based on the information and documentation available at that time. This means the application will normally fall for refusal under 245zx(c) and 245zx(d) on the basis that the applicant does not possess a valid CAS and the Home Office are not able to assess the maintenance requirement of the Immigration Rules.</p> <p>The amount of leave the applicant has left at this point will determine whether or not we take any action to curtail any remaining leave:</p> <ul style="list-style-type: none"> • If the applicant's leave to enter (LTE) or leave to remain (LTR) has expired whilst the application is outstanding there is no leave to curtail. The caseworker must refuse the Tier 4 application with a full right of appeal (ROA). • If the applicant has LTE or LTR of less than 60 days the caseworker must not curtail their leave. However their outstanding application will be refused with no ROA on the basis the applicant has extant leave. <p>If the applicant has more than 60 days leave remaining then their leave is curtailed. The caseworker must follow the Tier 4 curtailment procedure when they complete the case.</p>
6.	<p>The applicant may respond to the letter referred to in steps 2 and 3 in a number of ways. The applicant may:</p> <ul style="list-style-type: none"> • Ask to withdraw their applicant and leave the United Kingdom (UK). The caseworker should go to step 7.

	<ul style="list-style-type: none"> • Ask to withdraw their applicant and submit a new one under Tier 4, or any other eligible category, if they still have leave remaining. The caseworker should go to step 7. • Request more time to get a new sponsor and a CAS. The caseworker should go to step 8. • Say they have a new CAS for a licensed Tier 4 sponsor and would like to vary the grounds of their original application. The caseworker should go to step 9.
7.	<p>If the applicant makes a request to withdraw their application after their sponsor revokes sponsorship, the process for the caseworker to follow depends on the reason for withdrawal and the applicant's immigration status:</p> <ul style="list-style-type: none"> • If the applicant gives written notice they wish to withdraw their application and leave the UK the caseworker must follow the usual procedure for withdrawing an application. • Where the applicant says in writing they would like to withdraw their application and submit a fresh application on a different basis and the applicant has extant leave at the time the application is withdrawn the caseworker must follow the usual procedure for withdrawing an application. The caseworker must return the passport and other supporting documents to the applicant.
8.	<p>If the applicant responds requesting more time to obtain a CAS then:</p> <ul style="list-style-type: none"> • If the initial 60-day period has not passed the migrant must be notified in writing no additional time will be provided, and they have until the date specified in their original letter to obtain a new sponsor, CAS and supporting documents. • If the 60-day period has, or will have, elapsed by the date the response is received and considered, the application should be refused as adequate opportunity was given to obtain a new sponsor. <p>In addition the caseworker must acknowledge the applicant's request for additional time in the refusal, and provide the reason why it was not allowed (for example a reasonable amount of time had already been given).</p> <p>The refusal will be in line with the process set out in step 5.</p>
9.	<p>If the applicant requests to vary the grounds of their application, they must submit:</p> <ul style="list-style-type: none"> • a new Tier 4 General application form, • CAS • all relevant supporting documents which includes the documents used to obtain the offer • proof they meet the English Language requirement, and • documents showing they have access to the required level of maintenance. <p>Caseworkers must consider all new documents and information as they would when they assess any Tier 4 application. They will need to update CID to reflect the:</p>

	<ul style="list-style-type: none"> • new Tier 4 educational sponsor, • sponsor Licence number, and • correct CAS number. <p>The application will then be assessed and the caseworker will decide whether or not it meets the requirements of the Immigration Rules.</p> <p>If the varied application meets the requirements of the Immigration Rules, the caseworker should go to step 10.</p> <p>If the varied application does not meet the requirements of the Immigration Rules, the caseworker should go to step 11.</p>
<p>10.</p>	<p>As the varied application meets the requirements of the Immigration Rules, the appropriate period of leave should be granted and the case can be completed and despatched in the usual way.</p> <p>Any leave remaining at this point would be superseded by the new Biometric Residence Permit (BRP).</p>
<p>11.</p>	<p>If the varied application does not meet the requirements of rules, the caseworker must decide whether or not it would be appropriate to request missing information or documents or whether the case should be decided based on the information available at that time.</p> <p>If the caseworker is in doubt, they should refer to the evidential flexibility instructions and, if necessary, discuss the case with the EO caseworker on team.</p> <p>If it is decided the case should be decided on the basis of the information available at that time and further enquiries are not appropriate, the application would fall to be refused. The refusal will be in line with the process set out in step 5.</p> <p>If it is appropriate to make an enquiry or to request further information, before making a decision on the application, the caseworker should make the enquiry in the usual way and BF the case to allow for a response from the applicant or representative where applicable.</p> <p>Go to next step.</p>
<p>12.</p>	<p>If the applicant fails to respond to the evidential flexibility request, then the application may be refused. The refusal will be in line with the process set out in step 5.</p> <p>If the applicant responds to the evidential flexibility request, but the information provided does not show the applicant meets the requirements of the Immigration Rules, the caseworker must refuse the application. The refusal will be in line with the process set out in step 5.</p>

<p>If the response to the evidential flexibility request means the applicant now meets the requirements of the Immigration Rules, the application can be granted in the usual way. Any leave remaining at this point would be superseded by the new BRP.</p>
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