

# **CONSIDERING APPLICATIONS FOR FURTHER LEAVE (AT AGE 17 AND A HALF) FOLLOWING GRANTS OF DISCRETIONARY LEAVE UNDER THE POLICY ON UNACCOMPANIED ASYLUM SEEKING CHILDREN (ACTIVE REVIEW)**

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## **Table of Contents**

### **1 Active Review Process**

#### **2 Introduction**

**2.1 Application of this instruction in respect of children and those with children**

#### **3 Applications for Further Leave**

#### **4 Handling Applications for Further Leave**

#### **5 Interviewing Applicants who have applied for Further Leave**

**5.1 Applicants not previously interviewed**

**5.2 Inviting an applicant to attend an interview**

**5.3 Conducting the interview**

**5.4 Applicant declines the opportunity to be interviewed**

#### **6 Considering an Application for Further Leave**

#### **7 Qualifying for Further Leave**

#### **8 Failing to Qualify for Further leave**

#### **9 Refusing Further Leave**

#### **10 Section 94 certification of the asylum and human rights elements of a further leave application**

#### **11 Failing to Apply for an Extension of Leave**

#### **12 Implementation of Refusal and Rights of Appeal**

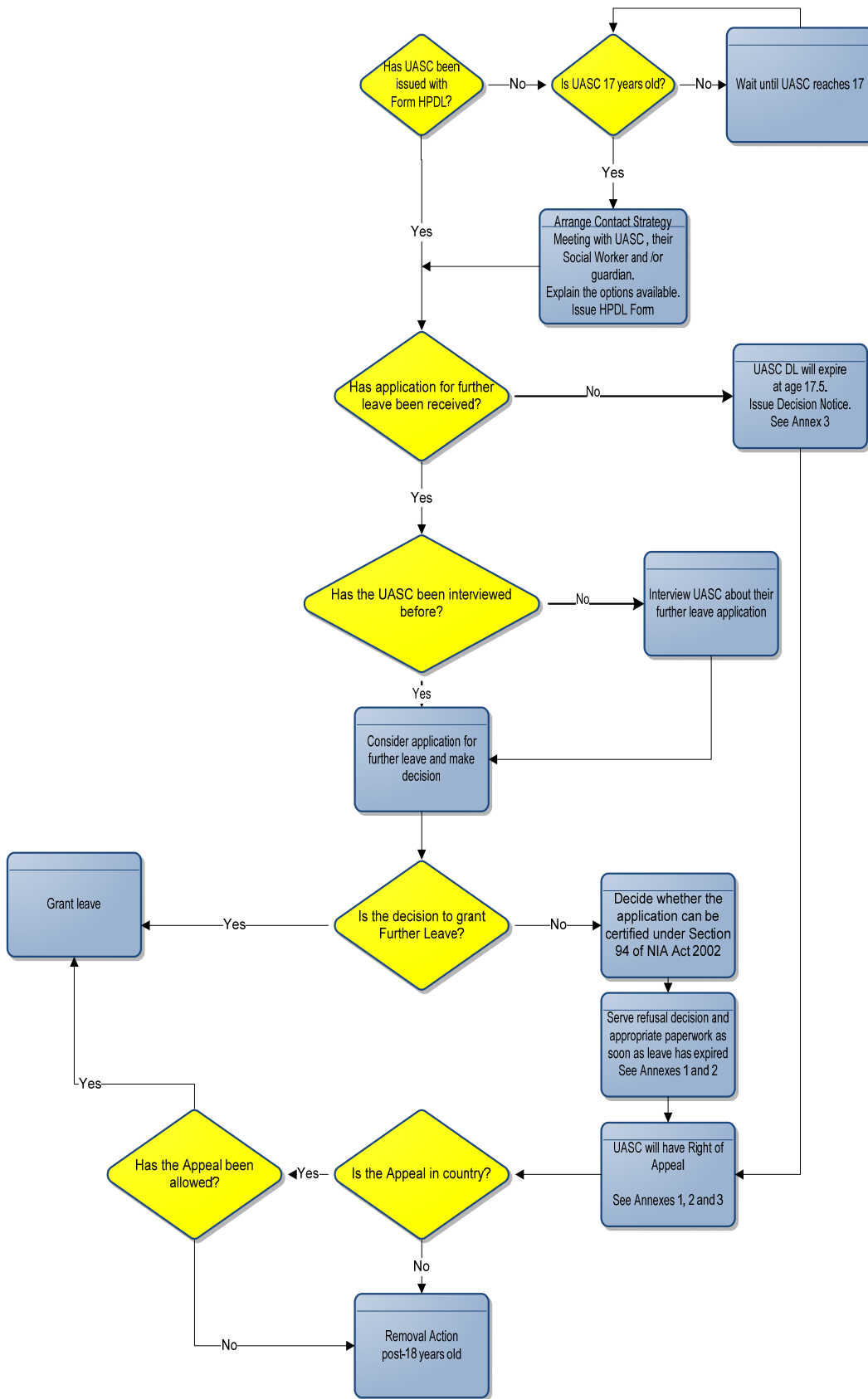
#### **13 Recording an application for further leave on CID**

**ANNEX 1 – Application for Further Leave was made before leave had expired - IN TIME**

**ANNEX 2 - Application for Further Leave was made after leave had expired – OUT OF TIME**

**ANNEX 3 – No application for Further Leave lodged**

# 1 Active Review Process



## 2 Introduction

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This instruction sets out the policy, processes and procedures to be followed when considering applications for further leave from minors previously granted discretionary leave under the policy on Unaccompanied Asylum Seeking Children (UASC). The process followed to decide these types of case is known as an Active Review.

This instruction **only** applies to those individuals whose leave will expire or has already expired at the age of 17 and a half years. This instruction also **only** applies to individuals granted discretionary leave under the UASC discretionary leave policy.

This instruction **does not** apply to individuals (children or adults) applying for further leave to enter or remain having previously been granted discretionary leave in accordance with the Asylum Instruction (AI) on [Discretionary Leave](#), or any other type of leave. For further information on these types of cases, see the AI on [Humanitarian Protection](#), and [Discretionary Leave](#).

This guidance applies to asylum case owners both in the regions and in the Case Resolution Directorate.

This instruction provides guidance on:

- When an active review is required;
- The purpose of an active review;
- How an active review should be conducted; and
- The possible outcomes of an active review.

For the purpose of simplicity, the generic terms he, him and his will be used for all case owners and applicants regardless of their gender.

Throughout this instruction, the “original decision” is the decision made which originally refused asylum and which gave rise to the leave currently being enjoyed by the subject. The “instant decision” is the decision currently being considered.

Case owners should read this instruction in conjunction with the AIs on, [Humanitarian Protection](#), [Discretionary Leave](#), [Refugee Leave](#), and [Certification under section 94 of the NIA Act 2002](#).

### 2.1 Application of this instruction in respect of children and those with children

Section 55 of the Borders, Citizenship and Immigration Act 2009 requires the UK Border Agency to carry out its existing functions in a way that takes into account the need to safeguard and promote the welfare of children in the UK. It does not impose any new functions, or override existing functions.

Officers must not apply the actions set out in this instruction either to children or to those with children without having due regard to Section 55. The UK Border Agency instruction ‘Arrangements to Safeguard and Promote Children’s Welfare in the United Kingdom Border Agency’ sets out the key principles to take into account in all Agency activities

Our statutory duty to children includes the need to demonstrate:

- Fair treatment which meets the same standard a British child would receive;
- The child’s interests being made a primary, although not the only consideration;

- No discrimination of any kind;
- Asylum applications are dealt with in a timely fashion;
- Identification of those that might be at risk from harm.

This instruction includes consideration of the use of enforcement action. Consideration must be made of the Code Of Practices statement that there must always be a presumption in favour

of not detaining a family and each family's case must be considered on its individual merits.

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/consultations/closedconsultations/keepingchildrensafe/>

### 3 Applications for Further Leave

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It is best practice for the case owner to establish a contact management strategy with the individual and their social worker and/or guardian. This should enable any application for further leave to remain to be made or for arrangements to be made to allow the individual to voluntarily leave the UK prior to the expiry of the existing leave. Case owners will be responsible for conducting an active review on these applications for further leave to remain.

The individual's original decision letter in which he was granted UASC discretionary leave will state the date when that leave expires. This information should also have been recorded on CID. The implications of what will happen and next steps required when the leave expires should have been explained to the individual when the decision letter was served.

- If the individual was granted leave which was less than one year he should be served with a copy of [Form HPDL](#) at the same time as the service of the asylum and human rights refusal decision.
- If the individual was granted more than one year's leave, in the six months before that leave expires (i.e. after their 17<sup>th</sup> birthday) the case owner should seek to arrange a contact management meeting with him and his social worker and/or guardian to discuss available options. [Form HPDL](#) should be served at this meeting.
- Prior to this meeting the case owner should liaise with the individual's social worker and/or guardian to agree the best way to explain the available options including Assisted Voluntary Return and applying for further leave.

Regions should arrange locally how they are best placed to be notified that an individual is approaching his 17<sup>th</sup> birthday.

- If the UASC discretionary leave is due to expire but the individual will still be under 17 and a half on the expiry date the case owner must conduct an active review to assess whether the individual still qualifies for leave under UASC discretionary leave policy. For further information see the Asylum instruction on [Child Asylum Applications](#).

An application for further leave cannot be made by the individual more than one month before his existing leave is due to expire. If an application is made early, the case owner should not consider the application and should inform the individual that he must reapply when he has only one month or less remaining on his leave in the UK. The case owner should not serve the active review decision on the individual before the expiry of his leave, unless the decision is to grant further leave.

[Form HPDL](#) needs to be completed by the individual, or the legal representative or responsible adult on his behalf. Please note that [Form HPDL](#) should only be used to apply for further leave to remain in the UK following refusal of asylum and a grant of less than 4 years exceptional leave, humanitarian protection or discretionary leave.

[Form HPDL](#) can be found through the link below:  
[UK Border Agency | Completing application form HPDL](#)

## 4 Handling Applications for Further Leave

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The decision to grant further leave can be made at Case Owner level.

For further information on granting and refusing leave, see the AIs on [Refugee Leave](#), [Humanitarian Protection](#) and [Discretionary Leave](#).

For further information on recording an application for further leave on CID see [CID process](#).

## 5 Interviewing Applicants who have applied for Further Leave

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Applications for further leave will normally be considered on the basis of the information contained within the recent application. However, case owners may see applications for further leave where there is insufficient information on file to make a decision on whether or not to grant further leave. In these circumstances, case owners should first write to the applicant and ask them to submit any further information that may be relevant to their application for further leave within 10 working days (plus 2 working days for postage). If the applicant fails to provide any information, or the information provided is still insufficient to make a decision, the case owner may then invite the applicant to attend an interview to discuss their application for further leave, if the case owner considers that an interview may produce further information that will assist in making a decision. See also next section – Applicants not previously interviewed.

Case owners must remember that individuals who are still under 18 years of age at the time of interview must only be interviewed by a case owner who has undergone the appropriate training for interviewing children and young persons. This interview must take place in the presence of a responsible adult. If the individual is aged 18 years or over by the time of the interview, the applicant may be interviewed as an adult if limits on regional resources will result in a long delay before a case owner trained to interview children or young persons is available.

### 5.1 Applicants not previously interviewed

Applicants should be invited to attend an interview in connection with their application for further leave if they were not previously offered this opportunity in connection with their claim for asylum.

### 5.2 Inviting an applicant to attend an interview

If a case owner decides to invite an applicant to attend an interview, he must do so by preparing a letter giving the applicant the opportunity to either accept or decline an interview. The following letter should be used:

- ACD.2195 (Request for Further Information/Offer Interview [Active Review]).

The case owner should make it clear that the applicant has ten working days to respond to this invitation.

See also [CID process](#) for Case Owner actions:

### 5.3 Conducting the interview

For some applicants, the active review interview will be the first time they have been interviewed. Such applicants may wish to talk about their initial claim. They should not be prevented from doing so as they may reveal important information that has not previously been considered. For example, they may wish to communicate a change in their country of origin that may warrant a grant of asylum.

However, case owners should also inform the applicant that the purpose of this interview is to discuss their application for further leave in the UK. As a result, it is important not to allow the applicant to go into too much depth about their initial application for asylum, unless there are clear changes in circumstance relating to the asylum element of the claim. It is important that the case owner interviewing the applicant has a good knowledge and understanding of the

case, has thoroughly read all the evidence on file before interviewing the applicant and has a good understanding of the current country situation in the individual's country of origin.

If the applicant has previously been interviewed, it is not necessary to go into depth about his initial asylum claim as asylum has been refused, unless there are clear changes in circumstance relating to the asylum element of the claim. If the applicant has anything new to add, he should be given the opportunity to do so.

Case owners should use Interviewing Record ACD.2217 (if the individual is still under 18) or ACD.2218 (if the individual is now over 18) when interviewing those who have applied for further leave.

The interview should be subject to the safeguards set out in paragraphs 339NA-ND of the Immigration Rules regarding general conduct of an asylum interview.

#### **5.4 Applicant declines the opportunity to be interviewed**

It should be noted that applicants who are invited to attend active review interviews are expected to attend. If they fail to attend, consideration may be given to applying paragraph 339M of the Immigration Rules to the claim, meaning that it will be refused on the basis of administrative non-compliance.

Case owners should not apply paragraph 333C of the Immigration Rules when an applicant fails to attend an active review interview. This paragraph concerns withdrawal of asylum applications, and should not be applied as applications for further leave will always contain a claim under Article 8 of the European Convention on Human Rights, which cannot be treated as implicitly withdrawn under paragraph 333C.

Where an applicant fails to provide information that has been requested, including failing to attend an interview, case owners should make a decision on the application for further leave on the basis of the evidence available to them. For further information, see the Asylum Instruction on [Non-compliance](#).

## 6 Considering an Application for Further Leave

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Applicants who were originally granted discretionary leave under the UASC policy and have now applied for further leave may be eligible for asylum, humanitarian protection or discretionary leave. The fact that they were not eligible for asylum, humanitarian protection or discretionary leave (other than under the UASC DL policy) at the time of the original decision does not preclude them from qualifying now.

When considering whether to grant further leave to remain or settlement, case owners should assess whether the applicant qualifies for asylum, humanitarian protection or discretionary leave **at the date of the active review**. For further information on the criteria to be met, see the Asylum Instructions on [Considering the Asylum Claim](#), [Considering the Human Rights Claim](#), [Refugee Leave](#), [Humanitarian Protection](#), [Discretionary Leave](#). When considering whether to grant asylum or humanitarian protection, case owners should also see the Asylum Instruction on [Exclusion - Articles 1F and 33\(2\) of the 1951 Refugee Convention](#) in case the applicant is excluded from those types of protection.

Case owners should have regard for the contemporary situation in the country of nationality (or of former habitual residence if appropriate) as this may have changed since the time of the original decision to grant UASC discretionary leave.

Case owners should not apply paragraph 353 of the Immigration Rules to any part of the application for an extension of leave.

## 7 Qualifying for Further Leave

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If an applicant is eligible for an extension of leave, case owners should follow the relevant guidance in the Asylum Instruction on [Implementing Substantive Decisions](#).

If it is the case that there has been a change in the applicant's circumstances, meaning that they are now eligible for either asylum or humanitarian protection, such a person would be eligible to apply for indefinite leave to remain (ILR) once they have completed a combined total of six years' leave provided they are not subject to the exclusion clauses. They would be subject to the same active review process that will apply to refugees or applicants granted humanitarian protection after 30 August 2005 at the end of their five year period of limited leave.

## 8 Failing to Qualify for Further leave

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An applicant who does not qualify for an extension of leave to enter or remain should be refused further leave and advised of the reasons why he no longer qualifies for discretionary leave (in other words, because he no longer meets the criteria of the UASC discretionary leave policy).

Subject to the outcome of any in-country appeal, he will be expected to leave the UK. Should he fail to do so, he will be liable to enforcement action.

An applicant whose appeal rights are exhausted may be eligible for Assisted Voluntary Return. For further information, see the Asylum Instruction on [Assisted Voluntary Returns](#).

Some applicants will be excluded from asylum and humanitarian protection as a result of their previous actions. However, if removal from the UK is not possible, such applicants are granted discretionary leave for a period of six months and are not eligible for indefinite leave to enter or remain until they have been granted leave for a continuous period of ten years.

For further guidance on implementing a refusal to grant further leave, please see [Refusing Further Leave](#).

## 9 Refusing Further Leave

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Once a case owner has decided to refuse to extend an individual's leave, he should:

Prepare a comprehensive consideration minute. The minute should include the following:

- Applicant's details (Home Office reference number, name, nationality and date of birth);
- Summary of the basis of the application for further leave including any asylum issues or human rights articles raised;
- Consideration; and
- Decision

Case owners should use the appropriate minute sheet to prepare both the decision-making and decision-service paperwork. The minute sheets currently available for in-time applications are:

- ACD.2188 (In-Time Extension of Stay or Settlement Application – Refuse Outright).
- ACN.2188 (In-Time Extension of Stay or Settlement Application – Refuse Outright – Suspensive ROA).

The minute sheets currently available for out of time applications are:

- ACD.2380 (Out of Time Extension of Stay or Settlement Application – Refuse Outright – Suspensive [UK] Right of Appeal).
- ACN.2380 (Out of Time Extension of Stay or Settlement Application – Refuse Outright – Suspensive [UK] Appeal).

Case owners should update CID if refusing further leave. For further information on see [CID process](#).

Case owners must also establish what appeal right the applicant has. For further information, see [Rights of Appeal](#).

## 10 Section 94 certification of the asylum and human rights elements of a further leave application

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Section 94 of the Nationality, Immigration and Asylum Act 2002 provides a certification process under which there is no in country right of appeal in certain circumstances, because that claim is considered to be clearly unfounded. Applications for further leave will be treated as both asylum and human rights applications, so if the application for further leave is certified under section 94, this will result in an out of country right of appeal only.

A case owner who has not been NSA-trained but is in ownership of a case that they believe could or should be certified under 94(2) or 94(3) after considering the further leave application against the criteria for an unfounded claim should personally refer the case to a NSA-accredited Senior Caseworker or case owner to review the case. If the case is deemed suitable for certification then the file should be reallocated to a NSA-trained case owner to consider the further leave application.

Case owners should refer to the AI on [Certification under section 94 of the NIA Act 2002](#).

## 11 Failing to Apply for an Extension of Leave

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If an individual's leave expires and they **do not** make an application for further leave to enter or remain they will become an overstayer as they have not sought to vary/extend their leave. The individual will be liable to removal under Section 10(1)(a) of the Immigration and Asylum Act 1999. Case owners should look to re-document such overstayers at the earliest opportunity. Case owners should bear in mind that the applicant cannot be removed if they are under 18 years of age unless adequate reception arrangements have been identified which make removal possible before 18. However if the applicant is approaching 18 this should not prevent case owners from completing any preliminary work necessary to ensure that removal can go ahead as soon as possible after the applicant turns 18. For further guidance regarding re-documentation, see [Travel Documentation](#).

Case owners should give full consideration to paragraph 395C of the Immigration Rules prior to serving a removal decision.

## 12 Implementation of Refusal and Rights of Appeal

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If a case owner has decided to refuse an application for further leave to enter or remain in the UK, he must distinguish between the right of appeal to which an applicant is entitled according to his immigration status and the circumstances of his case. The right of appeal will vary depending on the following factors; length of previous leave granted; whether the application for further leave was made in time, out of time or not at all; whether the further leave application can be certified. Case owners should use the following tables to decide which right of appeal would be applicable to their case.

Section 47 of the Immigration, Asylum and Nationality Act 2006 came into force on 1<sup>st</sup> April 2008. This enables the Secretary of State to decide to remove an individual whilst their leave continues under 3C(2)(b) or 3D(2)(a) of the Immigration Act 1971, if and when the leave ends. This means that the decision to refuse to vary leave (82(2)(d) 2002 Act) and the decision to remove (82(2)(g) 2002 Act) can be made at the same time. If both decisions are made at the same time, the appellant will have to lodge his appeal against the decision to vary leave **and** the decision to remove at the same time. There is therefore only one appeal which covers the refusal to vary leave and the decision to remove the applicant.

The following letters should be served on the subject on the day after the date on which the UASC discretionary leave expires, or as soon as possible thereafter:

- ACD 2186 – Covering letter
- ACD 1950 – Notification of outcome to Social Services (currently being redrafted, email Carl D Griffiths should you need to use this letter)

Case owners should also use appropriate table below for guidance on the right of appeal, and associated documents to be issued.

### Annex 1 - Application for Further Leave was made before leave had expired - in time

### ANNEX 2 - Application for Further Leave was made after leave had expired – Out of Time

### Annex 3 - No application for Further Leave lodged

- If the subject is **successful at appeal** and UK Border Agency does not exercise an onward RoA, he should be granted leave according to HO policy and the finding in the appeal. See [Asylum Appeal Hearings – Service of Appeal Determinations](#).
- If the subject is **unsuccessful at appeal**, he will be liable to removal under section 10 of the Immigration and Asylum Act 1999.
- If the subject remains in the United Kingdom after his appeal rights are exhausted in respect of the section 82(2) (2002 Act) decision/s, he will be an overstayer under the terms of section 10 of the 1999 Act, as he has no granted leave or section 3C leave remaining.
- As removal action follows, the section 10 removal directions will need to be authorised by a warranted immigration officer.

For further information about situations where applicants are entitled to a Right of Appeal, see Asylum Instruction [Rights of Appeal in Asylum Cases](#).

## 13 Recording an application for further leave on CID

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Once a case owner receives an application for further leave to enter or remain, they should ensure that CID is updated as follows:

- Click on the “File” tab on the left-hand side of the screen.
- Click on “Applicant/Case Search”.
- Type in the applicant’s reference number in the “Reference Number” field. Then click on the “Search” tab.
- If there are any dependants on the application, ensure that the main applicant is highlighted.
- Click on applicant’s initial asylum application under “Associated Cases”.
- Click on the “Case Creation Link/Unlink” tab.
- Enter applicant’s Home Office and/or Port reference numbers.
- Under “Case Type”, enter “App for further leave (HP/DL/ELR)”.
- Enter “Main Applicant” under “Association”.
- Enter the date the application was raised.
- Click on “Save/Exit” to save and exit.

### 13.1 When an applicant has accepted an invitation to attend an interview

The case owner should update CID as follows:

Insert applicant’s Home Office reference number and wait for the reference to appear on the screen.

If it is a family case, click cursor on main applicant’s details and ensure that these are highlighted.

Select the ‘Calendar Events’ icon on the vertical toolbar.

Click cursor in the ‘Event Type’ field.

Use the drop down list to select and enter the following static data value ‘App for further leave HP/DL/ELR I/V’.

The following fields must also be completed:

- Centre – using the static data drop-down select the appropriate unit.
- Booked For Date/Time – enter the scheduled date and time of the interview here.
- Booked By User – this field will auto populate.
- Booked By Unit – this field will auto populate.

- Unit Responsible – this should be the unit which will be conducting the interview (in most cases this will be the same as Booked By Unit).

There is no need to complete the 'Restriction Type', 'Restricted From Date' or 'Interpreter' on the 'Priority' fields.

Click on "Save/Exit" to save changes and exit.

### **13.2 When Refusing Further Leave**

Case owners should update CID as follows:

Click on "File" on the left-hand side of the screen.

Click on "Applicant/Case Search".

Type in applicant's reference number in the "Reference Number" box. Click on the "return" key.

Highlight the main applicant. Ensure that "App for further leave (HP/DL/ELR)" (code APPFL) is highlighted under "Associated Cases".

Click on the "Case Details" icon on the left-hand side of the screen. Then click on the "Icon" tab.

Enter the decision as "Refuse LTR (HP/DL/ELR)".

Click on the "Person Details" icon on the left-hand side of the screen.

Click on the "Person Notes" tab.

Make a note on the screen that the applicant's leave to enter or remain in the United Kingdom has not been extended.

Click on the "Save/Exit" button to save changes and exit.

## ANNEX 1 – Application for Further Leave was made before leave had expired - IN TIME

Original application; Was Leave granted for less than 12 months? If <b>Yes</b> = applicant had no previous ROA If <b>No</b> = applicant had ROA ( whether or not ROA was exercised)	Refusal will give rise to removal; case owners should consider whether there are any compassionate circumstances. If <b>there are none, or they are not strong enough to merit a grant of leave, then NEW IMMIGRATION DECISION will be:</b>		<b>Can the application for further leave be certified?</b>  If No ROA = In- country If Yes ROA = Out of country	Active Review outcome letter ASL	Decision Notice ASL	Appeal Notice IS87
	Refusal to vary leave <b>s 82(2)(d)</b>	Removal <b>s82(2)(g)</b>				
Y	Y	Y	N = <b>In-country</b>	ASL 3820	ASL 2178	UK
Y	Y	Y	Y = <b>Out of country</b>	ASL 3820	ASL 3819	Non-UK
N	Y	Y	N = <b>In-country</b>	ASL 3820	ASL 2178	UK
N	Y	Y	Y = <b>Out of country</b>	ASL 3820	ASL 3819	Non-UK

**ANNEX 2 - Application for Further Leave was made after leave had expired – OUT OF TIME**

ORIGINAL DECISION	FURTHER LEAVE APPLICATION			RELEVANT DOCUMENTS (in addition to ACD.2186 and ACD.1950)		
Original application; Was Leave granted for less than 12 months? If <b>Yes</b> = applicant had no previous ROA If <b>No</b> = applicant had ROA ( whether or not ROA was exercised)	Refusal will give rise to removal; case owners should consider whether there are any compassionate circumstances. If <b>there are none, or they are not strong enough to merit a grant of leave, then NEW IMMIGRATION DECISION will be:</b>		<b>Can the application for further leave be certified?</b>  If No ROA = In- country If Yes ROA = Out of country	Active Review outcome letter ASL	Decision Notice ASL	Appeal Notice IS87
	Refusal to vary leave <b>s 82(2)(d)</b>	Removal <b>s82(2)(g)</b>				
Y	N/A	Y	N = <b>In-country</b>	ASL 3820	ASL 2179	UK
Y	N/A	Y	Y = <b>Out of country</b>	ASL 3820	ASL 2179	Non-UK
N	N/A	Y	N = <b>In-country</b>	ASL 3820	ASL 2179	UK
N	N/A	Y	Y = <b>Out of country</b>	ASL 3820	ASL 2179	Non-UK

**ANNEX 3 – No application for Further Leave lodged**

ORIGINAL DECISION	NO FURTHER LEAVE APPLICATION		RELEVANT DOCUMENTS (in addition to ACD.2186 and ACD.1950)			
Original application; Was Leave granted for less than 12 months? If <b>Yes</b> = applicant had no previous ROA If <b>No</b> = applicant had previous ROA ( whether or not ROA was exercised)	Refusal will give rise to removal; case owners should consider whether there are any compassionate circumstances. If there are none, or they are not strong enough to merit a grant of leave, then <b>NEW IMMIGRATION DECISION</b> will be:		<b>THE RIGHT OF APPEAL</b>  Immigration Decision under Section 82 (g) will attract a Right of Appeal	Active Review outcome letter ASL	Decision Notice ASL	Appeal Notice IS87
	Refusal to vary leave s 82(2)(d)	Removal s82(2)(g)				
Y	N/A	Y	owing to the effect of section 92(4) of 2002 ACT the appeal will be <b>In-Country</b>	N/A	3823	UK
N	N/A	Y	owing to the effect of Section 92 of the 2002 Act the appeal will be <b>Out of Country</b>	N/A	3823	Non-UK

# Document Control

## Change Record

Version	Authors	Date	Change Reference
1.0	R. B	13/10/2008	First publication
2.0	S. K	29/10/2008	Update Branding only
3.0	S. K	18/05/2009	Update Introduction only
4.0	C. C	26/10/2009	Children's Duty reference added