

CHIEF EXAMINER COMMENTS WITH SUGGESTED POINTS FOR RESPONSES

LEVEL 6 UNIT 8 – IMMIGRATION LAW

JUNE 2023

Note to Candidates and Learning Centre Tutors:

The purpose of the suggested points for responses is to provide candidates and learning centre tutors with guidance as to the key points candidates should have included in their answers to the June 2023 examinations. The suggested points for responses sets out a response that a good (merit/distinction) candidate would have provided. Candidates will have received credit, where applicable, for other points not addressed by the marking scheme.

Candidates and learning centre tutors should review the suggested points for responses in conjunction with the question papers and the Chief Examiners' **comments contained within this report**, which provide feedback on candidate performance in the examination.

CHIEF EXAMINER COMMENTS

Due to only receiving one complete script it has not been possible to draft general remarks about the way in which each question performed.

SUGGESTED POINTS FOR RESPONSE**LEVEL 6 UNIT 8 – IMMIGRATION LAW**

Question Number	Suggested Points for Responses	Marks (Max)
1	<p>Responses should include:</p> <ul style="list-style-type: none"> • The fact that such applications are outside the immigration rules. • The development of caselaw in this area over time. • An understanding of the relevance of <i>N v SSHD</i>, <i>Paposhvilli</i> and other caselaw. • Understanding of threshold to be met and evidential requirements. • An understanding that both Article 3 and Article 8 arguments are separately freestanding but that it will usually be appropriate to make both sets of arguments in a given case. <p>Responses could include:</p> <ul style="list-style-type: none"> • Caselaw relevant to Article 3 including - <i>D v UK</i> (application no. 30240/96), <i>N v SSHD</i> [2005] UKHL 31, <i>N v UK</i> (application no. 26565/05), <i>Paposhvili v Belgium</i> (application no. 41738/10), <i>EA & Ors (Article 3 medical cases – Paposhvili not applicable)</i> [2017] UKUT 445 (IAC), <i>AM (Zimbabwe) and another v SSHD</i> [2018] EWCA Civ 64, <i>AM (Zimbabwe) v Secretary of State for the Home Department</i> [2020] UKSC 17 • Caselaw relevant to Article 8 including - <i>SL (St Lucia) v SSHD</i> [2018] EWCA Civ 1894, <i>Razgar, Huang, JN (Uganda) v SSHD</i> [2007], <i>Bensaid v UK</i> (Application no: 44599/98), <i>GS and EO (Article 3 – health cases) India</i> [2012] UKUT 00397 (IAC). <p>Discussion of application procedure or other relevant practical issues.</p>	25
Question 1 Total: 25 marks		



Question Number	Suggested Points for Responses	Marks (Max)
2	<p>Responses should include:</p> <ul style="list-style-type: none"> • Discussion of the requirements of Appendix Start Up and Appendix Innovator, specifically: • Validity, Suitability and eligibility requirements • Financial requirements - different requirements depending on length of presence in UK. Funds may need to be held in line with Appendix Finance • English language ability - B2 and comply with Appendix English Language • Relevant caselaw • N.B category of Innovator Founder is in the process of replacing these categories, therefore candidates may provide an answer that relates to this change and marks should be allocated accordingly. <p>Responses could include:</p> <ul style="list-style-type: none"> • Shahzad [2012] UKUT 81 (IAC) – no unfairness in the requirement of the PBS that an applicant must submit all required evidence in order to demonstrate they meet the rules. • <i>Alam v SSHD</i> [2012] EWCA Civ 960 – the immigration rules, policy guidance and application form make it clear that the submission of specified documents is mandatory and if not produced the application would be refused. It is a feature of the PBS that predictability and certainty are more important than discretion. • <i>Mudiyanselage v SSHD</i> [2018] EWCA Civ 65 – no evidential flexibility in submission of specified documents in PBS. • <i>Harpreet Singh v SSHD</i> [2018] EWCA Civ 2861. - no opportunity to correct administrative mistakes and applicants have to take the consequences of their own mistakes. • Other relevant caselaw 	25

Question 2 Total: 25 marks

Question Number	Suggested Points for Responses	Marks (Max)
3(a)	<p>Responses should include:</p> <ul style="list-style-type: none"> • Discussion of requirements of Appendix Student including information to be included on CAS, points requirement - 50 points for showing: CAS, Place of Study, Level of Study, Course Requirement and Approved Qualification Requirement. Financial requirements • English language ability - can also be met by sponsor assessment in student cases. • Relevant caselaw <p>Responses could include:</p> <ul style="list-style-type: none"> • Relevant case law may include: R (on the application of <u>Hazret Kose</u>) v SSHD (2011) EWHC 5294 (admin), R (<u>Global Vision</u> 	15



	<p><u>College Ltd) v SSHD (2014) EWCA Civ 659, R (on the application of Mushtaq) v ECO Islamabad, Pakistan (2015) UKUT 00224</u></p> <ul style="list-style-type: none"> • Other relevant caselaw 	
3(b)	<p>Responses should include:</p> <ul style="list-style-type: none"> • Identification that rights of appeal to the Tribunal are not available in student visa cases. • Reasoned discussion of administrative review, reapplication and judicial review and when each remedy may be relevant, including discussion of applicable time limits. <p>Responses could include:</p> <ul style="list-style-type: none"> • More extensive discussion of one or two of the available remedies in more detail than is expected. • Practical details related to either of the three identified remedies. 	10
Question 3 Total: 25 marks		
Question Number	Suggested Points for Responses	Marks (Max)
4	<p>Responses should include:</p> <ul style="list-style-type: none"> • Reference to SSHD’s and Tribunal’s power to grant bail under sch.10 IA 2016 • Discussion of bail conditions • Discussion of mandatory issues to be considered • Discussion of how to apply for bail from SSHD • Specific to Tribunal bail: • Discussion of bail grounds and supporting evidence • Discussion of financial conditions and financial supporters • Discussion of bail conditions • Discussion of process of applying for Tribunal bail <p>Responses may include:</p> <ul style="list-style-type: none"> • Discussion of relevant caselaw e.g <u>R (on the application of AM) v SSHD [2012] EWCA Civ 521, R (on the application of HA (Nigeria)) v SSHD [2012] EWHC 979 (Admin), R (Aboro) v SSHD [2018] EWHC 1436 (Admin), R (ZV) v SSHD [2018] EWHC 2725 (Admin)</u> • Breach of bail conditions • Discussion of additional relevant points such as the need for the SSHD to consent where removal directions set, practical issues with securing bail accommodation. • Any of the above discussed in greater detail than anticipated may attract additional marks. 	25
Question 4 Total: 25 marks		

SECTION B

Question Number	Suggested Points for Responses	Marks (Max)
1(a)	<p>Responses should include:</p> <ul style="list-style-type: none"> • Burden and standard of proof in asylum cases noting the changes under the Nationality and Borders Act to introduce two stages with different standards of proof in assessing whether can qualify as a refugee. Balance of probabilities/real risk – s.32 NABA. • Discussion of the definition of a refugee at Article 1A of the Refugee Convention and application to the facts with reference to relevant caselaw and sections of NABA: <ul style="list-style-type: none"> - Well-founded fear (s.32) - Persecution (s.31) - Convention reason (s.33) - Consideration of potential convention reasons e.g religion, imputed political opinion - Unable/unwilling to avail themselves of protection - Internal relocation (s.35) – unlikely to be available here due to state persecution • Discussion of credibility with reference to statutory provisions and caselaw • Discussion of evidence that will assist to establish risk on return (including objective evidence) • Reference to relevant statutory provisions, immigration rules and cases <p>Responses may include:</p> <ul style="list-style-type: none"> • Reference to case law may include: <i>Sivakumaran</i> (1987), <i>Rajendrakumar</i> (1996), <i>Horvath</i> (2000), <i>Karanakaran</i> (2000), <i>Svasas</i> (2002), <i>Ravichandran</i> (1995), <i>KS (Benefit of the doubt)</i> (2014) • Relevant application and procedure points • Discussion of whether needs to claim asylum at this stage, given humanitarian nature of current visa – reasoned discussion for/against. 	15
1(b)	<p>Responses should include:</p> <ul style="list-style-type: none"> • Knowledge of provisions for a “two tier” system of refugee status under NABA 2022 • Recognition that this would be a “sur place” claim • Relevant content of immigration rules and HO guidance • Knowledge of the different conditions attached to leave under Group 1 or Group 2 – Refugee Permission to Stay and Temporary Refugee Permission to Stay in respect of: <ul style="list-style-type: none"> • Length of leave, extensions and settlement • Family Reunion • As this is a “sur place” claim, likely to fall into Group 1 “refugee permission to stay” – limited leave for 5 years and then 	10

	<p>immediate ability to settle, family reunion without needing to establish Article 8 breach, able to work, study, claim benefits.</p> <ul style="list-style-type: none"> • Application to the facts <p>Responses may include:</p> <ul style="list-style-type: none"> • More detailed knowledge in respect of any aspect of the above than is anticipated. • Any other relevant details within the scope of the question. 	
Question 1 Total: 25 marks		
2(a)	<p>Responses should include:</p> <ul style="list-style-type: none"> • Discussion of Appendix FM and applications on the 10 year route to settlement – in particular E-LTRPT – leave to remain as a parent and requirements of sole responsibility or direct access. • Discussion of Ex.1(a)- rule governing leave to remain where genuine and subsisting relationship with a qualifying child. • Requirements on this route where EX.1(a) apply • Discussion of s.117B and “qualifying child” under s.117D • s.55 considerations • Application to scenario <p>Responses may include:</p> <ul style="list-style-type: none"> • Discussion of relevant caselaw • Discussion of application procedure • Additional relevant discussion. • Any of the above discussed in greater detail than anticipated may attract additional marks. 	10
2(b)	<p>Responses should include:</p> <ul style="list-style-type: none"> • Reference to the right of appeal under s.82(1) to the Immigration Tribunal on human rights grounds. • Discussion of relevant caselaw e.g : <i>ZH (Tanzania)</i> [2011] UKSC 4 , <i>Zoumbas</i> [2013] UKSC 74, <i>MA (Pakistan)</i> [2016] ECWA CIV 705. <i>JG (s 117B(6): "reasonable to leave" UK) Turkey</i> [2019] UKUT 72 (IAC) <i>KO (Nigeria) and Others v Secretary of State for the Home Department</i> [2018] UKSC 53 • Discussion of statutory provisions e.g S.1176B(6) - genuine and subsisting parental relationship with a qualifying child and unreasonable to expect the child to leave the UK and S.117D - definition of a qualifying child. • Application to scenario. <p>Responses may include:</p> <ul style="list-style-type: none"> • Additional relevant discussion. • Any of the above discussed in greater detail than anticipated may attract additional marks. 	15
Question 2 Total: 25 marks		

Question Number	Suggested Points for Responses	Marks (Max)
3	<p>Responses should include:</p> <ul style="list-style-type: none"> • An understanding that the most appropriate application would be an application under the domestic violence provisions of Appendix FM – a definition of domestic abuse that includes the behaviour in the scenario • Discussion of the requirements of section DVILR 1.1 (a)-(d) and section E-DVILR 1.1-1.3 Appendix FM • Discussion of the evidence that will be required (e.g social services reports, women’s aid, GP - unlikely to be a criminal conviction, but might be a non-molestation order given the facts) • The burden of proof is on the appellant and the civil standard “balance of probabilities” applies • Discussion of relevant principles from caselaw/Appendix FM <p>Responses could include:</p> <ul style="list-style-type: none"> • Discussion of relevant caselaw e.g: <i>IN (Domestic violence, IDI, policy) Pakistan</i> [2007] UKAIT 00024, <i>JL (Domestic violence: evidence and procedure) India</i> [2006] UKAIT 00058 • Discussion of 3-month DDV concession • Remedies in the event of refusal 	25

Question 3 Total: 25 marks

Question Number	Suggested Points for Responses	Marks (Max)
4	<p>Responses should include:</p> <ul style="list-style-type: none"> • Discussion of sch. 2 and sch. 3 Immigration Act 1971 • S.62 Nationality Immigration and Asylum Act 2002 • ‘Hardial Singh’ principle in respect of time limits • Administrative removal under s.10 Immigration and Asylum Act 1999 and no right of appeal against decision to remove. • Appendix Private Life provisions in respect of 20 year rule applications – I.e need to demonstrate continuous residence for the 20 year period. No reasonableness etc requirements. Must not fail on suitability grounds. • Evidence – will need to provide sufficient evidence to establish continuous residence in the UK for each year of the 20 year period. • Judicial review is the only remedy against imminent removal <p>Responses could include:</p> <ul style="list-style-type: none"> • Caselaw relevant to discussion of power to detain and time limits may include, <i>ZA (Iraq)</i> [2015] EWCA Civ 168, <i>J.N. v UK (application no: 37289/12)</i> (2016), <i>R (on the application of Bizimana) v SSHD</i> [2012] EWCA Civ 414 (failure to consider s.55 duty). • Caselaw relevant to administrative removal could include, <i>MS (Palestinian Territories) v SSHD</i> (2009) EWCA Civ 17, <i>MA (Statelessness; Removal)</i> (2005) UKAIT 00161 	25



	<ul style="list-style-type: none">• Arguments against removal based on private life under Appendix Private Life. Consideration of tactical issues i.e issue of judicial review, submission of valid application under 20 year rule is a human rights claim• Issues relevant to application process or other practical points.	
Question 4 Total: 25 marks		

