

## CHIEF EXAMINER COMMENTS WITH SUGGESTED POINTS FOR RESPONSES

### LEVEL 6 - UNIT 8 – IMMIGRATION LAW

JUNE 2022

#### 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 2022 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

Where candidates did not perform well it was due to excessively short answers for high mark questions, poor knowledge of relevant law and large areas of omission and error.

The reasons for good performance included:

- Use of relevant caselaw and other references to support answers
- Application of relevant law to the facts
- Good question comprehension and analysis of scenarios
- Thorough discussion of relevant points

Failures were due to:

- Inadequate reference to relevant legal provisions, particularly caselaw.
- Insufficient revision of key areas leading to superficial, inadequate answers
- Poor question comprehension leading to discussion of the wrong area of law.

## CANDIDATE PERFORMANCE FOR EACH QUESTION

### Section A

**Question 1** – Ankara agreement. No candidates answered this question.

**Question 2(a) and 2(b)**

Bail from SSHD/Tribunal respectively. This question was answered poorly by candidates. Bail is a longstanding component of the unit specification and has featured on a number of recent past papers, so it should not be a surprise to candidates that questions are posed in relation to it.

**Question 3**

Exclusion from protection. This question was answered adequately by one candidate. However, the majority of the answers failed to focus on exclusion and contained discussion more generally of protection law, which was of limited relevance.

**Question 4**

Marriage visitors. Good answers focused on the specific requirements and conditions in this category and the candidate(s) who scored highly made reference to relevant caselaw, which was very pleasing to note. Candidates who scored poorly tended to confuse the requirements for marriage visitors with those for fiancé visas.

### Section B

**Question 1(a)** - Naturalisation.

Most of the candidates answered this question well and engaged with the scenario meaning that they were able to address specific issues raised by the facts.

**Question 2** – Article 3/8 medical cases.

No candidates answered this question.

**Question 3(a)** - Appendix FM (10 year route).

This question was answered well by almost all the candidates. Good answers engaged with the scenario and made reference to relevant caselaw.

**3(b)** - Family life appeals.

This question was answered well. Good answers engaged with the different aspects of Article 8 and caselaw. No candidates discussed s.117 Immigration Act 2014, and familiarity with the provisions there would have improved the answers.

**Question 4** - Student visas.

The majority of students answered this question well. Good answers were comprehensive and well structured addressing all the issues raised by the scenario.

**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"><li>• Discussion of relevant provisions with the European Communities Association Agreement (“Ankara Agreement), including who is eligible (Turkish workers/Turkish business persons)</li><li>• Discussion of relevant provisions within Appendix ECAA of the Immigration Rules, including eligibility, suitability, extensions and settlement</li><li>• Discussion of changes to rules for settlement under Appendix ECAA</li></ul> <p>Responses may include:</p> <ul style="list-style-type: none"><li>• Reference to caselaw e.g <u>R v Aydogdu (2017)</u>, <u>Bektas Alagoz (2017)</u> (Scottish)</li><li>• Reference to additional elements of Appendix ECAA e.g family members, conditions attached to leave, financial requirements, KoLL, remedies in case of refusal.</li><li>• Additional relevant discussion</li></ul>	25
<b>Question 1 Total:25 marks</b>		



Question Number	Suggested Points for Responses	Marks (Max)
<b>2(a)</b>	<p>Responses should include:</p> <ul style="list-style-type: none"> <li>• Reference to SSHD’s power to grant bail under sch.10 IA 2016</li> <li>• Discussion of bail conditions</li> <li>• Discussion of mandatory issues to be considered</li> <li>• Discussion of how to apply for bail from SSHD</li> </ul> <p>Responses may include:</p> <ul style="list-style-type: none"> <li>• Discussion of relevant caselaw e.g <u>R (on the application of AM) v SSHD [2012] EWCA Civ 521</u>, <u>R (on the application of HA (Nigeria)) v SSHD [2012] EWHC 979 (Admin)</u>, <u>R (Aboro) v SSHD [2018] EWHC 1436 (Admin)</u>, <u>R (ZV) v SSHD [2018] EWHC 2725 (Admin)</u></li> <li>• Breach of bail conditions</li> <li>• Additional relevant discussion.</li> </ul>	<b>15</b>
Question Number	Suggested Points for Responses	Marks (Max)
<b>2(b)</b>	<p>Responses should include:</p> <ul style="list-style-type: none"> <li>• Reference to Sch. 10 IA 2016</li> <li>• Discussion of bail grounds and supporting evidence</li> <li>• Discussion of financial conditions and financial supporters</li> <li>• Discussion of bail conditions</li> <li>• Discussion of process of applying for Tribunal bail</li> </ul> <p>Responses may include:</p> <ul style="list-style-type: none"> <li>• Discussion of additional relevant points such as the need for the SSHD to consent where removal directions set, practical issues with securing bail accommodation.</li> <li>• Additional relevant discussion.</li> </ul>	<b>10</b>
<b>Question 1 Total:25 marks</b>		
Question Number	Suggested Points for Responses	Marks (Max)
<b>3</b>	<p>Responses should include:</p> <ul style="list-style-type: none"> <li>• Discussion of exclusion clauses under the Refugee Convention – Article 1D, Article 1E and Article 1F</li> <li>• Discussion of exclusion from Humanitarian Protection under Article 17 RQD/Paragraph 339D Immigration Rules</li> <li>• Discussion of relevant caselaw</li> </ul>	<b>25</b>

	<p>Responses may include:</p> <ul style="list-style-type: none"> <li>• Discussion of caselaw may include: Article 1D: El Kott (2012) CJEU, Said (Article 1D – meaning) Palestinian Territories (2012). Article 1E: Zeng v Canada (2010), KK and others (North Korea)(2011), HA (Article 24 QD) Palestinian Territories (2015). Article 1F: KJ (Sri Lanka) (2009), Al-Sirri (2012), JS (Sri Lanka) (2010), B and D (CJEU) (2009), Lounani (CJEU) (2014), Youssef (2018)</li> <li>• Discussion of caselaw may include: HP: Ah (Algeria) (2012), Ahmed (CJEU) (2017)</li> <li>• Additional relevant discussion.</li> </ul>	
<b>Question 3 Total: 25 marks</b>		
Question Number	Suggested Points for Responses	Marks (Max)
<b>4</b>	<p>Responses should include:</p> <ul style="list-style-type: none"> <li>• Discussion of requirements of Appendix V (including no special arrangements for family visitors) including:</li> <li>• Genuineness – including permitted purpose and intention to leave UK at end of visit</li> <li>• V 12.1 and V 12.2 - additional requirements when coming to UK for marriage including intention to marry or give notice of marriage.</li> <li>• Must apply specifically for marriage/civil partnership or would be prohibited activity under V 4.4.</li> <li>• Financial and accommodation requirements</li> <li>• Suitability</li> <li>• Differentiation between visa nationals and non visa nationals.</li> </ul> <p>Responses may include:</p> <ul style="list-style-type: none"> <li>• Discussion of caselaw in relation to any of the above e.g genuineness, or discussion of caselaw in relation to Article 8 in family visit matters.</li> <li>• Discussion of remedies.</li> <li>• Discussion of conditions of leave.</li> <li>• Additional relevant discussion.</li> </ul>	<b>25</b>
<b>Question 4 Total:25 marks</b>		

**SECTION B**

Question Number	Suggested Points for Responses	Marks (Max)
1	<p>Responses should include:</p> <ul style="list-style-type: none"> <li>• Discussion of requirements for naturalisation at s.6(1) BNA 1981, including:</li> <li>• Residence requirements</li> <li>• KoLL</li> <li>• Good character</li> <li>• Discussion of paragraph 39E Immigration Rules in relation to delay</li> <li>• Application to the facts</li> </ul> <p>Responses may include:</p> <ul style="list-style-type: none"> <li>• Discussion of relevant caselaw</li> <li>• Discussion of ability to waive requirement for KoLL where an applicant had a physical or mental impairment</li> <li>• Additional relevant discussion.</li> </ul>	25
<b>Question 1 Total:25 marks</b>		
Question Number	Suggested Points for Responses	Marks (Max)
2	<p>Responses should include:</p> <ul style="list-style-type: none"> <li>• Discussion of human rights applications outside the immigration rules on the grounds of an Article 3 or Article 8 breach.</li> <li>• Discussion of relevant caselaw.</li> <li>• Application to the facts.</li> </ul> <p>Responses may include:</p> <ul style="list-style-type: none"> <li>• Discussion of caselaw related to Article 3 e.g <u>D v UK</u>, <u>N v SSHD</u> [2005] UKHL 31 and <u>N v UK</u> [2008], <u>Paposhvili v Belgium, EA and Others</u> (2017) AM (Zimbabwe) [2020] UKSC 17.</li> <li>• Discussion of caselaw related to Article 8 e.g <u>Razgar</u> [2004] UKHL 27. <u>Huang</u> [2007] UKHL 11, <u>SL (St Lucia)</u> [2018] EWCA 1894 <u>JN (Uganda)</u> [2007] EWCA Civ 802, <u>Bensaid v UK</u> [2001] , <u>GS and EO (India)</u> [2012] UKUT 00397</li> <li>• Discussion of application procedure</li> <li>• Additional relevant discussion.</li> </ul>	25
<b>Question 2 Total:25 marks</b>		



Question Number	Suggested Points for Responses	Marks (Max)
<b>3(a)</b>	<p>Responses should include:</p> <ul style="list-style-type: none"> <li>• 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.</li> <li>• Discussion of Ex.1(a)- rule governing leave to remain where genuine and subsisting relationship with a qualifying child.</li> <li>• Requirements on this route where EX.1(a) apply</li> <li>• Discussion of s.117B and “qualifying child” under s.117D</li> <li>• s.55 considerations</li> <li>• Application to scenario</li> </ul> <p>Responses may include:</p> <ul style="list-style-type: none"> <li>• Discussion of relevant caselaw</li> <li>• Discussion of application procedure</li> <li>• Additional relevant discussion.</li> </ul>	<b>10</b>
Question Number	Suggested Points for Responses	Marks (Max)
<b>3(b)</b>	<p>Responses should include:</p> <ul style="list-style-type: none"> <li>• Reference to the right of appeal under s.82(1) to the Immigration Tribunal on human rights grounds.</li> </ul> <p>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)</i> <i>Turkey</i> [2019] UKUT 72 (IAC) <i>KO (Nigeria) and Others v Secretary of State for the Home Department</i> [2018] UKSC 53</p> <ul style="list-style-type: none"> <li>• 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.</li> <li>• Application to scenario.</li> </ul> <p>Responses may include:</p> <ul style="list-style-type: none"> <li>• Additional relevant discussion.</li> </ul>	<b>15</b>
<b>Question 3 Total:25 marks</b>		

Question Number	Suggested Points for Responses	Marks (Max)
4	<p>Responses should include:</p> <ul style="list-style-type: none"> <li>• Discussion of the requirements of Appendix Student, including:</li> <li>• Confirmation of Acceptance of Studies document and contents.</li> <li>• Level of Study and Place of Study Requirements.</li> <li>• Maintenance – awareness of different amounts inside and outside London.</li> <li>• Genuineness</li> <li>• English language and how evidenced</li> <li>• Leave granted and conditions to be attached to leave</li> <li>• Application to scenario</li> </ul> <p>Responses may include:</p> <ul style="list-style-type: none"> <li>• Discussion of relevant caselaw, e.g <i>Hazret Rose (2011)</i>, <i>Global Vision College (2014)</i>, <i>Mushtaq (2015)</i></li> <li>• Discussion of remedies</li> <li>• Additional relevant discussion.</li> </ul>	25
<b>Question 4 Total:25 marks</b>		

