



CHIEF EXAMINER REPORT

JANUARY 2024

LEVEL 6 UNIT 8 – Immigration Law

The purpose of the suggested points for responses is to provide candidates and Training Providers with guidance as to the key points candidates should have included in their answers to the January 2024 examinations.

The suggested points for responses sets out points that a good (merit/distinction) candidate would have made.

Candidates will have received credit, where applicable, for other points not addressed in the suggested points for responses or alternative valid responses.

Chief Examiner Overview

On the very limited evidence available due to the small cohort size, there is nothing to suggest any concern.

Candidate Performance and Suggested Points for Responses

It is noted that the low numbers of candidates taking this examination limits the scope for constructive and valid feedback to be given and for firm conclusions to be reached and embraced for positive use by candidates.

Therefore, no feedback on candidate performance has been included.

Section A

Question 1	25 marks
Attempts too limited to provide feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none">Nationality applications for children are on the basis of registration rather than naturalisation under British Nationality Act 1981 <p>1 – application for registration under s.1(4) BNA 1981.</p> <ul style="list-style-type: none">s.1(4) – entitles children born in the UK and who have lived in the UK for the first 10 years of their life to register as British citizens.Available to all children born in the UK after 1st January 1983 who have lived in the UK for the first 10 years of their life. The Applicant may apply for registration as a British national at a later date, including once they are over 18.Requirements in respect of time spent outside the UK –Applicants must not have been absent for more than 90 days in any of the 10 years. There is some discretion with regard to absences that can be applied by SSHD.Applicant will need to provide full birth certificate confirming birth in the UK.Applicant will need to provide evidence of continuous residence e.g. baby book (this would cover the first 5 years of life), school enrolment information, GP and dentist registrations, social services papers, court documents in respect of the child, club or group memberships – likely to require several sources that cumulatively will provide evidence of continuous residence for the required yearsAdvisable to submit application using Form T, which is available as an online application.Application fee is currently £1214.00 for child applicants and £1351.00 for adult applicants. <p>2 – application for registration under s.1(3) BNA 1981.</p> <ul style="list-style-type: none">Entitles a child to be registered as a British citizen if, whilst under the age of 18, the child’s parent become settled or British.Need to provide full birth certificate (as evidence of parentage and birth event) and evidence of his parent’s ILR or nationality in order to qualify.There are no requirements as regards time spent abroad.Definition of mother – s.50(9) BNA 1981 provides that the mother is the woman who gives birth to the childDefinition of father – s.65 IA 2014 provides that men who were not married to the mother of their child are able to pass on their British nationality to their child as long as paternity can be established. (Only men married to the mother of their children were able to pass on British nationality under the original provisions of the BNA 1981)Evidence of paternity should be provided in line with the British nationality (Proof of Paternity) Regulations 2006 (SI/1496/2006) and the British Nationality (Proof of Paternity) (Amendment) Regulations 2015 (SI/1615/2015)	

- Application would most appropriately be made on Form MN1 which is available as an online application.
- Correct fee to be paid online by debit or credit card.
- This application is only available to minors.

3 – application under s.3(1A)

- The child was born in the UK on or after 13 January 2010.
- The child was not a British citizen at birth, as at the time neither parent was a British citizen, settled in the UK, serving in the UK armed forces.
- While they are under the age of 18 either parent becomes a member of the UK armed forces.
- The child is under the age of 18 on the date of application.
- He/she is of good character if over the age of 10.
- Application form – MN1. Appropriate fee to be paid.

Good character requirements

- apply to all **registration** applications where the applicant is over the age of 10.
- *TN (Afghanistan) v SSHD* [2015] UKSC 40, [2015] 1 WLR 3083 – Parliament has entrusted the assessment of character to the SSHD not the judiciary and therefore the Courts cannot require the SSHD to grant a person British nationality.
- *R (Hiri) v SSHD* [2014] EWHC 254 (Admin) – the assessment of character must take into account the whole of an Applicant’s character and not just ask whether or not the Applicant has a criminal record.
- *R (DC) v SSHD* [2018] EWHC 399 (Admin) – the decision letter was not sufficient to show that the assessment of character had been carried out correctly i.e taking into account the whole of the Applicant’s character.
- OR other relevant caselaw.
- Other relevant discussion e.g. Fee waivers are not available in nationality matters, even for destitute children in social services care. The Court of Appeal has determined that this is not unlawful -(*R (Williams) v SSHD* [2017] EWCA Civ 98).
- A reasoned conclusion bringing together the above arguments.

Question 2	25 marks
Attempts too limited to provide feedback.	
Suggested Points for Response:	
<p>1 - Exclusion clauses contained with the UN Convention relating to the Status of Refugees 1951 (“the Refugee Convention”) – also set out at Article 12 of the RQD</p> <ul style="list-style-type: none"> • Article 1D –Palestinian refugees receiving assistance from UNRWA (United Nations Relief and Works Agency) are excluded from the Refugee Convention. • Discussion of relevant caselaw, e.g. <ul style="list-style-type: none"> ○ <i>El Kott, Abed El Karemand others v Bevandorlasies Allampolgarsagi Hivatal</i> [2012] EUECJ C-364/11 –if a person ceases to be in receipt of the protection of the UNRWA, they may be able to access assistance under the Refugee Convention in another country (for example, internal armed conflict in the designated refugee camp). ○ <i>Said (Article 1D: meaning) Palestinian Territories</i> [2012] UKUT 413 (IAC) – where a refugee benefiting from UNRWA protection is forced to leave the protected area due to e.g. internal armed conflict, they may qualify for RS in another signatory country even if they do not have a freestanding claim for asylum. • Article 1E –if there is a third country where the person is able to access rights “akin to nationality”. • <i>Zeng et al. v. Canada (Minister of Citizenship and Immigration)</i>, (2010) 402 N.R. 154 (FCA) – “Considering all relevant factors to the date of the hearing, does the claimant have status, substantially similar to that of its nationals, in the third country? If the answer is yes, the claimant is excluded. If the answer is no, the next question is whether the claimant previously had such status and lost it or had access to such status and failed to acquire it. If the answer is no, the claimant is not excluded under Article 1E. If the answer is yes, the RPD must consider and balance various factors. These include, but are not limited to, the reason for the loss of status (voluntary or involuntary), whether the claimant could return to the third country, the risk the claimant would face in the home country, Canada's international obligations, and any other relevant facts.” • <i>KK and others (nationality: North Korea) CG</i> [2011] UKUT 92 (IAC) – where an asylum seeker was entitled to the nationality of a country despite not holding a national passport they should be treated as a national of that country. However, if the national authorities of that country would exercise discretion as to whether or not they could be a national they could not be treated so. • <i>HA (Article 24 QD) Palestinian Territories</i> [2015] UKUT 465 (IAC) – asylum seekers must establish a well-founded fear in every potential country of return to succeed. • Article 1F –excludes those found to have committed crimes against international law and serious criminal activity of a non-political nature: <ul style="list-style-type: none"> ○ Crimes against international law: war crimes, crimes against humanity etc, crimes listed in the Rome Statute (International Criminal Court). ○ Crimes against humanity include torture, sexual violence, murder, enslavement and trafficking. ○ War crimes involve serious attacks against civilian populations. ○ Serious non-political crimes –can include crimes committed in the country in which asylum is sought under the Refugee Qualification Directive. • Discussion of relevant caselaw, e.g.: <ul style="list-style-type: none"> ○ <i>KJ (Sri Lanka) v SSHD</i> [2009] EWCA Civ292 –an armed campaign against a government will not necessarily be an act contrary to the purposes and principles of the UN. Rank within the organisation will also be a factor. ○ <i>Al-Sirri v SSHD</i> [2012] UKSC 54 –acts committed must be of real severity in order to be considered contrary to the purposes and principles of the UN (as was the case here, where the Appellant had undertaken military activities against UN-mandated forces in Afghanistan). 	

- *R (on the application of JS) (Sri Lanka) v SSHD* [2010] UKSC 15 –provided a list of factors that should be taken into account with regard to exclusion under 1F and summarised as follows: “I would hold an accused disqualified under article 1F if there are serious reasons for considering him voluntarily to have contributed in a significant way to the organisation’s ability to pursue its purpose of committing war crimes, aware that his assistance will in fact further that purpose.”
- *B and D (C-57/09 and C-101/09 (joined))* – commission of terrorist attacks can result in exclusion under Article 1F (and Article 12 RQD).
- *Lounani (C-573/14)* – persons who provide assistance to terrorists who commit attacks may also be excluded under Article F (and Article 12 RQD).
- *Youssef v SSHD* [2018] EWCA Civ 933 – the Appellant was excluded from RS because his behaviour had generally aimed to incite terrorism. There was no need for any specific act of terrorism to have resulted from his behaviour.

2 – Exclusion from Humanitarian Protection under Article 17 Refugee Qualification

Directive/paragraph 339D immigration rules

- A person may be excluded where there are serious reasons for considering that a person has
 - Committed a crime against peace, a war crime or a crime against humanity.
 - Has committed a serious crime.
 - Has been guilty of acts contrary to the principles of the United Nations.
 - Constitutes a danger to the community of the security of the UK.
 - If prior to admission to the UK has committed one or more crimes punishable by imprisonment if they had been committed in the UK, and sole reason for travelling is to avoid sanctions for these crimes.
- *AH (Algeria) v SSHD* [2012] EWCA Civ395 –exclusion from HP is fact-sensitive and the particular length of a criminal sentence is not sufficient grounds alone to exclude or revoke Humanitarian Protection.
- *Ahmed C-369/17* – CJEU found that a member state must take account of all the circumstances of a crime committed by an Applicant before declaring it a “serious crime” resulting in exclusion from Humanitarian Protection.
- A reasoned conclusion bringing together the above arguments.

Question 3a	13 marks
Attempts too limited to provide feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none"> • Introduced in July 2021, this route is for international students who have successfully completed an eligible course at a “student sponsor” which is a higher education provider with a track record of compliance. • Is a non-sponsored route for graduates to remain in the UK under Appendix graduate after completion of a degree. • Applicant must have been sponsored on degree by student sponsor which is a higher education provider with a track record of compliance on the date of application. • The course must either have led to a degree at bachelor’s or postgraduate level, or have been “a professional course requiring study at UK bachelor’s degree level or above, in a profession with reserved activities that is regulated by UK law or UK public authority.” • UK NARIC (the ‘National Academic Recognition Information Centre’, which grades qualifications, particularly from abroad, by comparison with UK degrees) has had to change its name, as this is only to be used by Member States of the EU. It is now called UK ENIC (the ‘European Network Information Centre’), which sounds more European than the old name. It is managed by a service provider called ‘Ecctis’, and it is through this service that individuals can check their qualifications for immigration purposes. The Rules have been changed throughout to replace references to ‘UK NARIC’ with ‘Ecctis’. • The route allows international students who have completed a degree or other higher educational qualification to remain in the UK to: <ul style="list-style-type: none"> ○ Work in the UK after their degree/qualification is completed; ○ Work in a job at any skill level or salary, for a period of two years; ○ Work for three years following a PhD/doctorate. ○ The application fee is £822 plus the NHS surcharge. • An applicant requires 70 points which are achieved by one of meeting the following: • Successful Completion – Must have successfully completed the course of study and sponsor must notify Home Office of this. • Qualification – Must have completed a BA or PG degree of other recognised qualification such as law conversion, LPC. Dentistry, medicine, PGCE – see GR 5.1-5.3. • Study in UK – study took place in UK or began as distance learning and entered UK before June 2022 with permission as a student. • Leave granted - Leave will be granted for 2 years for most degrees, 3 years for a doctorate, during which they can work or look for work at any skill level. • Once the leave to remain period is completed the visa cannot be extended and the applicant would need to switch to a work category to remain in the UK. • Graduates can switch into Appendix Skilled Worker if they can find an employer to sponsor them. • Applications for the new route must be made in the UK, and applicants must have current leave (now also called ‘<i>permission</i>’) as a Student (or if still on the old Tier 4 route). • They must not previously have had leave on the Doctorate Extension Scheme (a previous scheme for post-study work, but only for graduates with a PhD) or on the Graduate route. • Dependent family members are permitted, but only if they are already in the UK, having been granted permission as dependents of the main applicant. • This would have been while he or she was undertaking postgraduate studies on the Tier 4 or Student route, as undergraduates are not allowed to have family members with them. • New dependents will not be permitted, except where a dependent child has been born in the UK during a period of Student or Graduate permission. 	

Attempts too limited to provide feedback.

Suggested Points for Response:

Global Business Mobility:

- The Government's 2022 'Plan for Growth' included changes to the immigration rules for working and doing business in the UK.
- Under the heading **Global Business Mobility** come four rebranded routes plus one new one. Despite recommendations from the Migration Advisory Committee, none of them lead to settlement.

Senior or Specialist Worker:

- Replacing Appendix Intra-Company Routes, this one is for "senior managers or specialist employees who are being assigned to a UK business linked to their employer overseas."
- Must be paid at least £42,400 or the 'going rate' for the job whichever is higher.
- Must have been employed by the business outside the UK for at least 12 months, unless they are paid over £73,900.
- Can stay for up to 5 years, or up to 9 years if they are earning over £73,900.

Graduate Trainee:

- Replacing the Graduate Trainee component of the Intra-Company Routes, this one is for "workers on a graduate training course leading to a senior management or specialist position ... who are required to do a work placement in the UK."
- Must be paid at least £23,100 or 70% of the 'going rate' for the job, whichever is higher.
- Must have been employed by the business outside the UK for at least 3 months.
- Must be undertaking a placement as part of a structured graduate training programme.
- Can stay for up to 1 year.

UK Expansion Worker:

- This route is for "senior managers or specialist employees who are being assigned to the UK to undertake work related to a business's expansion in the UK."
- It closes off Appendix Representative of an Overseas Business to new entrants in the Sole Representative category (existing ones can carry on) but remains open for initial applications by Media Representatives.
- Have the same conditions as Senior or Specialist Workers, except that they can only stay for 1 year, with the possibility of extending for a further year if required.
- Their employers will have to go through a different procedure to get a sponsor licence.

Service Supplier:

- Replacing the Contractual Service Supplier and Independent Professional provisions in Appendix Temporary Work – International Agreement, this route is for migrants based overseas who "need to undertake an assignment in the UK to provide services covered by one of the UK's international trade commitments", such as GATS.
- Must be delivering a service under a contract covered by one of the UK's international trade agreements.
- Must be nationals of the country covered by the relevant trade agreement.
- Must have a degree and 3 to 6 years' experience.
- Must be an existing employee with at least 12 months' employment outside the UK.
- Can stay for 6 months or 1 year, depending on the trade agreement.

Secondment Worker:

- The only wholly new route, this is for "workers being seconded to the UK as part of a high value contract or investment by their employer overseas."

- Must have been employed by the business outside the UK for at least 12 months.
- Must be working on a contract worth at least £50 million.
- Can stay for up to 1 year, with the option of extending for a further year if needed.
- There is no minimum salary requirement.

Question 4	25 marks
Attempts too limited to provide feedback.	
Suggested Points for Response:	
<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. • 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. • Discussion of relevant caselaw e.g. <i>R (on the application of AM) v SSHD</i> [2012] EWCA Civ 521, <i>R (on the application of HA (Nigeria)) v SSHD</i> [2012] EWHC 979 (Admin), <i>R (Aboro) v SSHD</i> [2018] EWHC 1436 (Admin), <i>R (ZV) v SSHD</i> [2018] EWHC 2725 (Admin). • 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. 	

Section B

Question 1	25 marks
Attempts too limited to provide feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none">• Discussion of ground of appeal of entry clearance decision – now human rights and protection grounds only.• Right of appeal under s82 Nationality Immigration and Asylum Act 2002 (NIAA) on the grounds refusal of entry clearance would breach s6 Human Rights Act (grounds in s84 NIAA)• Deemed right of appeal for refusal of partner – potential breach of Article 8 ECHR.• Can argue compliance with immigration rules can make refusal of entry clearance a disproportionate interference with Article 8 ECHR – <u>Mohamed and Mostafa [2015] UKUT 00112 (IAC)</u>.• Discussion of requirements of immigration rules in Appendix FM and Appendix FM SE and application to the rules.• Only need to have met once to meet the rules as long as have appreciation of appearance or personality– <u>Meharban [1989] Imm AR 57 /Hashmi (4975)</u> – so should not be refused for this reason.• In particular issues with genuine and subsisting requirement – not taken into account cultural practices and different ways to meet requirement; arranged marriage so would not know details of partner to same extent as other marriages.• Financial requirement can be met with commission based pay and income in combination.• Annualised average income – $9000/6 \times 12 = \text{£}18\,000$. Add to basic wage of $\text{£}16\,600 = \text{£}34\,600$ so way above minimum income threshold.• Accommodation is adequate and without recourse to public funds – requires one reasonably sized room for the couple and has two bedrooms.• If any issue with the flat not being vacated the room in the parents' house will be adequate – <u>Saghir Ahmed (8260)</u>, Housing Act 1985.• Language requirement needs to be met – test certificate will have to be submitted here as not English speaking country and no degree taught in English.• If the application is successful, will be granted 33 months leave to remain then after 30 months can apply for further 30 months. After 60 months can apply for ILR.	
Discussion of relevant caselaw:	
<ul style="list-style-type: none">• <u>Mohamed and Mostafa [2015] UKUT 00112 (IAC)</u> - entry clearance refusal for partners• <u>Merhaban [1989] Imm AR 57</u> – require appreciation of one another, <u>Hashmi (4975)</u> – one meeting sufficient.• Account for work commitments when having to return after wedding– <u>Niksarli (21663)</u>, <u>Janat Bi (16929)</u>.• <u>Choudhury [2002] UKIAT 0239</u> – arranged marriage account for arrangements of marriage, time spent after wedding together etc.• <u>MM and Others [2017] UKSC 10</u> – on minimum income requirement and income sources.• <u>Saghir Ahmed (8260)</u>– one room sufficient.• <u>KJ Jamaica [2008] UKAIT 00006</u> – requisite degree of stability to call home.	

Question 2a	17 marks
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Attempts too limited to provide feedback.

Suggested Points for Response:

- Make application online and pay fee and NHS surcharge.
- Discussion of Appendix student and relevant validity, suitability and eligibility requirements.
- In particular points requirement and how met:
- **50 points for showing all five of following:**
 - Confirmation of Acceptance for Studies-
 - Course requirement
 - Approved qualification requirement
 - Level of study requirement
 - Place of study requirement

Confirmation of Acceptance for Studies

- Must confirm course requirement, approved qualification, level of study and place of study requirements are met.
- Includes details of course and student including duration of course, hours of study etc.
- Must also show how financial requirements met.
- Must be issued less than 6 months before application.

Course Requirement

- ST 8.1- The application must be for a single course of study that meets the requirements.
- Under ST 8.3 it falls into category (a) - Full-time (FT) course at degree level or above that leads to an approved qualification.

Approved qualification requirement ST 9.1 (b)

- As the course of study is awarded by a UK recognised body – University of mid Wales would need to satisfy this requirement.

Level of Study - ST 10.2.

- If the Confirmation of Acceptance for Studies has been assigned by a student sponsor, the course must meet level of study requirements: Here - studied in England, Wales or Northern Ireland and it is at Regulated Qualifications Framework level 3 or above (Degree level 6).

Place of Study - ST 11.1.

- All study that forms part of the course of study must take place on the premises of the student sponsor or a partner institution unless the applicant is on a course-related work placement, a study abroad programme overseas, or a pre-sessional course.

Maintenance –

- **10 points for maintenance**
- Will need his first year's fees plus **£9207** (£1023 a month for the first 9 months of the course as outside London. If in London is £1334 per month for nine months therefore £12 006 plus fees.)
- In this case will therefore need £14 000 plus £9207 = £23 207
- Has £40 000 in account and must stay in account for 90 days before application (will not need to access the other £20 000).

Language

- **10 points for language**
- Not English speaking country and not got a degree taught in English so will need to do a test or sponsor can assess language before issuing CAS.

Genuine Student - ST 5.1. The applicant must be a genuine student.

- Interviews may be used to check sponsorship documentation and to reject CAS and therefore application – *R (Global Vision College Ltd) v SSHD [2014] EWCA Civ 659.*
- Common law principles of procedural fairness apply to ECO decision- making process, including interviews - *R (on the application of Mushtaq) v ECO Islamabad, Pakistan [2015] UKUT 00224.*

Leave granted

- If successful will be granted leave to enter for the period of his course plus an extra five months as it is a three year degree, one month before the course and four months at the end of the course.

Discussion of relevant caselaw:

- *R (Global Vision College Ltd) v SSHD [2014] EWCA;*
- *Cov 659, R (on the application of Mushtaq)v ECO Islamabad, Pakistan [2015] UKUT;*
- *00224, R (on the application of Hazret Kose) v SSHD [2011] EWHC 5294 (admin).*

Question 2b	8 marks
Attempts too limited to provide feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none">• All educational establishments that wish to sponsor international students must have a student sponsor licence.• Sponsor must obtain a sponsorship licence from the Home Office.• Once a licence is obtained the educational provider will be added to the register of sponsors on the gov.uk website.• Will need to check a sponsor still has a student sponsor licence if been granted in past.• Late applications or failure of HO inspection can lead to a zero CAS allocation.• Type of institution and the status of licence can affect an application under either student route and the permission granted.• Can have licence revoked if do not comply with duties.• General Duties:• Responsible for students from when assign a CAS to when leaves UK or transfers to another sponsor.• Must act honestly in all dealings with the Home Office – responsible for sponsored students including compliance with course and leave requirements.• Must co-operate with the Home Office in any requests for site visits particularly with regard to immigration law breaches.• Record Keeping duties:<ul style="list-style-type: none">○ Keep copies of students' passports.○ Keep copy of UK Immigration status document.○ Keep copy of Biometric Residence Permit (BRP).○ Keep up to date contact details of student.• Reporting Duties• Must inform Home Office if student:<ul style="list-style-type: none">○ Does not enrol for their course.○ Does not maintain contact – misses 10 expected contacts without sponsor's permission.○ If have stopped sponsorship for other reasons, e.g. changed to different category of PBS that does not need sponsor or has finished course early.○ If significant change in circumstances of student or education provider. e.g. student changed course or provider stopped trading.	

Question 3a	20 marks
Attempts too limited to provide feedback.	
Suggested Points for Response:	
<p>Responses should include:</p> <ul style="list-style-type: none"> • Burden and standard of proof in asylum cases • Discussion of the definition of a refugee at Article 1A of the Refugee Convention and application to the facts with reference to relevant caselaw: • Well-founded fear - s32 NBA 2022. • Subjective fear – fears FGM on return. • Objectively well founded as still highly prevalent despite law in place. • Analysis of evidence in favour of HO and in favour of asylum seeker. • Burden and standard of proof – apply section 32 NBA – must prove characteristic on balance of probabilities and reasonable likelihood of persecution. • Persecution – s31 NBA - sufficiently serious single act of FGM. • Lack of Protection – non state agents but without effective state protection. • <u>Horvath [2000] UKHL 37</u>– not an effective and functional system of criminal justice in place to prevent FGM. • Convention reason – particular social group – woman under 65 from an ethnic group practising FGM – <u>P and M [2004] EWCA Civ 1640</u>, <u>Fornah [2006] UKHL 46</u>, <u>K and Others [2013] UKUT 00062</u>. Unable/unwilling to avail themselves of protection. • Internal relocation – raised here by Home Office. <ul style="list-style-type: none"> - Not a viable option as ethnic groups interspersed throughout the country (<u>K and Others [2013] UKUT 00062</u>). - Unreasonable/unduly as single woman in a society that discriminates against women without a support network – <u>Robinson [1997] 3 WLR 1162</u>; <u>Januzi v Secretary of State for the Home Department [2006] 2 AC 426</u>; <u>Al Jaff [2002] UKIAT 05271</u>/ <u>Jasim [2006] EWCA Civ 342 CA</u>. • Discussion of evidence that will assist to establish risk on return (including objective evidence). • Reference to relevant statutory provisions, immigration rules and cases. • Reference to case law may include: <u>Horvath [2000] UKHL 37</u>; <u>Shah and Islam (1999)</u> <u>Karanakaran (2000)</u>, <u>Ravichandran (1995)</u>, <u>P and M [2004] EWCA Civ 1640</u>, <u>Fornah [2006] UKHL 46</u>, <u>K and Others [2013] UKUT 00062</u>; <u>Robinson [1997] 3 WLR 1162</u>; <u>Januzi v Secretary of State for the Home Department [2006] 2 AC 426</u>; <u>Al Jaff [2002] UKIAT 05271</u>/ <u>Jasim [2006] EWCA Civ 342 CA</u>. • Statutory provisions relating to the definition of a refugee could be applied – NBA 2022, s31-s35. 	

Question 3b	5 marks
Attempts too limited to provide feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none"> • Recognition has alternative argument that would be a breach of Article 3 ECHR if applicant faces FGM on return. • Discussion of definitions of torture, inhuman treatment, and degrading treatment and application to scenario. FGM likely to be torture but meets all three definitions. • Recognition of lower standard of proof in human rights cases. • Reference to relevant case law may include: <i>Ireland v UK</i> (App. no. 5310/71), <i>Soering v UK</i> (App. no. 14038/88), <i>Chahal v UK</i> (App. no. 22414/93), <i>Selmouni v France</i> [1999] 29 EHRR 403.; <i>Kacaj</i> [2001] INLR 354. 	

Question 4	25 marks
Attempts too limited to provide feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none"> • Bela should be advised to apply for a standard visitor's visa by completing the online application process. She would need to book an appointment at a visa application centre where her fingerprints and photographs will be taken. • As part of the online application process, she would also be expected to pay the relevant fees and provide a valid travel document. • The standard visitor visa replaced the following short-term visas family visitor visa, general visitor visa, child visitor visa, business visitor visa, including visas for academics, doctors and dentists, sports visitor visa, entertainer visitor visa, prospective entrepreneur visa, private medical treatment visitor visa and approved destination status (ADS) visa. • Visitor is defined in the Introduction to Appendix V Immigration Rules as: <ul style="list-style-type: none"> ○ 'A visitor is a person who is coming to the UK, usually for up to six months, for a temporary purpose, for example as a tourist, to visit friends or family or to carry out a business activity.' • Bela meets this definition as she is coming for a temporary purpose, wishing to stay in the UK for 6 months. • There are the core requirements prescribed under the Immigration <u>Rules (V4.2 – V4.10)</u>. Applicants applying for a standard visit visa must show evidence that: <ul style="list-style-type: none"> ○ They will leave the UK at the end of their visit - This may be questioned by the UKVI in Bela's case as she has strong family ties to the UK, and less ties in India due to not seeing her family in India as much. ○ They are genuinely seeking entry for the permitted purposes – again the UKVI may question this as she lived with the family before and it may be thought she will want to stay. ○ However, she has returned home on a previous visit visa so has a good immigration history. ○ They will not undertake prohibited activities – nothing to indicate this will happen on the facts. ○ They have sufficient funds to cover all reasonable costs in relation to their visit without working or accessing public funds. This includes: <ul style="list-style-type: none"> ○ Funding the cost of the return or onward journey, ○ Any costs relating to dependants, and ○ the cost of planned activities such as private medical treatment. ○ Bela has sufficient funds for her visit. • Prohibited activities, including: <ul style="list-style-type: none"> ○ (a) Taking employment in the UK; ○ (b) Doing work for an organisation or business in the UK; 	

- (c) Establishing or running a business as a self-employed person;
- (d) Doing a work placement or internship;
- (e) Direct selling to the public;
- (f) Providing goods and services.
- There is no indication that Bela would undertake any of these activities.

Responses may include discussion of relevant case law:

- Mostafa (Article 8 in entry clearance) [2015] UKUT 00112 (IAC)- family life and visit visas.
- Adjei (visit visas – Article 8) [2015] UKUT 0261 (IAC) – discussion of family life;
- Kaur (visit appeals; Article 8) [2015] UKUT 00487 (IAC) – discusses intention to leave at end of visit. Similar facts but can be distinguished as had not returned in past on previous visit.
- Students can achieve credit for other cases discussed appropriately in the context of visit visas.