



CHIEF EXAMINER REPORT

January 2025

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 2025 examinations.

The 'suggested points for responses' sections set 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.

Only two candidates sat the exam.

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 1 – application for registration under s.1(4) BNA 1981. 2 – application for registration under s.1(3) BNA 1981. 3 – application under s.3(1A) Good character requirements apply to all registration applications where the applicant is over the age of 10. <i>TN (Afghanistan) v SSHD</i> [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. <i>R (Hiri) v SSHD</i> [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. <i>R (DC) v SSHD</i> [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. 	

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"> ○ <u><i>El Kott, Abed El Karemand others v Bevandorlasies Allampolqarsaqi Hivatal</i></u> [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) – <p>“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.”</p> • <u><i>KK and others (nationality: North Korea) CG</i></u> [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. • <u><i>HA (Article 24 QD) Palestinian Territories</i></u> [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.:
 - KJ (Sri Lanka) v SSHD [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.
 - Al-Sirri v SSHD [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.

Discussion of relevant case law, e.g:

- 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.

Question 3a	15 marks
Attempts too limited to provide feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none"> • 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: <p>50 points for showing all five of following:</p> <ul style="list-style-type: none"> • Confirmation of Acceptance for Studies- • Course requirement • Approved qualification requirement • Level of study requirement • Place of study requirement <p><u>Confirmation of Acceptance for Studies</u></p> <ul style="list-style-type: none"> • 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. <p><u>Course Requirement</u></p> <ul style="list-style-type: none"> • 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. <p><u>Approved qualification requirement ST 9.1 (b)</u></p> <ul style="list-style-type: none"> • As the course of study is awarded by a UK recognised body – University of mid Wales would need to satisfy this requirement. <p><u>Level of Study - ST 10.2.</u></p> <ul style="list-style-type: none"> • 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). <p><u>Place of Study - ST 11.1.</u></p> <ul style="list-style-type: none"> • 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. <p><u>Maintenance –</u></p> <ul style="list-style-type: none"> • 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. Demonstrate minimum B2 level

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.

Question 3b	10 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. <p>General Duties:</p> <ul style="list-style-type: none"> • 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. <p>Record Keeping duties:</p> <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. <p>Reporting Duties</p> <ul style="list-style-type: none"> • 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. ○ If any suspicions student is breaking conditions of permission to stay. 	

Question 4a	10 marks
Attempts too limited to provide feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none"> • Discussion of grounds for deportation under s.3(5)(a) and s.3(6) IA 1971. • Discussion of meaning of “conducive to the public good and relevant caselaw. • Discussion of automatic deportation under s.32 UK Borders Act 2007. • relevant caselaw may include: <i>N (Kenya) v SSHD</i> [2004] EWCA, <i>AS (Pakistan) v SSHD</i> [2008] EWCA Civ 1118, <i>AL (Jamaica) v SSHD</i> [2008] EWCA Civ 482, <i>R v Kluxen</i> [2010] 	

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"> 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) Unable/unwilling to avail themselves of protection Internal relocation (s.35) Discussion of women as a particular social group and how this may be applied to the current circumstances due to the social inferior position of women in the society – apply <i>Shah and Islam</i> [1999]. 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 	

Question 2a	10 marks
Attempts too limited to provide feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none"> 1Application Based on Family Life as a Parent (Under Appendix FM) Under Appendix FM of the UK Immigration Rules, a person can apply for leave to remain as a parent if: They have a genuine and subsisting parental relationship with a British child (Sandy is British through Karen). The child is under 18 and lives in the UK. They have a primary role in the child's upbringing, with evidence of direct parental responsibility. It would be unreasonable for the child to leave the UK or to continue without the parent in the UK (Article 8 rights of Peter, Karen and Sandy) Peter meets the criteria as he is the primary carer for Sandy, a British child. Given Karen's terminal illness and absence, Sandy's dependency on Peter strengthens his case. Application: FLR(FP) – this is the form used for applications under family life as a parent. Requirements to Prove: Peter needs to provide evidence of his parental responsibility, his relationship with Sandy, and Karen's health status (which makes his role as 's primary carer critical). He should also include evidence of his residence and his daily activities relating to Sandy, for example collecting her from school, attending parents evening, reading to her, cooking her, she may have special needs etc and taking her to see her terminal mother Karen weekly, as well as supporting her on a emotional level with the possible loss of her mother. 	

Question 2b	15 marks
Attempts too limited to provide feedback.	
Suggested Points for Response:	
<p>1. Article 8 ECHR: Right to Family Life</p> <ul style="list-style-type: none"> • - Peter can argue that removing him from the UK violates his and Sandy's right to family life under Article 8 ECHR. Specifically, he can submit that his forced departure would significantly disrupt Sandy's stable environment, given that he is her primary carer in the absence of her mother. • - <i>ZH (Tanzania) v Secretary of State for the Home Department</i> (2011) — The Supreme Court emphasized the best interests of the child in immigration cases, especially where the child is a British citizen. It ruled that a child's best interests are a primary consideration and that removal of a parent may not be proportionate if it significantly affects those interests. • The principles from <i>ZH (Tanzania)</i> strongly support Peter's argument that his removal would have an adverse impact on Sandy, making his removal disproportionate. <p>2. Section 117B of the Nationality, Immigration and Asylum Act 2002</p> <ul style="list-style-type: none"> • -Section 117B provides statutory guidance for considering the public interest in Article 8 cases. It outlines factors that weigh against granting leave, such as the applicant's ability to integrate, financial independence, and lawful presence in the UK. • -Section 117B(6) states that where a person has a "genuine and subsisting parental relationship" with a qualifying child (in this case, Sandy, who is British), and it would be unreasonable to expect the child to leave the UK, the public interest does not require the applicant's removal. • Since Peter is the sole primary carer for Sandy, it would be unreasonable for her to leave the UK, meaning that removal would not be justified under Section 117B(6). <p>3. The Zambrano Principle (C-34/09, <i>Zambrano v Office national de l'emploi</i>)</p> <ul style="list-style-type: none"> • -In <i>Zambrano</i>, the European Court of Justice (ECJ) held that an EU national child has the right to reside in their home country without the risk of being forced to leave due to a parent's immigration status. This principle was designed to prevent a situation where a British child (Sandy) would effectively be forced to leave the UK if her non-British parent (Peter) were removed. • -Sandy would most likely have to leave the UK if Peter were removed, as she would not have anyone else to care for her due to her mother's terminal illness. Peter could argue that removing him would violate the <i>Zambrano</i> principle, as it would indirectly remove a British citizen from their home country. • 4. Section 55 of the Borders, Citizenship and Immigration Act 2009 (Duty to Safeguard and Promote the Welfare of Children) • -Section 55 requires the Secretary of State to take into account the best interests of the child in immigration matters. In <i>ZH (Tanzania)</i>, the court highlighted the importance of considering this duty in decisions that affect children. • -Section 55 places a statutory duty on the Secretary of State to consider Sandy's best interests. Removing Peter would go against these best interests, especially with Karen's terminal illness leaving Sandy solely dependent on him. • Possible Challenges: • Administrative Review or Appeal Based on Article 8 ECHR • If refused, Peter may seek an appeal on human rights grounds, arguing that his removal would disproportionately harm Sandy's right to family life under Article 8. 	

- Judicial Review Based on Procedural Fairness: If there is no appeal right or if an appeal is unsuccessful, Peter could seek judicial review, focusing on whether the decision was legally correct, fairly reached, and compliant with human rights obligations, especially under ZH (Tanzania) and Section 55.

Question 3	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. Would therefore be 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. • A reasoned conclusion bringing together the above arguments. 	

Question 4a	10 marks
Attempts too limited to provide feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none"> • An understanding of the definition of a CUKC and that those CUKC's who were present and settled on the coming into force of IA 1971 on 1st January 1973 obtained the right of abode • An understanding that the right of abode is a statutory right that a person either does or does not have. • An understanding that s.11 BNA 1981 gave all CUKC persons with the right of abode automatic British citizenship on coming into force on 1st January 1983 • Discussion of the burden of proof under s.3(8) IA 1971 and evidence needed to establish right of abode/British citizenship • Discussion of relevant caselaw 	

Question 4b	15 marks
Attempts too limited to provide feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none"> • Awareness of "Windrush" cases and the existence of the Windrush Home Office taskforce • Reasoned discussion of the following options: • Applying for a British passport to evidence status • Applying for a certificate of entitlement to evidence status • Evidence that may be used to support Brinder's status • Remedies in case of refusal, e.g.- internal review, judicial review, human rights application/appeal etc. • More detailed, relevant discussion of Windrush casework • Relevant discussion of enforcement action • Discussion of any relevant caselaw 	