



CHIEF EXAMINER REPORT

JUNE 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 June 2024 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.

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 1a	15 marks
Attempts too limited to provide feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none">• Discussion of human rights applications outside the immigration rules on the grounds of Article 3.• Discussion of caselaw related to Article 3 and medical treatment e.g <i>D v UK</i>, <i>N v SSHD</i> and <i>N v UK</i>, <i>Paposhvili v Belgium</i>, <i>EA and Others</i> (2017) AM (Zimbabwe) (UKSC), AM (Art 3; health cases) Zimbabwe [2022] UKUT 131 (IAC)• Discussion of caselaw related to prison conditions such as <i>Elashmawy v Court of Brescia, Italy & Ors</i> [2015] EWHC 28 (Admin); <i>Peers v Greece</i> (2001) 33 EHRR 51 <i>Kalashnikov v Russia</i> (2003) 36 EHRR 34 etc.• Good students may identify the different standards of proof between Article 3 ECHR and the new standard of proof for asylum claims therefore easier to show a real risk (<i>Kacaj</i>) for Article 3.	

Question 1b	10 marks
Attempts too limited to provide feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none">• Discussion of the Refugee Qualification Regulations, paragraph 339C immigration rules and other relevant legal provisions.• Features of a grant of HP.• Relevant caselaw may include: <i>Elgafaji</i> [2009] EUECJ C-465/07, <i>QD (Iraq) v SSHD</i> [2009] EWCA Civ 620, <i>GS (Article 15(c): indiscriminate violence) Afghanistan CG</i> [2009] UKAIT 44, <i>HM and others (Article 15(c)) Iraq CG</i> [2010] UKUT 331 (IAC)	

Question 2	25 marks
Attempts too limited to provide feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none"> • Requirements for naturalisation as a British citizen in s.6(1) (persons not married to British nationals, s.6(2) (persons married to British nationals) and Sch. 1 British Nationality Act 1981. • Presence in the UK on the date five years preceding the date of the application. • Presence in the UK for a 5-year period prior to the application. • No more absence from the UK than 450 days over the 5-year period and 90 days in the 12 months preceding the application under s.6(1) (270 days over a 3-year period and 90 days in the 12 months preceding the application under s.6(2).) • No immigration restrictions on period he may remain in the UK for a period of 12 months. • No breach of immigration laws since ILR grant. • Applicant must intend to make the United Kingdom their main home. • Knowledge of language and life (KOLL) – this is usually a mandatory requirement if under 65. • Minimum age 18 years of age, as only adults can naturalise as British nationals. • Good character requirement. 	

Question 3	25 marks
Attempts too limited to provide feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none"> • Discussion of Sch. 10 Immigration Act 2016 as it relates to bail granted by SSHD, including: <ul style="list-style-type: none"> ○ Bail conditions ○ Relevant factors ○ Financial condition ○ Accommodation ○ Breach of bail conditions ○ Specific vulnerabilities that may increase the likelihood of bail being granted • Relevant caselaw. • Concept of “immigration bail” now replaces all previous terminology such as “temporary admission” and “temporary release” • A reasoned conclusion 	

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 4b	15 marks
Attempts too limited to provide feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none"> • Discussion of statutory provisions – particularly s.98B and s.117C-D NIAA 2002 (IA 2014), exemption from deportation under s.7 IA 1971 and exceptions under s.33 UKBA 2007. • Discussion of relevant immigration rules and their application, particularly paragraphs A398-399C. • Discussion of relevant human rights principles and caselaw. • Discussion of caselaw could include: <i>KO (Nigeria) v SSHD</i> [2018] UKSC 53, <i>SSHD v PG (Jamaica)</i> [2019] EWCA Civ 1213, <i>R (Kiarie) v SSHD</i> [2017] UKSC 42, <i>MF (Nigeria) v SSHD</i> [2013] EWCA Civ 1192, <i>SSHD v AQ (Nigeria)</i> [2015] 	

Section B

Question 1	25 marks
Attempts too limited to provide feedback.	
Suggested Points for Response:	
Juan: <ul style="list-style-type: none">• Discussion of requirements of Appendix Student including information to be included on CAS, reference to Appendix A and paragraph 254ZV.• Note cannot switch to being a student in the UK and must return and apply for entry clearance.• Financial requirements – note that insufficient at present and parents will need to put money in account before application to satisfy onerous maintenance requirement.• English language ability.• Ability to work 20 hours a week during term-time and unlimited during holidays.• Relevant caselaw.	
Manuel: <ul style="list-style-type: none">• Discussion of visitor requirements of Appendix V.• Genuine intention to visit.• Leave at the end of the visit.• Temporary purposes only – 6 months maximum leave in most cases.• Adequate accommodation and maintenance – be able to fund return trip.	

Question 2a	20 marks
Attempts too limited to provide feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none">• Detailed discussion of the relevant provisions of Appendix FM and Appendix FM SE, including:<ul style="list-style-type: none">○ Suitability requirements.○ Definition of a partner in Gen 1.2.○ Need for 2 years cohabitation as unmarried couples therefore would need to resume cohabitation and apply or remain as spouse if get married.○ Status of sponsor.○ Age and no prohibited relationship requirements.○ Genuine and subsisting relationship – Home Office guidance will account for previous immigration history.○ Previous marriage may be detrimental but 11 years ago and entered for work since that time.○ Previous relationship breakdown – divorce certificate needed if getting married.○ Intention to live together permanently.○ Financial requirements – met – detail salaried employment requirements in Appendix FM SE.○ Both salaries relevant as leave to remain.○ Accommodation – adequate on the facts	

Question 2b	5 marks
Attempts too limited to provide feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none"> • Appendix FM – leave granted for spouses or unmarried couples – 2 years 6 months then renew for same period. • After 5 years ILR. • After a further year can apply for British citizenship unless they do marry then can do so immediately after ILR. 	

Question 3a	18 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 (NBA) to introduce two stages with different standards of proof in assessing whether can qualify as a refugee. • Balance of probabilities for characteristic and past persecution /real risk of persecution in future– s.32 NBA 2022. • 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 NBA • Discussion of political opinion as a convention reason and broad application. • Discussion of credibility with reference to statutory provisions and caselaw – Article 4 (5) RQD genuine effort to substantiate application, section 8 AITCA considerations. • Discussion of evidence that will assist to establish risk on return (including objective evidence) • Reference to relevant statutory provisions, immigration rules and cases 	

Question 3b	7 marks
Attempts too limited to provide feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none"> • Application process and other practical considerations. • Other relevant case law (e.g. <i>Elashmawy v Court of Brescia, Italy & Ors</i> [2015] EWHC 28 (Admin); <i>Peers v Greece</i> (2001) 33 EHRR 51 <i>Kalashnikov v Russia</i> (2003) 36 EHRR 34 etc. 	

Question 4	25 marks
Attempts too limited to provide feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none"> • Discussion of Global Talent category for Saanvi. • Needs to be either a recognised leader in for have potential talent to lead to this - Saanvi has this talent as she has written world leading papers and is internationally recognised. • The 70 points she needs for attributes will be from the relevant endorsement from Designated Competent Body – British Academy. • Two stage process - apply for an endorsement on the stage 1 form on the gov.UK with a fee of £524 at this stage. • The British Academy will then advise on whether the endorsement criteria are met – likely to be met here given her profile. • She will then need a valid approval letter from the Home Office for the Designated Competent Body (DCB) endorsement, granted no more than three months before the application for EC or LTR. • Once she has received the endorsement, she must make the application online with a further fee of £192. • Limited leave to remain_will be granted initially for a period of up to 5 years per application– G.T 7.1. • Conditions – no access to public funds, can work other than as a professional sports person, study permitted. • Can apply to extend stay if earned money in UK in the field for which she was endorsed, her endorsement letter issued by the Home Office has not been withdrawn and the endorsing body is still approved by the Home Office at the date of the decision. • She will be entitled to apply for settlement after 3 years as her endorsement is by the British academy (GT 11.1a). • Discussion of entry under skilled worker route for Imran. • Needs to be sponsored for this route so hospital will need sponsor licence and to comply with requirements for skilled worker sponsors. • Allocation of points for sponsorship (SW 5.1-5.7) -20 points, • Appropriate skill level (SW 6.1-6.5) - 20 points. • English language skills (SW 7.1-7.3) 10 points. • 20 tradeable points also required. • Healthcare worker so 20 tradeable points as on shortage occupation list. 	