

CHIEF EXAMINER COMMENTS WITH SUGGESTED POINTS FOR RESPONSES

JANUARY 2023

LEVEL 6 UNIT 8 – IMMIGRATION LAW

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 January 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

9 candidates sat the January exam and performance overall was good.

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
- Clear evidence of relevant knowledge and wider reading/research
- Understanding of practical recent developments of the law in this area

Failures were due to:

- Inadequate reference to relevant legal provisions, particularly caselaw.
- Insufficient revision of key areas leading to superficial, inadequate answers
- Reliance on out-of-date law resulting in answering on the wrong legal basis.
- Answers that were far too short to gain sufficient marks, particularly in the 25-mark questions.

The unit specification performed as expected. Candidates should expect to cover all aspects of a particular learning outcome in their revision if intending to answer a question on that topic, in particular caselaw. Failure to do this was a cause of poor performance in this exam session. Candidates should pay particular attention to areas of the unit specification that are updated in the annual update, due to the fast-moving nature of Immigration Law.

CANDIDATE PERFORMANCE FOR EACH QUESTION

The marking of the scripts was undertaken by the Chief Examiner with reference to the agreed mark scheme and grade descriptors. The standard of scripts was mixed across the small cohort.

Because of the small cohort of 9 candidates in total, it is difficult to assess which centres performed well.

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 mistakes.

There was a broad range of performance across the cohort, with some candidates able to achieve distinction and merit grades.

The paper covered key areas across a broad range of the unit specification including questions on asylum, deportation, immigration, nationality and human rights law. The paper covered 80% of the unit specification which is available to all candidates and should form the basis of their preparatory work for the exam.

The candidates were required to answer 4 questions including at least one question from section A and at least one question from section B. Some candidates failed to adhere to this requirement.

Section A

Question 1 – Ukrainian humanitarian visa schemes. This question was answered by only one candidate and was answered very well. This recent development in the law was discussed well.

Question 2 – student visas. This question was answered well with all candidates being able to identify most of the relevant statutory provisions. Some of the answers lacked discussion of case law.

Question 3 – Human rights medical cases. This question was answered by only one candidate but was answered well with relevant issues identified and some appropriate discussion of caselaw.

Question 4a – Deportation ground(s). This question was generally answered well. All candidates identified relevant statutory provisions and some candidates were able to discuss relevant caselaw.

Question 4b – Resisting deportation based on family life. Answers to this question were more mixed. Some candidates provided answers covering a broad scope of statutory and other provisions,



including caselaw and scored higher marks. Some candidates failed to demonstrate a passable level of knowledge.

Section B

Question 1 – Registration as British and private life applications for children. One candidate answered this question extremely well and achieved a high mark, including discussion of recent changes in Appendix private life relevant to the children in the scenario. The other candidates provided mixed answers.

Question 2a – Asylum and definition of a refugee. Both parts of this question required knowledge of recent developments in the law brought about by the Nationality and Borders Act. Candidates who answered parts a and b of this question displayed a passable level of knowledge. Candidates should familiarise themselves with the changes brought in by this Act.

Question 2b – Impact of new Nationality and Borders Act provisions. See above (part a)

Question 3 – EUSS (family permit). One candidate provided an excellent answer to this question, but the other answers provided were poor. Some answers wrongly discounted a route under the EUSS and others discussed inappropriate alternatives to the scenario given. Candidates should ensure that they are aware of all the elements of the EU Settlement Scheme.

Question 4a – “Windrush scenario”. This question was answered quite well by candidates who demonstrated an understanding of CUKC status and the difficulties faced by those impacted by “the Windrush Scandal”.

Question 4b – “Windrush scenario”. See above (part a). Answers to this questions were better in this round of assessment than has been the case when a similar scenario and questions have been posed in previous papers, which is positive.

SUGGESTED POINTS FOR RESPONSE**JANUARY 2023****LEVEL 6 UNIT 8 – IMMIGRATION LAW**

Question Number	Suggested Points for Responses	Marks (Max)
1	<p>An answer which consists of a reasoned evaluation of relevant issues supported by evidence and legal authority.</p> <p>Marks should be distributed in the following areas:</p> <ul style="list-style-type: none"> • Correct identification of relevant Case Law and Statutory provisions • Discussion around the above with detailed arguments, for and against being evidenced • A reasoned conclusion which is supported with evidence • Response is appropriately structured <p>Responses should include:</p> <ul style="list-style-type: none"> • Awareness of the following: • Homes for Ukraine scheme (sponsorship, conditions attached to leave) • Ukraine family scheme (sponsorship, conditions attached to leave) • Ukraine Extension scheme (conditions and eligibility) • Concessions to the rules for Ukrainians on work and study visas (conditions and eligibility) • HO guidance on Ukrainian asylum claims based on avoiding military service. • Discussion of the various features of the schemes <p>Responses may include:</p> <ul style="list-style-type: none"> • Reference to PK and OS (Basic Rules of Human Conduct) Ukraine CG [2020] UKUT 314 (IAC) • Discussion of the provisions of any of the above in greater detail than expected. • Other relevant discussion. 	25
Question 1 total:25 marks		
2	<p>An answer which consists of a reasoned evaluation of relevant issues supported by evidence and legal authority.</p> <p>Marks should be distributed in the following areas:</p> <ul style="list-style-type: none"> • Correct identification of relevant case Law and statutory provisions 	25



	<ul style="list-style-type: none"> • Discussion around the above with detailed arguments, for and against being evidenced • A reasoned conclusion which is supported with evidence • Response is appropriately structured <p>Responses should include:</p> <ul style="list-style-type: none"> • Discussion of the requirements of Appendix Student, particularly the financial requirements (currently one year of course fees plus 9 months maintenance at £1334 per month if studying in London). • Discussion of course requirement, approved qualification requirement, level of study, place of study and level of study requirements. • Discussion of the Confirmation of Acceptance of Studies document and its contents. • Discussion of different ways in which the English language requirement will be met including sponsor assessment and previously met. • Discussion of genuine student requirement and account of immigration history, education history, personal and financial circumstances etc.in assessing credibility. • Discussion of likely period of leave to be granted and the conditions that could be attached to the grant of leave • 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. • Discussion of relevant caselaw. <p>Response may include:</p> <ul style="list-style-type: none"> • Discussion of relevant caselaw could include: <i>R (Hazret Kose) v SSHD</i> [2011] EWHC 5294, <i>R (Global Vision College Ltd) v SSHD</i> [2014] EWCA Civ 659, <i>R (Mushtaq) v ECO Islamabad, Pakistan</i> [2015] UKUT 00224 	
	Question 2 total:25 marks	
3	<p>An answer which consists of a reasoned evaluation of relevant issues supported by evidence and legal authority.</p> <p>Marks should be distributed in the following areas:</p> <ul style="list-style-type: none"> • Correct identification of relevant case Law and statutory provisions • Discussion around the above with detailed arguments, for and against being evidenced • A reasoned conclusion which is supported with evidence 	25

	<ul style="list-style-type: none"> • Response is appropriately structured <p>Responses should include:</p> <ul style="list-style-type: none"> • Discussion of human rights applications outside the immigration rules on the grounds of Article 3 • Discussion of human rights applications outside the rules on the grounds of Article 8 • Discussion of relevant caselaw <p>Responses may include:</p> <ul style="list-style-type: none"> • Discussion of caselaw related to Article 3 e.g D v UK, Nv SSHD and N v UK, <u>Paposhvili v Belgium, EA and Others (2017) AM (Zimbabwe) (UKSC)</u>, AM (Art 3; health cases) Zimbabwe [2022] UKUT 131 (IAC) • Discussion of caselaw related to Article 8 e.g Razgar. Huang, SL (St Lucia) (2018), JN (Uganda), <u>Bensaid v UK, GS and EO (India)</u> • Discussion of application procedure • Additional relevant discussion. • Any of the above discussed in greater detail than anticipated may attract additional marks. 	
Question 3 Total:25 marks		
4	<p>An answer which consists of a reasoned evaluation of relevant issues supported by evidence and legal authority.</p> <p>Marks should be distributed in the following areas:</p> <ul style="list-style-type: none"> • Correct identification of relevant Case Law and Statutory provisions • Discussion around the above with detailed arguments, for and against being evidenced • Response is appropriately structured <p>Responses should include:</p> <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 • <p>Responses may include:</p> <ul style="list-style-type: none"> • Relevant caselaw may include: <u>N (Kenya) v SSHD [2004]</u> <u>EWCA, AS (Pakistan) v SSHD [2008]</u> <u>EWCA Civ 1118, AL (Jamaica) v SSHD [2008]</u> <u>EWCA civ 482, R v Kluxen [2010]</u> <u>EWCA crim 1081, Masih (deportation – public interest –</u> 	10

	<i>basic principles) Pakistan [2012] UKUT 00046, SSHD v Rehman [2001] UKHL 47, Chahal.</i>	
4(b)	<p>An answer which consists of a reasoned evaluation of relevant issues supported by evidence and legal authority. Marks should be distributed in the following areas:</p> <ul style="list-style-type: none"> • Correct identification of relevant case law and statutory provisions • Discussion around the above with detailed arguments, for and against being evidence • Response is appropriately structured <p>Responses should include:</p> <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 other relevant caselaw. <p>Responses could include:</p> <ul style="list-style-type: none"> • Discussion of caselaw could include: • Re: “unduly harsh” and “compelling circumstances” - <u>HA (Iraq) v SSHD [2022] UKSC 22, KO (Nigeria) v SSHD [2018] UKSC 53, SSHD v PG (Jamaica) [2019] EWCA Civ 1213, SSHD v AQ (Nigeria) [2015] EWCA Civ 250, Velasquez Taylor v SSHD [2015] EWCA Civ 845, Binaku (s.11 TCEA; s.117C NIAA; para. 399D) [2021] UKUT 34 (IAC)</u> • <u>Self-contained Article 8 assessment within the rules for unduly harsh - MK (section 55 – Tribunal options) Sierra Leone [2015] UKUT 223 (IAC) and NA (Pakistan) v Secretary of State for the Home Department [2016] EWCA Civ 662, MF (Nigeria) v SSHD [2013] EWCA Civ 1192,</u> • <u>Article 8 Private Life - Maslov v Austria (ECtHR) Kamara v SSHD [2016] EWCA Civ 813 and AS v Secretary of State for the Home Department [2017] EWCA Civ 1284 – on integration. CI Nigeria v SSHD [2019] EWCA Civ 2027– where been in Uk entire life.</u> <p>Rights of appeal - <u>R(Kiarie) v SSHD [2017] UKSC 42</u></p>	15
Question 4 total: 25 marks		

SECTION B

Question Number	Suggested Points for Responses	Marks (Max)
1	<p>An answer which consists of a reasoned evaluation of relevant issues supported by evidence and legal authority.</p> <p>Marks should be distributed in the following areas:</p> <ul style="list-style-type: none"> • Correct identification of relevant case law and statutory provisions • Detailed discussion of the above • A reasoned conclusion which is supported with evidence • Response is appropriately structured <p>Responses should include:</p> <ul style="list-style-type: none"> • Requirements of Appendix Private Life and EX 1 • Suitability requirements: Residence requirements for a child on the Private Life route at PL 3.1 • Concept of ‘reasonableness’ and relevant caselaw. • Evidential considerations to satisfy requirements under Appendix Private Life and/or EX1 • Appendix Private Life (and provisions under PL 13.1-13.3) with the possibility of immediate settlement Discussion of entitlement to register as British under s.1(4) British Nationality Act 1981 and relevant evidential considerations. • Discussion of the SSHD discretion to register a child as British under s.3(1) BNA 1981. • Discussion of good character and relevant caselaw. • Difference in LLTR under Appendix Private Life and immediate ability to remain permanently in the UK via registration as British. <p>Responses could include:</p> <ul style="list-style-type: none"> • Caselaw relevant to reasonableness might include, MT and ET (child’s best interests; ex tempore pilot) Nigeria [2018] UKUT 88 (IAC), PD and Others (Article 8: conjoined family claims) Sri Lanka [2016] UKUT 108 (IAC), <u>Zoumbas v Secretary of State for the Home Department</u> [2013] UKSC 74 • SSHD guidance on reasonableness. • Practical points such as application process, fee waivers, next steps, remedies following refusal. • Discussion of s.3(1) BNA 1981 (although this would not be the most appropriate application) • Discussion of Article 8 more broadly (e.g Hesham Ali 2-stage test and Razgar may attract some marks). 	25

	<ul style="list-style-type: none"> • Caselaw in respect of s.3(1) may include, <u>Genovese v Malta</u> (2012) (ECtHR), <u>R (Williams) v SSHD</u> (2015) EWHC • Caselaw in respect of good character may include, <u>TN (Afghanistan) v SSHD</u> [2015] UKSC 40, [2015] 1 WLR 3083, <u>R (Hiri) v SSHD</u> [2014] EWHC 254 (Admin) • Application process, availability of fee waivers for nationality applications involving minors, or other practical points. 	
	Question 1 total:25 marks	
Q2(a)	<p>An answer which consists of a reasoned evaluation of relevant issues supported by evidence and legal authority.</p> <p>Marks should be distributed in the following areas:</p> <ul style="list-style-type: none"> • Correct identification of relevant case law and statutory provisions • Discussion around the above with detailed arguments, for and against being evidenced • A reasoned conclusion which is supported with evidence • Response is appropriately structured <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) - Unable/unwilling to avail themselves of protection - Internal relocation (s.35) <p>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 Shah and Islam [1999].</p> • 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>	17

	<ul style="list-style-type: none"> • Reference to case law may include: <i>Sivakumaran (1987)</i>, <i>Rajendrakumar (1996)</i>, <i>Horvath (2000)</i>, <i>Shah and Islam (1999)</i>, <i>Karanakaran (2000)</i>, <i>Svasas (2002)</i>, <i>Montoya (2002)</i>, <i>Ravichandran (1995)</i>, <i>KS (Benefit of the doubt) (2014)</i> • Relevant application and procedure points 	
2(b)	<p>An answer which consists of a reasoned evaluation of relevant issues supported by evidence and legal authority.</p> <p>Marks should be distributed in the following areas:</p> <ul style="list-style-type: none"> • Correct identification of relevant legal authority • Discussion around the above with detailed arguments, for and against being evidenced <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 • 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 • Application to the facts <p>Responses may include:</p> <ul style="list-style-type: none"> • Challenging allocation to Group 2 (Temporary Refugee Permission to Stay) • More detailed knowledge in respect of any aspect of the above than is anticipated. • Any other relevant details within the scope of the question. 	8
	Question 2 total:25 marks	
3	<p>An answer which consists of a reasoned evaluation of relevant issues supported by evidence and legal authority.</p> <p>Marks should be distributed in the following areas:</p> <ul style="list-style-type: none"> • Correct identification of relevant case law and statutory provisions • Discussion around the above with detailed arguments, for and against being evidenced • A reasoned conclusion which is supported with evidence • Response is appropriately structured <p>Responses should include:</p> <ul style="list-style-type: none"> • Discussion of relevant provisions in Appendix EU – Family Permit section. i.e relevant EEA national sponsor, family applicant requirements. (FP3-FP8A) 	25

	<ul style="list-style-type: none"> • Understanding that initial entry will be with an EUSS family permit • Conditions attached to leave i.e. permission to work, study • Understanding that further applications will be necessary under the EUSS – i.e. for pre-settled status and settled status. • Discussion of dependency and evidential requirements • Application to the facts <p>Responses may include:</p> <ul style="list-style-type: none"> • Discussion of case law may include: <u>Reyes v Sweden</u> [2014] C-423/12 (CJEU), <u>Jia</u> [2007] C-1/05 (CJEU) on dependency. • Other relevant caselaw • Discussion of provisions in HO guidance • Practical issues e.g free of charge application, details of application procedure(s) etc • Any of the above discussed in greater detail than expected. • Other relevant discussion. 	
Question 3 total: 25 marks		
4(a)	<p>An answer which consists of a reasoned evaluation of relevant issues supported by evidence and legal authority.</p> <p>Marks should be distributed in the following areas:</p> <ul style="list-style-type: none"> • Correct identification of relevant case law and statutory provisions • Discussion around the above with detailed arguments, for and against being evidence • A reasoned conclusion which is supported with evidence • Response is appropriately structured <p>Responses should include:</p> <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 <p>Responses might include:</p>	10

	<ul style="list-style-type: none"> • Relevant caselaw could include: <i>Christodoulido v SSHD</i> [1985] Imm AR 179, <i>R (Miah) v SSHD</i> [2017] EWHC 2925 (admin) • More detailed, relevant discussion of statutory provisions. • More detailed, relevant discussion with regard to Ugandan CUKCs 	
4(b)	<p>An answer which consists of a reasoned evaluation of relevant issues supported by evidence and legal authority.</p> <p>Marks should be distributed in the following areas:</p> <ul style="list-style-type: none"> • Correct identification of relevant case Law and statutory provisions • Discussion around the above with detailed arguments, for and against being evidenced • Response is appropriately structured <p>Responses should include:</p> <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: <ul style="list-style-type: none"> - Applying for a British passport to evidence status - Applying for a certificate of entitlement to evidence status <ul style="list-style-type: none"> • Evidence that may be used to support Arjun’s status • Remedies in case of refusal e.g. Internal review, judicial review, human rights application/appeal etc. <p>Responses may include:</p> <ul style="list-style-type: none"> • More detailed, relevant discussion of Windrush casework • Relevant discussion of enforcement action • Discussion of any relevant caselaw 	15
	Question 4 total:25 marks	