CILEx CHARTERED INSTITUTE OF LEGAL EXECUTIVES

CHIEF EXAMINER COMMENTS WITH SUGGESTED ANSWERS

SEPTEMBER 2020

LEVEL 6 - UNIT 8 – IMMIGRATION LAW

Note to Candidates and Learning Centre Tutors:

The purpose of the suggested answers is to provide candidates and learning centre tutors with guidance as to the key points candidates should have included in their answers to the September 2020 examinations. The suggested answers set out a response that a good (merit/distinction) candidate would have provided. The suggested answers do not for all questions set out all the points which candidates may have included in their responses to the questions. Candidates will have received credit, where applicable, for other points not addressed by the suggested answers.

Candidates and learning centre tutors should review the suggested answers 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

The standard of scripts was mixed across the small cohort, with over half the candidates receiving fail grades. No candidates received merit or distinction grades.

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

There was a broad range of performance across the cohort, with some candidates able to achieve high pass grades.

There was an issue in respect of Section A Question 1 whereby no candidates had familiarised themselves with changes in the law that took place in Spring/Summer 2019 and which formed the basis for this question. Therefore, candidates who might otherwise have passed the exam or achieved a higher overall mark instead scored extremely low marks on this question as a result of this omission.

The paper covered key areas across a broad range of the unit specification including questions on asylum, bail, immigration, nationality and human rights and EU 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.

CANDIDATE PERFORMANCE FOR EACH QUESTION

Section A

Question 1

Business visas ("Tier 1") – this question was answered very badly. Only one candidate made reference to start up/innovator visa categories. Some marks were awarded for relevant content, but overall marks scored for this question were very low.

Question 2(a)

Ankara agreement (settlement) – this question was answered very badly. No candidates were able to describe the provision for settlement in any detail. Some candidates were able to score marks for displaying some knowledge of these provisions. Answers were also extremely short. Candidates must review the whole of a section of the unit specification when revising topics in order to make sure they can perform well in the exam across the whole topic should arise in the exam.

Question 2(b)

EU settlement – most candidates who answered this question provided adequate answers, which went some way to mitigating the poor level of knowledge displayed in part a) of this question. All candidates were able to provide relevant detail in respect of either the "old" system of permanent residence or the "new" system under the EU settlement scheme. The best performing candidates were able to provide relevant details of both systems.

Question 3

Humanitarian Protection – As very few candidates attempted this question, it is difficult to make general remarks. However, one candidate performed very well achieving a high mark. The other candidate was able to provide some relevant details and marks were awarded accordingly. Candidates need to ensure that they cover whole topics during the revision process. For example, a question about Humanitarian Protection may encompass any aspect of this including family reunion, international travel, exclusions etc.

Question 4

Nationality – This question was answered well by candidates. All candidates understood that deprivation was in issue and discussed this with differing degrees of relevance and detail. Most candidates understood that renouncement was also within the remit of the question. Nullification was also within the remit of the question and is included in the suggested answer. However, it was determined that a reasonable reading of the question could

have excluded consideration of nullification and therefore additional marks were made available for deprivation and renouncement content and no candidate suffered a detriment for failure to discuss nullification.

Section B

Question 1

Fiancé visa – this question was very popular and overall candidate responses were good. Almost all candidate identified that an application for a fiancé visa under Appendix FM was the most appropriate. Some candidates discussed why a marriage visitor visa would not be appropriate and received marks accordingly. There was overall good discussion of the requirements of Appendix FM.

Question 2(a)

Fresh claim for asylum – Most candidates identified that a fresh claim for asylum needed to be made and that there were specific requirements that needed to be met beyond what is required for a first asylum claim. Some candidates approached the question in the way that they would approach a question relating to a first asylum claim and were able to obtain some marks for this approach.

Question 2(b)

EX.1 application under Appendix FM – Most candidates identified the correct legal provisions and were able to provide some relevant analysis of the scenario. However, there was a lack of detail in most answers. Some candidates identified old legal provisions highlighting the need for candidates to maintain up-to-date knowledge of the course content and immigration law generally.

Question 3

Dublin convention and bail/detention – One candidate answered this question very well. Responses to this question were mixed. Some candidates grappled with the issue of Dublin in an acceptable way but failed to identify that the question also required consideration of bail and remedies. Several candidates failed to discuss the significance of the sister in the UK.

Question 4

Tier 4 – Overall, this question was answered well. There were varying degrees of detail provided in the answers. Some answers were too short, which limited the amount of marks that could be awarded. Those candidates who scored well provided comprehensive answers to the question set.

SECTION A

Question 1

Significant changes were made to the routes in which a non-EU migrant may set up or grow a business in the UK in Spring/Summer 2019. The graduate entrepreneur and entrepreneur routes closed to new applicants and two new routes opened up - start up visa and innovator visa.

New routes: start-up visa and innovator visa routes

The requirements for the two new routes introduced in 2019 are found in Appendix W of the immigration rules. Part W3 provides the general requirements applicable to both routes. Part W5 then provides the specific requirements relevant to a start-up visa, and Part W6 provides the specific requirements relevant to an innovator visa.

Under Part W3, applicants can apply for entry clearance or apply in-country. For example, it may be possible to switch from a Tier 1 (graduate entrepreneur) or Tier 2 visa. It may also be possible to switch from a Tier 4 visa or a visitor visa in limited circumstances.

The applicant will be subject to a credibility check to ensure that the applicant intends to set up the business stated, is in a realistic position to do so and will not use any grant of leave to pursue other work. In assessing credibility, decision makers will have account of the evidence submitted as well as the education, work and immigration history of the applicant.

Applicants must meet the specified English language requirement. They must provide one of the following: evidence of passing a secure English language test at B2 CEFR level, be a national of a majority English speaking country as listed, or have a degree taught in English from a Home Office approved country. If the applicant has previously demonstrated English language ability at this level in a previous immigration application, they may rely on this evidence again.

The applicant must show that they have sufficient funds to maintain themselves in the UK. Applicants must hold £945 in cash for themselves and for each dependent. The funds must have been held for at least 90 days in a personal bank or building society account. The applicant may provide one of the following forms of evidence – bank statements, building society account book, letter from the bank, letter from the Financial Conduct Authority in relation to money held in savings accounts, or a letter from an overseas regulated financial institution to confirm possession of the funds. The documents used to evidence the funds must confirm the name of the account holder and the account number, the financial institution's name and logo, that the funds have been present for the full 90 day period and outline any transactions made in the 90 day period. The documents must be dated. Bank statements must be on official headed paper. If they are electronic statements they must be stamped by the bank as confirmation of accuracy or

accompanied by a letter from the bank that confirms the accuracy of the statements.

Part W5 – specific requirements for a Start Up visa

The applicant requires endorsement and must provide a letter from an endorsing body listed on the gov.uk website. The endorsement letter must confirm the following: the endorsing body's name and contact details (for verification purposes), the applicant's reference number, the date of issue (which must be no more than three months prior to application), the applicant's name, date of birth, nationality and passport number, a short description of the planned business venture, confirmation that the applicant has not previously set up a business in the UK (unless they had previous leave granted in the graduate entrepreneur category) and confirmation that the endorsement criteria has been met.

The endorsement letter must confirm that criteria based on innovation, viability and scalability has been met. The business plan must be genuine and original, meeting new or existing market needs. The business plan must be able to be actioned by the applicant based on current or skills that are to be realistically obtained. The business plan must indicate significant planning, the chance of future job creation and market growth.

Part W6 – specific requirements for an Innovator visa

The requirements for an endorsement letter are the same as for a start-up visa, save that the endorsement criteria that must be confirmed is different. The relevant endorsement for an innovator visa is dependent on whether the business plan relates to a new business or continuing with a current business.

For a new business, the same criteria in terms of innovation, viability and scalability applies. However, in addition there is investment criteria for the new business. For an innovator visa, the endorsement letter must confirm that £50,000 is available to be invested or has been invested in the new business. Otherwise, it must state what proportion can be confirmed to be held to be invested or already invested. If the full amount has not been confirmed in the endorsement letter, other specified evidence must be provided under W6.5 to confirm that the remainder of the funds is available and will be invested in the business. Where multiple applications are being submitted for an "innovator team", £50,000 cash investment must be established for each member of the team. (W6.4)

Where endorsement is for the same/an existing business, the criteria under W6.6 applies. In these circumstances, the endorsement letter must confirm that the applicant's business is registered with Companies House and that they are personally listed as a director, that the business has made significant achievements in line with the original business plan, that the business is active and trading, that the business appears to be sustainable for at least 12 months, taking into account the financial information, and that the applicant is involved in the day-to-day running of the business.

With regard to all of the above routes, the applicant must not fall for refusal under the general grounds for refusal in Part 9 of the immigration rules. They also must not be in the UK without leave (unless paragraph 39E applies).

Further, when submitting an application for one of these routes paragraph 39B of the immigration rules indicates that where specified documents are stated as a requirement, only those documents will be accepted.

The Courts have repeatedly found that the Secretary of State for the Home Department is entitled to have an inflexible system of this kind where applicants have to accept the consequences of their own mistakes. For example, in Shahzad [2012] UKUT 81 (IAC), there was found to be no unfairness in the requirement of the Points-Based System that an applicant must submit all required evidence in order to demonstrate that they meet the rules. In Alam v Secretary of State for the Home Department [2012] EWCA Civ 960, it was stated that the immigration rules, policy guidance and application form make it clear that the submission of specified documents is mandatory and, if not produced, the application will be refused. It is a feature of the Points-Based System that predictability and certainty are more important than the exercise of discretion. In Mudiyanselage v Secretary of State for the Home Department [2018] EWCA Civ 65, it was found that there is no evidential flexibility in submission of specified documents for applications under the Points-Based System. In Harpreet Singh v Secretary of State for the Home Department [2018] EWCA Civ 2861, it was found that the Points-Based System system allows no opportunity to correct administrative mistakes at a later date.

Therefore, it is imperative that applicants fully appreciate the requirements that must be met when applying under these categories and submit the specified evidence in support of their applications.

Question 2(a)

"The Ankara Agreement" (properly known as the European Communities Association Agreement) was signed by the UK in 1973, allowing Turkish business persons preferential treatment to set up businesses in the UK. The agreement included a "standstill clause" under Article 41(1), which prevented any general tightening of immigration control from affecting those Turkish nationals who could benefit from the agreement. Under the agreement, Turkish business persons were initially able to apply for indefinite leave to remain in the UK after four years.

In the case of R (Aydogdu) v Secretary of State for the Home Department (Ankara Agreement – family members – settlement) [2017] UKUT 167 (IAC), it was found that Article 41(1) does not apply to settlement applications, which are outside of the scope of the Ankara Agreement. In Bektas Alagoz [2017] CSOH 27, a Scottish case, it was found that the effect of Article 41 does not extend to affect measures relating to settlement put in place since 1973.

As a result, a new appendix to the immigration rules was issued in respect of settlement for those in the UK under the ECAA/Ankara Agreement in March 2018 and has been regularly updated since – Appendix ECAA. This latest version provides a route to settlement after five years residence, unlike the initial Appendix. The new provisions under Appendix ECAA for settlement include;

Separate categories for Turkish workers and Turkish business people. In either category, the Turkish national must not have been outside of the UK for more than 180 days in any 12-month period or else they will fail to establish their continuous residence for five years (ECAA2.1). Twenty-eight

day periods of overstaying (or less) can be disregarded under para 39E when considering continuous residence and breaks in leave.

Indefinite leave for Turkish workers (ECAA Part 3) and Turkish business persons (ECAA Part 4)

Under ECAA 3.1, the relevant Turkish worker must have been lawfully and continuously resident in the UK for a period of five years in a combination of any of the following categories: Tier 2 (multiple), work permit holder or Turkish worker. Under ECAA 4.1, the Turkish business person must have been lawfully and continuously resident for a period of five years in a combination of any of the following categories: Tier 1 (entrepreneur) or Turkish business person. The most recent period of leave must have been as a Turkish worker/Turkish business person. The applicant must meet the English language requirement in Appendix KoLL including passing the Life in the UK test. The applicant must demonstrate that they have been able to support family members without recourse to public funds over the five-year period and not fall for refusal under the general grounds for refusal. Under ECAA part 4, The Turkish business person must also have a business that meets the requirements of ECAA4.2.

ECAA4.2 states that the Turkish business person must be in charge of one or more genuine businesses in the UK, the business relied on must be viable and the applicant must genuinely intend to continue operating the business relied upon.

Under ECAA4.3, the Secretary of State for the Home Department must be satisfied on the balance of probabilities that the requirements of 4.2 are met. They will take into account: the evidence submitted, the viability and credibility of the business including the source of investment funds, the financial accounts, the applicant's business activity and whether mandatory accreditations or insurance policies have been obtained.

Under ECAA4.4, the Secretary of State for the Home Department may request further evidence to assist making the decision and such evidence must be submitted within 28 days. If this is not provided the claim may be refused.

Question 2(b)

Since the European Communities Act 1972 received Royal Assent, and the UK joined the (then) European Community, nationals of the countries making up the European Economic Area have enjoyed preferential rights to live, work and study in the United Kingdom.

Provisions relating to remaining permanently in the UK as an EEA national - permanent residence – have been set out in the European Parliament and Council Directive 2004/38/EC of 29 April 2004. These have been transposed into UK domestic law via statutory instruments, most recently through the Immigration (European Economic Area) Regulations 2016 (I(EEA) Regulations).

Regulation 15(1) I (EEA) Regulations provides that permanent residence is acquired by an EEA national once they have lived in the UK for a period of five years as a a "qualified person." A qualified person is a person who is economically active, namely a worker, job-seeker, student, self-employed person or self-sufficient person (reg. 6(1)).

In Lawrie Blum (C-66/85), a worker was defined as a person who is employed for a period of time, in the provision of services for another, in return for remuneration. In D.M. Levin v Staatssecretaris van Justitie (C-53/81), it was determined that work must be genuine and effective, not marginal and ancillary. This was found to include part-time or low paid work. Self-employment must also fit this definition. In Jany C-268/99, it was found that self-employment must amount to independent economic activity where a person has freedom to choose the activity and working conditions Remuneration must be made directly to the self-employed person. In Commission v Belgium C-408/03, it was found that a self-sufficient person needs only to have the available resources to not become a burden on the state; the source of the funds is irrelevant and can come from a third party. In Commission v Italy (C-424/98), it was found that a member state is not permitted to require any specific documents to be provided by a student who states that they are self-sufficient. Further, there is no minimum income or minimum level of funds that must be held. The student must make a declaration that they have sufficient funds available to them.

A person may apply for a document certifying their right of permanent residence that evidences their status, but there is no requirement for a person with permanent residence must obtain such a document. In order to obtain a document certifying permanent residence, a form must be submitted to the Home Office, with appropriate evidence demonstrating presence in the UK and economic activity for the relevant five-year period. The five-year period relied upon can be any continuous period in which the EEA national has lived in the UK. There is no requirement for it to include the most recent period of residence.

Since the UK voted to leave the European Union in a referendum in June 2016, there has been no change to the rights and entitlements of EEA nationals living in the UK. The UK still remains a member of the European Union. It is therefore still possible to apply for permanent residence as stated above. However, in March 2019 the UK government rolled out the EU settlement scheme nationally. Administration of the scheme is set out in Appendix EU to the immigration rules.

Paragraph EU2 states that a successful applicant will be granted indefinite leave to remain or indefinite leave to enter. It also sets out requirements for a valid application to be made, states that the applicant must meet the eligibility requirements at EU11 and EU12 and that the applicant must not fall for refusal on suitability grounds set out at EU15 and EU16.

Paragraph EU9 sets out that in order for an application to be valid it must follow the required application procedure, contain the required ID and nationality evidence, contain the required proof of entitlement to apply from outside the UK (if applicable) and the required biometrics must be provided. EU10 provides that if this required evidence is not provided, the application will be rejected as invalid.

EU11 sets out seven eligibility conditions for consideration under the scheme, the first four of which are relevant to EEA nationals in the UK exercising treaty rights in their own right. Condition 1 allows for applications from EEA nationals who have already obtained a document certifying permanent residence in the UK. Condition 2 allows for applications from EEA nationals who are able to demonstrate that they already hold indefinite leave to remain. Condition 3

allows for applications from EEA nationals who are able to demonstrate five years continuous residence in the UK. Annex 1 indicates that continuous residence means no absences of longer than six months in any 12-month period, although a single period of up to 12 months absence is permitted for a valid reason, for example studying abroad, childbirth in a home country etc. There is no requirement to demonstrate that economic activity was being undertaken during this time. Condition 4 allows for applications from EEA nationals who have ceased activity, for example retired persons.

The application is intended to be an online process. EEA nationals may download an app to submit scanned identity documents (passport or national ID card, if they have a biometric chip), or attend at a Sopra Steria application centre to have their documents scanned. They may also send them by post. A photograph is also required with the application.

Initially, applicants need only provide their national insurance number in order to establish continuous residence, as the Home Office will undertake automated checks with HMRC and the Department of Work and Pensions. If continuous residence can be established automatically then the applicant will be granted "settled status" – which equates to indefinite leave to remain/enter. If the initial check does not establish continuous residence, the applicant will have a chance to submit other documents. Home Office guidance to caseworkers is to apply a flexible attitude towards alternative evidence and work with applicants to allow them to establish their residence for five years. If an applicant is unable to establish their residence for the required continuous five-year period they may then be granted "pre-settled status" – which equates to limited leave to remain, and they then may apply for settled status/indefinite leave to remain when eligible.

Every EU national will need to make an application to the settlement scheme by June 2021, as indicated by the UK's EU withdrawal agreement.

Question 3

Humanitarian Protection (HP) is a subsidiary form of protection and will only be considered where an applicant does not qualify for Refugee Status. There is no separate application process for Humanitarian Protection. If an asylum applicant does not qualify for Refugee Status, only then will consideration of a grant of HP be appropriate.

The legal framework on which a grant of Humanitarian Protection is based emanates from EU Directive2004/83/EC 29th April 2004 – "the Refugee Qualification Directive". This came into force on 10 October 2006.

Article 15 consists of paragraphs a), b) and c). Article 15(a) and Article 15(b) equate roughly to Article 2 (right to life) and Article 3 (prohibition on torture, inhuman and degrading treatment) of the European Convention on Human Rights (ECHR). Article 15(c) provides protection where there is "serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict."

Article 15 of the Refugee Qualification Directive has since been incorporated into paragraph 339C of the immigration rules. This paragraph states that: "Where there are substantial grounds for believing that a person on return to the country of return would be at real risk of suffering serious harm and is unable to obtain the protection of that country, the person should be granted

Humanitarian Protection". Paragraph 339CA of the immigration rules defines what should be regarded as "serious harm" and includes at (iv) "serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict."

In Elgafaji [2009] EUECJ C-465/07, it was found that, where levels of indiscriminate violence are at a very high level, the effect of the violence may extend to all people, regardless of their personal circumstances for the purposes of Article 15(c). In QD (Iraq) v Secretary of State for the Home Department [2009] EWCA Civ 620, the Court of Appeal posed a 'critical question' namely, whether there is such a high level of violence in a country, or a material part of it, that solely by being present there, an applicant would face a real risk which threatens their life or person. If there is, then a grant of Humanitarian Protection on the basis of Article 15(c) is appropriate.

GS (Article 15(c): indiscriminate violence) Afghanistan CG [2009] UKAIT 44 provides an example of a disabled person who cannot escape from insurgent attacks as quickly as an able-bodied person as being more vulnerable and therefore at greater risk than the average person. It was also stated that "indiscriminate violence" can mean violence from criminals or war lords taking advantage of a power vacuum. In HM and others (Article 15(c)) Iraq CG [2010] UKUT 331 (IAC), it was stated that there must be evidence of significant physical injuries, serious mental traumas and serious threats to bodily integrity, including where these arise from a breakdown in order for a grant of HP to be appropriate.

[Candidates should note that where "CG" is denoted in the case name of HM and others, this case no longer provides authoritative guidance as to country situation as it has been superseded by a more recent country guidance case. However, this case remains good law in terms of the principles identified in respect of interpreting the RQD].

It is possible to be excluded from Humanitarian Protection under Paragraph 339D of the immigration rules, which aims to incorporate Article 17 RQD into the immigration rules.

Exclusion from Humanitarian Protection is similar to exclusion under Article 1F of the Refugee Convention. Reasons for exclusion include serious crimes, acts contrary to UN purposes and principles and persons who have fled to the UK to escape criminal sanctions in home countries. It also excludes persons deemed to constitute a danger to UK security or the public. In AH (Algeria) v SSHD [2012] EWCA Civ 395, it was determined that exclusion from Humanitarian Protection is fact-sensitive and the particular length of a criminal prison sentence is not sufficient grounds alone to exclude or revoke Humanitarian Protection.

Home Office guidance on Humanitarian Protection also notes that the types of persons who should be excluded from Humanitarian Protection on security grounds include those on the sex offenders register and the same types of considerations that would exclude a person from obtaining British nationality as a result of character. Humanitarian Protection can also be reviewed and revoked in light of later conduct, or where new information comes to light about the conduct of a person at a later date.

A grant of Humanitarian Protection under paragraph 339C immigration rules gives rise to an entitlement to apply for pre-existing family members to join the applicant in the UK.

Paragraph 352FA immigration rules applies to the Humanitarian Protection recipient's pre-existing spouse. The marriage must have taken place prior to the recipient of Humanitarian Protection leaving their country of origin. The couple must intend to live together permanently in the UK and their relationship must be genuine and subsisting. The pre-flight spouse must not be a person who would be excluded from Humanitarian Protection in their own right. The couple must not be within the prohibited degree of relationship i.e. they must not be more closely related than first cousins.

Paragraph 352FG applies to children of the Humanitarian Protection recipient. The child must be under the age of 18, have not begun living an independent life and have not started an independent family unit. They must have been part of the family unit when the applicant left the country of origin (if born at that time).

GEN.1.1 of Appendix FM also indicates that a person with a grant of Humanitarian Protection is able to apply for post-flight family members to join them in the UK under standard immigration rules.

In terms of international travel, recipients of Humanitarian Protection are entitled to undertake this using their own national passport. Only where they can establish that they are unable to obtain a national passport, and that there are serious humanitarian reasons for travel, are they able to apply to the Home Office for a "Certificate of Travel" under paragraph 344 immigration rules. This is in marked contrast to the position for refugees recognised under the Refugee Convention, who must not travel using their own national passport or travel to their country of origin. No such restrictions apply to recipients of Humanitarian Protection.

In addition, the Certificate of Travel document is not widely accepted for international travel (including non-acceptance by some European Union countries). This can cause difficulty for those Humanitarian Protection recipients who have received this form of protection due to a breakdown in civilian society in their home country.

Question 4

There are three circumstances in which British nationality may be lost – deprivation by the Secretary of State, nullification by the Secretary of State or renouncement of citizenship by the British national themselves.

Deprivation

In Pirzada (Deprivation of citizenship: general principles) [2017] UKUT 196 (IAC) it was confirmed that the Secretary of State for the Home Department has two powers to deprive citizenship under s.40(2) and s.40(3) of the British Nationality Act 1981.

Under s.40(2), the power of deprivation is only available to the Secretary of State if they deem that deprivation is conducive to the public good. In Aziz [2018] EWCA Civ 1884, a case that involved the members of an infamous sexual grooming/paedophile gang, the Court of Appeal agreed with the Upper

Tribunal that this behaviour amounted to involvement in serious organised crime, which was not conducive to the public good.

In K2 v. the United Kingdom (Application no. 42387/13), the European Court of Human Rights confirmed that depriving a suspected terrorist of his citizenship was lawful under the European Convention of Human Rights. In Pham v Secretary of State for the Home Department [2018] EWCA Civ 2064, it was found that deprivation of citizenship can be justified by treasonous conduct.

Under s.40(3), the power of deprivation is only available to the Secretary of State if it is deemed that registration or naturalisation as a British national was granted following fraud, false representation or concealment of material fact.

The Pirzada case also confirmed that a s.40 deprivation of citizenship is entitled to receive a full right of appeal to the Tribunal (including to the Special Immigration Appeal Commission if appropriate). That right of appeal is under s.40A BNA 1981.

In Deliallisi (British citizen: deprivation appeal: Scope) [2013] UKUT 439 (IAC), it was determined that the Tribunal in deprivation appeals is able to take into account human rights principles, including those under Article 8 ECHR, the effect of an appellant's rights under EU law and the reasonably foreseeable consequences of deprivation, including removal from the UK. If a person had Indefinite Leave to Remain prior to being granted nationality, there is no provision for this to be reinstated automatically on nationality being revoked.

Under s.40(4), the Secretary of State for the Home Department may not render a person stateless in deciding to revoke their British nationality under s.40(2). In Pham v Secretary of State for the Home Department [2015] UKSC 19 (preceded Pham case above) it was stated that, when deciding whether a person will be rendered stateless by a decision to deprive them of their British nationality, it is necessary to have regard to the text of the nationality law of the state but also to the way in which the government of that state gives meaning to the law in practice.

In addition, s.40(4A) indicates that it is permissible to render a person stateless by depriving them of their British nationality in some circumstances. These are where a person has been naturalised as a British national, where the continuance of their British nationality is not conducive to the public good because the person has conducted themselves in a manner which is seriously prejudicial to the vital interests of Britain, and the Secretary of State for the Home Department has reasonable grounds for believing that the person will be able to obtain the nationality of another country.

Nullification

The case of R (Hysaj & Ors) v Secretary of State for the Home Department [2017] UKSC 82 is the current leading case on nullification of British nationality. The case expressly confines nullification of nationality to cases whereby nationality was obtained by using a false identity – i.e name, date of birth, place and country of birth and nationality were falsely given. This case overruled much of the existing caselaw on the subject, promulgated since the 1980s. It was decided by the Supreme Court that the law had taken

a “wrong turn” following the case of Sultan Mahmood [1981] QB 58. The Supreme Court decided that an actual and intentional fraud or deception must take place. An innocent mistake is not sufficient to nullify nationality, but may leave the person at risk of deprivation.

In R v. SSHD ex p. Naheed Ejaz [1994] QB 496, the Applicant had obtained a certificate of naturalisation as British on account of being married to a British national, without knowledge that the husband was not really British and had been naturalised as a British national by deception. The court found that the nationality granted to the applicant was not nullified as it had been granted in the applicant’s genuine name. However, she was at risk of deprivation. There is evidence of the wider implications of nullification being considered in this case as nullifying the nationality of a spouse could then nullify the nationality of children, which could cause serious difficulties for which the child would not be responsible.

In Kaziu [2014] EWHC 832 (Admin) there was held to be no right of appeal against nullification of British nationality. It was determined that the proper course of action in disputing an executive decision such as this, including where human rights considerations are in issue, is judicial review.

Renouncement

Under s.12 British Nationality Act 1981, a person may renounce their British nationality. The person must be over 18, of sound mind, have another nationality or show that they will be able to obtain another one.

Renouncement of nationality is most commonly used when a person wishes to become the national of a country that does not permit dual nationality. Applications can be refused if the SSHD is not satisfied that an alternative nationality has or can be obtained. In addition, persons may wish to renounce the nationality of one country in order to demonstrate complete loyalty to another country.

Applications for renouncement of British nationality are made on Form RN. This is an online application and a fee is payable. If accepted, the Secretary of State for the Home Department will issue a Certificate of Renunciation. If a new nationality is not obtained within 6 months, the renunciation is considered void and the person remains a British national. When an individual renounces their British nationality they will also lose the right of abode (unless they hold this in another capacity as well) and will need to apply to re-enter the UK under the immigration rules.

Once renounced, the person has a single opportunity to reclaim their right to British citizenship under s.13 BNA 1981.

SECTION B

Question 1

Nansi should most appropriately apply for a fiancée visa, the provisions for which are found in Appendix FM.

GEN.1.2 provides the relevant definition of a “partner”, which includes the fiancée of a British national. A fiancée visa is only available as an entry clearance application.

EC-P.1.1 provides the requirements that must be met. The applicant must be outside the UK at the time of application. They must make a valid entry clearance application.

They must meet the relationship requirements at E-ECP.2.1 – both applicant and partner must be over 18, which they are on the facts. The couple must not be more closely related than first cousins, which they are not here. The couple must have met in person, which is clear here. The relationship between the couple must be genuine and subsisting. Factors taken into account include cohabitation, length of the relationship, visits to each other’s country etc. The fact that they have cohabited for 18 months and will have joint financial responsibilities etc. will show the relationship is genuine. As a fiancée, the applicant must demonstrate that they are making an application to enter the UK to enable the marriage to take place. Documentation regarding the arrangements for the marriage could be provided. Any previous relationship must have broken down and there is no relevant relationship on the facts

Nansi’s passport will establish her date of birth, as will Ted’s. The couple should show evidence that they have been living together outside of the UK as a family unit with their two children from previous relationships. They should provide photographs of family life being enjoyed and evidence of joint finances and joint ownership or rental of a home. They should provide correspondence in joint or in each of their names from e.g. utility companies, medical appointments to the address that they state on the form as their home address.

Nansi must meet the financial requirements at E-ECP 3.1 – Nansi must show that her partner has a gross annual income of at least £18,600, or if below this that they have savings in excess of £16,000 - the amount that they have above this must amount to 2.5 times the shortfall in relation to the income requirement. For each non-British child, the applicant must show an additional £3,800 is available.

Nansi’s income cannot be taken into account for the purposes of the entry clearance application. It is the partner’s income under E-ECP.3.1 that forms the basis for the financial assessment. Nansi must show that Ted can meet the income limit for herself and her son, Meric. As Ted’s son is a British national he is free to enter the UK at any time. Therefore, the income requirement for this family is £18,600 + £3,800 for Meric to be included. A total of £22,400. As Ted’s gross income is £25,000 per annum, the couple should be able to demonstrate that they meet the minimum income requirement without having to rely on any of Ted’s bonuses or their jointly held savings.

The couple must provide specified evidence to show that they meet the income requirement as set out in Appendix FM-SE.In accordance with Paragraph 15(b) Appendix FM-SE, Ted can rely on evidence of his income from employment outside of the UK for the 12-month period prior to submitting the application. 12 months bank statements and wage slips will be required, the bank statements showing the wage going into the account.

However, Ted also needs to show evidence that he has a job offer that he will be able to start within 3 months of entering the UK and that his new employment will continue to meet the minimum income requirements (paragraph 13(c) Appendix FM-SE). Therefore, Ted will need to obtain firm confirmation from Gumball that he can transfer to their UK office as indicated (and check that this will be at the same rate of pay as his current job) or obtain an alternative job offer and provide evidence of this.

Examples of specified evidence include original payslips and bank statements on headed paper covering specific time periods. However, in MM and others v Secretary of State for the Home Department [2017] UKSC 10, the Supreme Court upheld the minimum income requirement in principle, but held that the SSHD's rules and policies must be amended to allow some degree of flexibility especially in cases involving children. The couple should ensure that they meet the specified evidence requirements to the best of their ability. However, if they have difficulty in meeting parts of the evidential requirements then there may be some flexibility, although only where there are exceptional circumstances and refusal of the application would result in unjustifiably harsh consequences.

In terms of the accommodation requirements under E-ECP.3.4, the applicant must show that there is adequate accommodation for the family in the UK without causing them to have recourse to public funds or for statutory provision on overcrowding to be breached. As they are a family of four, any accommodation will need to show that it will not breach statutory overcrowding under the Housing Act 1985. Nansi's application will therefore need to demonstrate that as a family they will have at least 2 rooms available to them excluding kitchens and bathrooms. This is because, under s.325 Housing Act 1985, two children of the same sex are able to share a bedroom without this causing statutory overcrowding. As they are travelling to the UK together, Ted and Nansi's options include arranging to stay with Ted's family or renting a property in the UK.

The applicant must meet the English language requirement under E-ECP.4.1, As the United States of America is named in the list of majority English speaking countries, Nansi's US passport should provide sufficient evidence for this requirement to be met.

The applicant must also meet the suitablility requirements under Section S-EC, but there is nothing in the scenario to indicate that Nansi will fail on suitability grounds.

The fiancée visa application potentially has a good chance of success as long sufficient evidence is supplied. If the application is successful, the leave granted for Nansi will be six months, during which time the marriage should take place. After the marriage has taken place, she can apply for leave to remain as a spouse for 30 months. Just before the expiry of this leave, she should apply for a further 30 months leave. After 60 months she will be able to apply for indefinite leave to remain. Meric will be a dependent on the application and entitled to the same leave.

The application is online (available on the gov.uk website) and 2 applications must be made – one for Nansi and one for her son, Meric. Two application fees are therefore payable. An appointment will then need to be booked with the visa application centre in order to provide the supporting evidence. It

would be sensible to provide a covering letter that sets out the circumstances of the family in full.

If refused, the application should attract a right of appeal on human rights grounds to the Tribunal.

If refused, any future visitor visa applications made by Nansi would be difficult to succeed in given that she has previously made an application leading to settlement and her intention to return to the United States would be called into question.

If issued, it will not be possible for Nansi to work whilst she is in the UK with a fiancée visa. However, once the wedding takes place she will be able to apply for a spouse visa and, once granted, she will have permission to work in the UK.

Question 2(a)

Fresh claim applications are made with reference to paragraph 353 of the immigration rules. Paragraph 353 states that where a person has become appeal rights exhausted following an initial asylum claim, the SSHD will consider whether any further submissions establish a "real risk" of persecution/serious harm on return to the country of origin. If the submissions are rejected as not establishing this, then notwithstanding the rejection, the SSHD will consider whether the submissions received amount to a fresh claim for asylum. The submissions will only amount to a fresh claim if they are "significantly different" to the material previously considered. Significantly different means – i) not already considered, and ii) taken together with the previous material create a realistic prospect of success (before the First-tier Tribunal). Therefore, the starting point for the SSHD in assessing a fresh claim is the content of the previous asylum application.

Sonia had not converted to Christianity at the time of her initial asylum application. Therefore, this material has not previously been considered. In assessing whether the submissions create a realistic prospect of success, the SSHD will look to the content of the original asylum application and reconsider this alongside the freshly made submissions. This could potentially create difficulties for Sonia.

Section 8 Asylum and Immigration (Treatment of Claimants, etc) Act 2004 states that when determining whether to believe a claimant, the deciding authority is able to take into account anything that is said that is designed or likely to conceal information or designed or likely to mislead as a factor that is damaging to the overall credibility of an applicant. As Sonya's initial asylum claim was rejected because the SSHD and the Tribunal felt that statements she had made damaged her credibility, it is possible that the SSHD will now argue that Sonia's claimed conversion to Christianity is opportunistic.

However, SM (section 8: Judge's process) Iran [2005] UKAIT 116 found that, even where s.8 applies, the evidence must still be considered in the round. In JT (Cameroon) v SSHD [2008] EWCA Civ878, it was found that s.8 does not affect the usual standard of proof in an asylum case. It simply ensures that certain factors are taken into account. The weight to be given to s.8 factors, however, is for the decision-maker.

It will therefore be crucial that Sonia submits strong evidence in support of her claimed conversion to Christianity. Sonia should consider submitting a letter or witness statement from the minister of her church confirming her involvement with the church and also stating an opinion on the genuineness of her faith. Sonia may also submit a letter or witness statement from Lily setting out how it was that Sonia came to attend her church. Sonia could also obtain a supporting letter or witness statement from the Sunday School leader confirming the attendance of her son at Sunday School regularly and his engagement with Christianity. It would also be useful to be able to provide evidence of baptism, for example a video of the event or a baptism certificate. The solicitor should also check whether Sonia has a social media presence and whether she has used social media to publicise her Christian faith (or indeed used it to publicise the opposite).

A good witness statement will be very useful from Sonia herself to setting out how she feels herself about Christianity and her conversion. It would also be useful to ask Sonia if she shows any outward signs of her faith, for example, whether or not she wears a cross. Submissions should be made with regard to the requirement of the SSHD to consider all evidence in the round.

In R (on the application of SA (Iran)) v Secretary of State for the Home Department [2012] EWHC 2575 (Admin), the judge of the High Court stated that in lieu of being able to look into a person's "soul" the only real way to determine whether a person was a genuine convert was to consider their outwards signs of involvement in the faith they had converted to. The judge also stated that if a person has acted as a Christian in the UK, even for non-genuine reasons, they could still be considered to be an apostate on return to Iran and be persecuted as a result. The issue at stake is how the person will be perceived on return.

There is objective evidence available that indicates that Christians in Iran are persecuted, as detailed in the country guidance cases of SZ and JM (Christians – FS confirmed) Iran CG [2008] UKAIT 00082 and FS Iran [2004] UKIAT 00303. Further case law that indicates that people must not be required to hide their religion in order to avoid persecution (for example HJ and HT (Iran) 2010), therefore there would be merit in Sonia submitting a fresh claim to the SSHD. This is given further strength by the fact that Sonia has presented herself outwardly in the UK as a Christian.

The further submissions should be submitted in person to the Home Office further submissions unit in Liverpool. If the Secretary of State for the Home Department determines that the submissions amount to a fresh claim, a right of appeal will be provided to the Tribunal on protection grounds under s.82 NIAA 2002. If the SSHD determines that the submissions do not amount to a fresh claim then the claim will be certified as clearly unfounded under s.94B NIAA 2002 and an appeal right that can only be exercised once the applicant has left the UK will be provided.

If the claim is certified then the only remedy is judicial review. However, such certifications are subject to the judgment handed down in R (Kiarie) v SSHD [2017] UKSC 42, where it was stated that if an appeal hearing could not be effectively administered from abroad then the person concerned should not be removed and an in-country right of appeal should be provided.

Question 2(b)

Sonia is able to make an application under the parent route of Appendix FM, relying on the provisions of EX.1 on the 10-year route to settlement.

Submissions relating to this route can be made alongside the fresh claim presented to the further submissions unit at the Home Office. It is important that a separate application on these grounds is only attempted once efforts to obtain protection via a fresh claim have been exhausted in these circumstances.

EX.1 provides that where a parent has a genuine and subsisting relationship with a child who is under the age of 18, in the UK and (although not British), has lived in the UK for a continuous period of 7 years immediately preceding the date of application AND taking into account their best interests as a primary consideration it would not be reasonable for the child to leave the UK, they may be granted leave to remain.

The applicant must also meet all of the usual parent route requirements under Section R-LTRPT of Appendix FM, save for that where EX.1 applies the applicant is exempt from meeting the immigration status requirement, the English language requirement or the maintenance and accommodation requirements. Under E-LTRPT.2.4, the applicant must provide evidence that they have sole parental responsibility for the child. The applicant must not fall for refusal on suitability grounds under Section S-EC. There is no suggestion from the scenario that this client will fail on suitability.

In terms of the relationship requirements, Sonia will need to show that she has sole parental responsibility for Zai. As she is a single parent, she should aim to supply letters from her son's school, doctor's surgery, dentist and her church confirming that she attends alone to deal with her son's affairs. In the event that no father is listed on Zai's birth certificate then this should be relied upon as indicating sole parental responsibility. The birth certificate will need to be submitted in any event to establish to basic relationship.

As a single parent, it should be possible for Sonia to submit sufficient evidence to determine that she has a genuine and subsisting relationship with Zai given that she is his sole carer. This might include photographs and evidence of NASS support in her name with her son as a dependant since his birth.

Sonia will need to establish that Zai has not left the UK since birth. As evidence, she could rely on records of NASS support in her name with Zai as a dependent. In addition, she could provide medical records, Zai's red "baby book" that sets out post-birth and health visitor appointments in infancy, school reports and other school records.

Sonia will then need to establish that it would not be reasonable for Zai to leave the UK taking his best interests as a primary consideration. Under s.117B(6) Immigration Act 2014, where a person is not liable to deportation, the public interest does not require removal of that person where they have a genuine and subsisting relationship with a qualifying child. Under s.117D, the definition of a qualifying child includes a child who has lived in the UK for 7 continuous years. In MA (Pakistan) v Upper Tribunal (Immigration and Asylum Chamber) [2016] EWCA Civ 705, it was confirmed that there is no public interest in removing a qualifying child where s.117B is satisfied

In Zoumbas v Secretary of State for the Home Department [2013] UKSC 74) the Supreme Court stated that "A child must not be blamed for matters for which he or she is not responsible, such as the conduct of a parent". Therefore, the consideration of the impact of removal on a child cannot be influenced by the poor conduct of the parents. Therefore, the credibility issues is Sonia's previous appeal and her continued presence in the UK despite being a failed asylum seeker should not be taken into account in determining the best interests of Zai and whether it would be reasonable to leave the UK.

The Home Office policy document 'Appendix FM 1.0b: family life (as a partner or parent) and private life: 10-year routes v4.0 dated 4th April 2019' lists a number of factors that the HO caseworkers should consider when assessing "reasonableness". These include whether the child will leave the UK with their parents (generally in the best interests of the child), the prospect of reintegration on return, wider family ties in the UK, risk to the child's health and country specific information. In KO (Nigeria) & Ors v Secretary of State for the Home Department [2018] UKSC 53, the Supreme Court concluded that the list of factors set out in this Home Office policy document was "wholly appropriate and sound in law".

Therefore, submissions on the point of reasonableness should focus on Zai's current level of integration in the UK, his schooling, his church attendance and the fact that he could not continue to develop his understanding of the Christian faith if removed.

The application should be made on the appropriate form A fee is payable, but Sonia could make an application for a fee waiver which would prevent her from having to pay the application fee and health surcharge. She will need to establish that she is destitute, which she will already need to have done in order to receive NASS support.

If the application is successful, Sonia and Zai will usually be a granted a period of 2.5 years discretionary leave on the 10-year route to settlement. If the application is not successful, Sonia and Zai should receive a right of appeal to the Tribunal on human rights grounds.

Question 3

'Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person', commonly referred to as "Dublin 3/Dublin III" is concerned with 'take back' requests such as the one made to Germany in respect of Berhane.

Article 15(2) provides that on receipt of a Eurodac hit for fingerprints, the requesting member state must request the receiving member state to take back the asylum applicant within 2 months. Article 22 provides that the receiving state will make enquiries and send a response, either accepting or denying responsibility for the claim of the applicant, within 2 months of receipt of the request. Article 22(7) provides that if the proposed receiving state fails to respond to the request within the indicated timeframe, acceptance is given by default. Article 29(2) provides that the maximum permitted time limit for transfer to take place is 6 months after the acceptance of the request has been given by the receiving state. Article 5(2) of Implementing Regulation

1560/2003 as amended by Implementing Regulation 118/2014 sets out that where a receiving state refuses to take responsibility then the requesting state may request further re-examination of the request as long as this is submitted to the receiving state within three weeks. Article 17 – 'the sovereignty clause' permits a member state to take responsibility for an asylum claim that they are not otherwise responsible for, because there are exceptional compassionate circumstances.

In C-201/16 Shiri, it was found that applicants can successfully resist removal to the receiving state if removal does not take place within 6 months of acceptance. In C-670/16 Mengesteab, the two-month time limit for submitting a take back request was confirmed.

Berhane should be advised that, as he is not detained, the SSHD has two months to make a request to Germany to take responsibility for his case. Germany then has two months to either confirm or deny responsibility. If they do not respond, this is tantamount to acceptance. If responsibility passes to Germany, the UK then has six months to remove Berhane to Germany. If these time limits are missed, Shiri indicates that Berhane would be able to effectively resist removal.

Whilst the above process is ongoing, there will be no substantive movement in respect of an asylum claim in the UK. Berhane's case will be dealt with by the Third Country Unit/TCU in the Croydon offices of the Home Office. A personal interview may be held with Berhane under Article 5. This will not seek to find out details about the substantive reasons for seeking asylum but will focus on location of family members and travel history.

Berhane should make human rights (Article 8 based) representations to the SSHD at the earliest opportunity and before any request is accepted for his transfer to Germany. Recital 13 of Dublin 3 indicates that respect for private and family life is a primary consideration of the Dublin process. EM Eritrea and Others [2014] UKSC 12 – Dublin 3 should be interpreted in line with fundamental rights (e.g human rights) principles. H (Somalia) [2004] UKIAT 00027 states that the usual standards of consideration that apply to relationships where a person has voluntarily left their country cannot be applied to in exactly the same way to situations were family members have fled from persecution.

Berhane should request that discretion be exercised by the SSHD under Article 17 and allow him to have his claim considered in the UK where his minor sister lives. Berhane could make representations as to the fact that his sister would be able to live with him instead of under the care of Social Services should his asylum claim be considered and accepted in the UK. This arguably would be a better arrangement for Miriam, particularly given that she is a vulnerable teenager having been accepted to be a victim of trafficking and having been trafficked from Eritrea at around the age of 12. (It would also relieve social services of the responsibility and cost of maintaining and accommodating Miriam).

Berhane must prove the relationship between himself and his sister – this may be difficult. If they are both able to provide birth certificates then this might go some way to proving the relationship. DNA evidence is not required under SSHD policy guidance on DNA evidence, but it may be useful in this situation. However, DNA evidence of siblings is complicated and not as conclusive as

DNA evidence for direct descendants. It would be worth checking whether Miriam listed Berhane as a family member in her own asylum application.

In the event that the human rights arguments are successful, the SSHD will agree to consider the asylum application in the UK. In the event that the human rights arguments are not successful, the only further remedy is judicial review. Careful consideration of the case taking into account all the evidence will be needed.

It may be worth submitting a pre-action protocol letter under the pre-action protocol for Judicial Review appended to the Civil Procedure Rules to the relevant department of the Home Office should the human rights submissions be rejected and removal directions set in order to attempt to prevent removal.

Given the complicated nature of the case which will require consideration of human rights submissions at least, and the fact that the SSHD will need to undertake a check of their records in respect of Miriam, there is a possibility that the SSHD will not meet the 6-month deadline for removing Berhane to Germany in any event. In the event that Berhane is detained, and one of the time limits outlined above is not adhered to, it will be advisable to make an application for bail. The current provisions for immigration bail are given in Schedule 10 of the Immigration Act 2016.

Mandatory issues to be considered in deciding whether to grant bail are listed at paragraph 3 of Schedule 10 and include issues such as previous offending and whether an offence is likely to be committed on bail or whether the applicant is likely to abscond. Berhane should highlight his relationship with sister as a reason why he would not be likely to abscond. If possible, he should offer a financial supporter who agrees to pay a sum of money in the event that he does not comply with bail conditions e.g absconds. As Berhane has not had a decision in the UK on an asylum claim, he will need to be released from detention before he can apply for NASS accommodation, but he should be entitled to this at least initially and should state this on his form.

The initial application for SSHD bail is made on Form 401, and a further application for bail may be made to the Tribunal using Form B1. If an application for bail is refused by the Tribunal, the applicant may not make another bail application for 28 days.

If the time limits are adhered to and Berhane's human rights arguments fail, he will be administratively removed to Germany under s.10 Immigration and Asylum Act 1999.

Question 4

Tuan must apply for a Tier 4 (general) student visa under the points-based system. The requirements are found in paragraph 245ZV of the immigration rules. Tuan must score 30 points for "attributes" and 10 points for maintenance.

To obtain the points for attributes, Tuan must obtain a CAS from his chosen institution that meets the requirements set out at Appendix A. The CAS must be issued no more than six months before the date of application. The application must be made no more than three months before the start of the course as outlined in the CAS. The issuing institution must hold a Tier 4

sponsor licence. The licence must still be held at the time of the decision on the application.

The CAS document itself must include the following information:

- The applicant's name, date of birth, nationality, gender and passport number of the student must be recorded on the CAS.
- The CAS must include the details of the course, namely the title of the course, the level at which it is set, the start and end dates of the course and the number of hours per week that will be spend studying at the institution. The CAS also needs to state whether the course is full time or part time and details of any work placements must also be given.
- The CAS must include details of the main study address of the student and details of accommodation costs and tuition fees.
- The CAS must confirm that the student has English language ability at Level B2 of the Common European Framework or above. The institution must explain in the CAS how the English language ability of the student was determined. The CAS should include, if relevant, test scores for all 4 components of English language ability, namely reading, writing, speaking and listening.
- The CAS must also provide details of any course-specific requirements that are relevant. None appear to be relevant to Tuan.

As stated above, the institution must be satisfied of Tuan's English language ability, and he will need to ensure that he is able to pass all 4 elements at level B2 before he can make his application to the institution for sponsorship. If Tuan is concerned about his written English then he should work on improving this ahead of taking the English language test. However, having previously lived and studied in Australia this is an indication that this English language ability can improve to the required standard is needed. Tuan should be aware that in R (on the application of Hazret Kose) v SSHD [2011] EWHC 5294 (admin) demonstrated that an applicant can be refused entry at port due to displaying poor command of English language. In this case, the CAS was subsequently withdrawn by the institution.

Under para 245ZV(k), the Entry Clearance Officer must be satisfied that the applicant is a genuine student. As a result, the Entry Clearance Officer is able to interview the applicant, and an application can be reviewed and rejected as happened in R (Global Vision College Ltd) v SSHD [2014] EWCA Cov 659. Although it should be noted that common law principles of procedural fairness apply to Entry Clearance decision-making processes, including interviews. (R (on the application of Mushtaq) v ECO Islamabad, Pakistan [2015] UKUT 00224).

The institution has a continuing duty in providing the CAS as part of their sponsorship agreement with the SSHD to ensure that the student is attending sessions at the institution and must report the student if they fail to attend more than 10 expected contact sessions. They must also report a student who fails to enrol on the course, if the student makes major changes to their course of study or the institution believes that the student may be breaching the conditions of their leave.

Tuan must score 10 points for maintenance. As he plans to study outside of London, he must show that he has £1015 per month (up to £9135 for 9 months in total plus the first year of tuition fees for the first academic year of his course). Tuan need only show that he has the full maintenance for his first

year of study in the UK. The stipulated maintenance includes the money needed to pay for accommodation whilst in the UK.

Tuan will clearly be able to meet this with his available finances. He needs to show that he has £9135 + £11,000 available = £20,135. Tuan has £40,000 in his savings account held in his name.

Appendix T lists Vietnam and therefore Tuan will need to provide a Tuberculosis test certificate with his application.

If an applicant fails to meet these requirements, then the Applicant will not be awarded sufficient points and leave as a student under Tier 4 will be refused.

The application is made online and the relevant fee and health surcharge is payable. An appointment must be made at the local visa application centre for submission of the documents for consideration.

If the application for entry clearance is successful, Tuan will be issued with a vignette that is valid for 30 days. Tuan must travel to the UK whilst the vignette is valid. Once Tuan arrives in the UK, he must collect his biometric residence card from the Post Office within 10 days of arrival.

As Tuan’s course is an undergraduate bachelors degree, he will be granted leave to enter for the duration of his degree plus four months at the end. The usual conditions that would be attached to his Tier 4 visa are as follows:

Permission to work, with a stipulation of working a maximum of 20 hours during term time and full time during academic vacation periods. Any time spend working is in addition to any permitted work placement, which will be important particularly for Tuan given the nature of the degree that he wishes to study. Permitted work placements are those that are integral and assessed as part of the course, according to Home Office guidance. Tuan should not engage in other business activities or self-employment. Tuan may be subject to restrictions on voluntary work.