



THE CHARTERED INSTITUTE OF LEGAL EXECUTIVES

UNIT 8 – IMMIGRATION LAW*

Time allowed: 3 hours plus 15 minutes' reading time

Instructions to Candidates

- You have **FIFTEEN** minutes to read through this question paper before the start of the examination.
- **It is strongly recommended that you use the reading time to read this question paper fully.** However, you may make notes on this question paper or in your answer booklet during this time, if you wish.
- **All questions carry 25 marks. Answer FOUR only of the following EIGHT questions. This question paper is divided into TWO sections. You MUST answer at least ONE question from Section A and at least ONE question from Section B.**
- Write in full sentences – a yes or no answer will earn no marks.
- **Candidates may use in the examination their own unmarked copy of the designated statute book: Immigration Law Handbook, 9th edition, Phelan and Gillespie, Oxford University Press, 2015.**
- Candidates must comply with the CILEx Examination Regulations.
- Full reasoning must be shown in answers. Statutory authorities, decided cases and examples should be used where appropriate.

Information for Candidates

- The mark allocation for each question and part-question is given and you are advised to take this into account in planning your work.
- Write in blue or black ink or ballpoint pen.
- Attention should be paid to clear, neat handwriting and tidy alterations.
- Complete all rough work in your answer booklet. Cross through any work you do not want marked.

Do not turn over this page until instructed by the Invigilator.

* This unit is a component of the following CILEx qualifications: **LEVEL 6 CERTIFICATE IN LAW** and the **LEVEL 6 PROFESSIONAL HIGHER DIPLOMA IN LAW AND PRACTICE**

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SECTION A
(Answer at least one question from this section)

1. A statutory provision exists in UK immigration law to prevent a person, who makes a valid in-time application to extend their leave, from becoming an overstayer. Identify and explain this provision and the circumstances where it may or may not apply.

(25 marks)

2. Explain the legal basis upon which a person may be assessed to be a refugee in the UK under Article 1 (A)(2) of the 1951 UN Convention.

(25 marks)

3. Under the Immigration Acts, consideration must be given to the release of a detained person subject to immigration control.

(a) Discuss the process to follow in order to seek the release, from detention, of a person subject to immigration control.

(17 marks)

(b) Identify the factors relevant to outweigh public interest in deporting a person subject to immigration control where criminality was punished by imprisonment.

(8 marks)

(Total: 25 marks)

4. Discuss the key issues, including the relevant EEC Articles, in the case of R (Secretary of State for the Home Department) v Immigration Appeal Tribunal and Surinder Singh [1992] 3 CMLR 358 and the benefits the case confers on a non-EEA spouse.

(25 marks)

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SECTION B
(Answer at least one question from this section)

Question 1

Hector is a citizen of Zimbabwe living in the UK. He entered the UK on a six-month visit visa seven years ago, but did not return when his visa expired. Hector was then in the UK illegally for six months, before he claimed asylum and was granted temporary admission. His claim was refused two months later and his appeal rights were exhausted five years ago. However, he was not removed from the UK at that time. Approximately six years ago, Hector formed a relationship with a British citizen, Rachel, and four years ago they had a daughter, Lillie.

When Lillie was 2 years old, Rachel and Hector's relationship ended. Hector still sees his daughter every Tuesday and she stays at his flat overnight on alternate Saturdays. Hector works in temporary jobs and manages to earn enough money to live. He pays Rachel money towards Lillie's upbringing, when he can afford to.

The Secretary of State now proposes to remove Hector to Zimbabwe. Hector wishes to appeal the decision, as he claims it will put the UK in breach of its obligations under the European Convention on Human Rights, by separating him from his daughter in the UK, and will breach the immigration rules.

- (a) Discuss the grounds upon which the Secretary of State can remove Hector and the immigration rules, statute and human rights arguments that could be raised to oppose his removal.

(15 marks)

- (b) How would your answer differ to question (a), if Hector had been convicted in the UK of a criminal offence of possession with intent to supply the class A drug cocaine, and had spent the first two years of Lillie's life in prison?

(10 marks)

(Total: 25 marks)

Question 2

Gregory Onyema is a Nigerian citizen. He is 67 years old. A few years ago, he underwent a surgical operation to remove a benign brain tumour. Since his operation, he has suffered mild to severe seizures. Gregory recently lost his wife to cancer. He currently lives alone in Nigeria. His only child, Obinna, is a British citizen. Obinna lives in the UK with his wife and one child.

Gregory cannot perform everyday tasks for himself owing to ill-health, and requires long-term personal care. In the past, he has had a series of home-helps, each of whom has subsequently left because they cannot provide the level of care he needs. He currently has no home-help.

Gregory wants to live in the UK. Obinna and his family can provide the required level of care.

At present, Obinna has been visiting Nigeria regularly to care for his father, but cannot continue to do this, as he needs to return to the UK to care for his young family. Gregory appears to have nobody in Nigeria capable of providing the level of care that he requires, and therefore appears to be unable to cope without the help and support of his only family in the UK.

Gregory is very lonely and wishes to join his son in the UK permanently.

Advise Obinna on the type of application his father should make and what evidence is required to support his father's application.

(25 marks)

Turn over

Question 3

Tom Smith is a British citizen. He married his American girlfriend, Kelly Jones, in the summer of 2017. They are in a genuine and subsisting relationship. Kelly wishes to make a visa application to join Tom in the UK, but she is concerned as to whether Tom would meet the financial requirement under Appendix FM of the Immigration Rules to sponsor her application. Tom currently works part-time for Marks & Johns departmental store in Hull and has been employed by Marks & Johns as a customer assistant since June 1997. Tom has a 5-year-old son, David, from a previous relationship.

Tom's gross annual income is £11,615.64.

In the last six months, Tom has received the following bonuses for working on Sundays: £111.15, £115.15, £55.58, £55.58, £111.15 and £55.58. These total £504.19.

In the same period, Tom has also received overtime payments of £74.00, £75.48, £35.52, £290.08, £66.60 and £74.00. These total £615.68.

- (a) Advise Tom on the financial requirement under Appendix FM to sponsor Kelly's application.

(8 marks)

- (b) Calculate the annualised total of Tom's combined bonus and overtime payments and how much in savings he would need to combine with his income to meet the financial requirement.

(17 marks)

(Total: 25 marks)

Question 4

Paul Chang is an ambitious Chinese entrepreneur. He currently resides in China with his wife and two children. Paul completed a degree in Computer Science at the University of Cranbrook in Sheffield, UK. He has been unable to find a career job in China, but currently works as a volunteer for the society of disabled children in Guangdong Province.

Paul has developed a unique computer program, which supports children with disabilities. His business idea is new and innovative, as there are no similar products currently for sale on the market in the UK, which automatically gives this enterprise idea a competitive edge. He has found that getting funding in China for innovative ideas is almost impossible. Paul inherited the equivalent of £50,000 from his late grandfather's estate, which he intends to invest in his business idea. Paul is encouraged by friends in the industry to consider the UK market.

Entrepreneurs with businesses that have high growth potential can apply for a visa to come to the UK. To do this, they need to have received funding from an approved organisation in the UK.

Paul is excited about the idea of setting up a business in the UK and the opportunities it will bring, but he is worried that he would not be granted a visa to come to, or stay in, the UK to set up his business.

Advise Paul, who would be applying for the first time, on the general requirements for a Tier 1 (Entrepreneur) visa and what steps he should take to increase his chances of securing the visa.

(25 marks)

End of Examination Paper

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