

CHIEF EXAMINER COMMENTS WITH SUGGESTED POINTS FOR RESPONSES

JANUARY 2022

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 2022 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

The reasons for good exam 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

Failures were due to:

- Failing to answer the correct number of questions, thereby severely limiting the marks that could be accrued.
- Inadequate reference to relevant legal provisions, particularly caselaw.
- Insufficient revision of key areas leading to superficial, inadequate answers
- Poor question comprehension leading to discussion of the wrong area of law.

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 error. One candidate answered too few questions which severely limited the marks they could achieve. One candidate answered too many questions. Candidates are reminded to carefully read the exam rubric and ensure that they fully comprehend the number of questions they should answer.

CANDIDATE PERFORMANCE FOR EACH QUESTION

SECTION A

Question 1 - Start up/innovator route.

All candidates identified the correct area of law. All answers related to the newer rules listed in Appendix W. Some answers lacked detail and were superficial.

Question 2 - Humanitarian Protection.

This question was answered badly by most of the candidates. Humanitarian Protection is a longstanding component of the unit specification and has featured on a number of recent past papers, so it should not be a surprise to candidates that questions are posed in relation to it.

Question 3 - Loss of British citizenship.

This question was answered adequately but there was a lack of knowledge of recent developments in the law in this area.

Question 4(a) - Deportation grounds.

This question was generally answered well with most candidates identifying the correct statutory grounds and some able to identify relevant caselaw.

(b) - Challenging deportation.

Most candidates were able to identify applicable provisions in relation to challenging deportation from statute, immigration rules or caselaw. Some answers lacked detail.

SECTION B

Question 1(a) -Student route.

Most of the candidates answered this question well and were able to identify the relevant provision from Appendix Student.

(b) - Remedies.

Most of the candidates were able to identify that there was no right of appeal and that administrative review was available.

Question 2 – Domestic violence rule.

This question was answered satisfactorily. Some answers lacked detail.

Question 3 – Asylum.

Overall, this question was answered well. Most candidates were able to work through the definition of a refugee appropriately and were able to pick up on the credibility issues and reach a sensible conclusion.

Question 4(a) –Nationality/Windrush.

This question was answered particularly well by one candidate, who managed to identify the historical development in the law which was relevant to the question.

(b) – Nationality/Windrush.

Again, the same candidate answered this question quite well in that they were able to identify the type of evidence that would be required to support the most appropriate application.

SUGGESTED POINTS FOR RESPONSE

LEVEL 6 – UNIT 8 – IMMIGRATION LAW

SECTION A

Question Number	Suggested Points for Responses	Max Marks
1	<p>Responses should include:</p> <ul style="list-style-type: none">• Discussion of the requirements of Appendix W, specifically Part W3 (general), Part W5 (start-up) and Part W6 (innovator)• Financial requirements• English language ability• Relevant caselaw <p>Responses could include:</p> <p>Relevant caselaw may include:</p> <ul style="list-style-type: none">• <i>Shahzad</i> [2012] UKUT 81 (IAC) – no unfairness in the requirement of the PBS that an applicant must submit all required evidence in order to demonstrate they meet the rules.• <i>Alam v SSHD</i> [2012] EWCA Civ 960 – 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 would be refused. It is a feature of the PBS that predictability and certainty are more important than discretion.• <i>Mudiyanselage v SSHD</i> [2018] EWCA Civ 65 – no evidential flexibility in submission of specified documents in PBS.• <i>Harpreet Singh v SSHD</i> [2018] EWCA Civ 2861. - no opportunity to correct administrative mistakes and applicants have to take the consequences of their own mistakes.• Other relevant caselaw	25

Question 1 Total:		25 marks
2	<p>Responses should include:</p> <ul style="list-style-type: none"> • Discussion of the Refugee Qualification Regulations, paragraph 339C immigration rules and other relevant legal provisions • Exclusion from HP under paragraph 339D immigration rules • Features of a grant of HP (including family reunion under paragraphs 352 FA and 352FG immigration rules) and international travel considerations (including circumstances in which a CoT will be issued by the SSHD) • Reference to relevant caselaw <p>Response may include:</p> <ul style="list-style-type: none"> • Relevant caselaw may include: <i>Elgafaji</i> [2009] EUECJ C-465/07, <i>QD (Iraq) v SSHD</i> [2009] EWCA Civ 620, <i>GS (Article 15(c): indiscriminate violence) Afghanistan CG</i> [2009] UKAIT 44, <i>HM and others (Article 15(c)) Iraq CG</i> [2010] UKUT 331 (IAC) • Other relevant caselaw 	25
Question 2 Total:		25 marks
3	<p>Responses should include:</p> <ul style="list-style-type: none"> • Discussion of deprivation of citizenship under s.40(2) and s.40(3) BNA 1981 • Discussion of nullification of a grant of citizenship • Discussion of renouncement of citizenship under s.12 BNA 1981 • Discussion of remedies • Discussion of relevant caselaw <p>Response may include:</p> <ul style="list-style-type: none"> • Discussion of relevant caselaw in relation to deprivation e.g <i>Pirzada (Deprivation of citizenship: general principles)</i> [2017] UKUT 196 (IAC), <i>Aziz</i> [2018] EWCA Civ 1884, <i>K2 v UK</i> (Application no. 42387/13), <i>Pham v SSHD</i> [2018] EWCA Civ 2064, <i>Deliallisi (British citizen: deprivation appeal: Scope)</i> [2013] UKUT 439 (IAC), <i>Pham v SSHD</i> [2015] UKSC 19, <i>R (Begum) v SIAC</i> [2021] UKSC 7 • Discussion of relevant caselaw in relation to nullification e.g <i>R (Hysaj & Ors) v SSHD</i> [2017] UKSC 82, <i>R v. SSHD ex p. Naheed Ejaz</i> [1994], <i>Kaziu</i> [2014] EWHC 832 (Admin) 	25
Question 3 Total:		25 marks
4(a)	<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>	10

	<ul style="list-style-type: none"> Relevant caselaw may include: <i>N (Kenya) v SSHD</i> [2004] EWCA, <i>AS (Pakistan) v SSHD</i> [2008] EWCA Civ 1118, <i>AL (Jamaica) v SSHD</i> [2008] EWCA civ 482, <i>R v Kluxen</i> [2010] EWCA crim 1081, <i>Masih (deportation – public interest – basic principles) Pakistan</i> [2012] UKUT 00046, <i>SSHD v Rehman</i> [2001] UKHL 47, <i>Chahal</i>. 	
4(b)	<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: <i>KO (Nigeria) v SSHD</i> [2018] UKSC 53, <i>SSHD v PG (Jamaica)</i> [2019] EWCA Civ 1213, <i>R(Kiarie) v SSHD</i> [2017] UKSC 42, <i>MF (Nigeria) v SSHD</i> [2013] EWCA Civ 1192, <i>SSHD v AQ (Nigeria)</i> [2015] EWCA Civ 250, <i>Velasquez Taylor v SSHD</i> [2015] EWCA Civ 845, <i>Maslov v Austria</i> (ECtHR), <i>Bikanu (s.11 TCEA; s.117C NIAA; para. 399D)</i> [2021] UKUT 34 (IAC), <i>AA (Nigeria) v SSHD</i> [2020] EWCA Civ 1296, <i>HA (Iraq) v SSHD</i> [2020] EWCA Civ 1176, <i>SSHD v JG (Jamaica)</i> [2019] EWCA Civ 982, <i>CI Nigeria v SSHD</i> [2019] EWCA Civ 2027 	15
Question 4 Total:		25 marks

SECTION B

Question Number	Suggested Points for Responses	Max Marks
1(a)	<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 how the English language requirement will be met Discussion of likely period of leave to be granted and the conditions that could be attached to the grant of leave 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 May include knowledge of ability to work for 20 hours a week during term time and full time in the holidays 	15

1(b)	<p>Responses should include:</p> <ul style="list-style-type: none"> • 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. <p>Responses could include:</p> <ul style="list-style-type: none"> • More extensive discussion of one or two of the available remedies in more detail than is expected. • Practical details related to either of the three identified remedies. 	10
Question 1 Total:		25 marks
2	<p>Responses should include:</p> <ul style="list-style-type: none"> • An understanding that the most appropriate application would be an application under the domestic violence provisions of Appendix FM. • Discussion of the requirements of section DVILR 1.1 (a)-(d) and section E-DVILR 1.1-1.3 Appendix FM • Discussion of the evidence that will be required and the burden and standard of proof • Discussion of relevant principles from caselaw <p>Responses could include:</p> <ul style="list-style-type: none"> • Discussion of relevant caselaw e.g: <i>IN (Domestic violence, IDI, policy) Pakistan</i> [2007] UKAIT 00024, <i>JL (Domestic violence: evidence and procedure) India</i> [2006] UKAIT 00058 • Discussion of 3-month DDV concession • Remedies in the event of refusal 	25
Question 2 Total:		25 marks
3	<p>Responses should include:</p> <ul style="list-style-type: none"> • Burden and standard of proof in asylum cases • Discussion of the definition of a refugee at Article 1A of the Refugee Convention and application to the facts with reference to relevant caselaw: <ul style="list-style-type: none"> - Well-founded fear - Persecution (e.g Article 9 RQD) - Convention reason (e.g Article 10 RQD) - Unable/unwilling to avail themselves of protection - Internal relocation • 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>	25

	<ul style="list-style-type: none"> Reference to caselaw may include: <i>Sivakumaran</i> (1987), <i>Rajendrakumar</i> (1996), <i>Ravichandran, Horvath</i> (2000), <i>Shah and Islam</i> (1999) <i>Karanakaran</i> (2000), <i>Svasas</i> (2002), <i>Montoya</i> (2002), <i>Ravichandran</i> (1995), <i>KS (Benefit of the doubt)</i> (2014), <i>PS</i> (Sri Lanka), Relevant application and procedure points 	
Question 3 Total:		25 marks
4(a)	<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> <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 	10
4(b)	<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 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 Discussion of provisions of the IA 2014 and IA 2016 and the 'hostile environment' Relevant discussion of enforcement action Discussion of any relevant caselaw 	15
Question 4 Total:		25 marks