

## 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 the question paper fully.** However, you may make notes on the 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. The 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, 6<sup>th</sup> edition, Phelan and Gillespie, Oxford University Press 2009**
- Candidates must comply with the ILEX 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 ball point 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 ILEX qualifications: **LEVEL 6 CERTIFICATE IN LAW, LEVEL 6 PROFESSIONAL HIGHER DIPLOMA IN LAW AND PRACTICE and the LEVEL 4 DIPLOMA IN LEGAL**

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## SECTION A

(Answer at least one question from this section)

1. (a) Discuss the rules relating to applications for further leave to remain and settlement as they apply to Tier 1 (General) migrants. How do these rules differ from those relating to Tier 4 migrants?

*(12 marks)*

- (b) Explain the rights of those EU citizens who have exercised the general right of free movement under the Article 18 EC Treaty and Directive 2004/38/EC to come to the UK who wish to remain in the UK beyond the initial three-month period.

*(13 marks)*

*(Total: 25 marks)*

2. Explain the structure of the immigration appeals system in the UK and the main features of the jurisdiction of the bodies involved, including the extent to which judicial review can be used to challenge decisions affecting an individual's immigration status.

*(25 marks)*

3. (a) How has the right to UK citizenship of a child born in the UK changed since 1<sup>st</sup> January 1983?

*(7 marks)*

- (b) Compare the immigration status of a woman who was a Commonwealth citizen married to a person with a right of abode prior to 1<sup>st</sup> January 1983 with one in a similar position after that date, indicating how the immigration status of each could be improved.

*(9 marks)*

- (c) Explain the basis on which a child can become a British citizen by descent.

*(9 marks)*

*(Total: 25 marks)*

4. Outline the impact of Human Rights Act 1998 on immigration (**note: not asylum**) decision making and explain the approach of the courts to immigration cases involving the right to respect for family life following the implementation of this Act.

*(25 marks)*

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

**Question 1**

Filip, Zofia, Leon and Sabina, work colleagues from Gdansk, have decided to come to the UK. All except Leon are Polish nationals. Filip, who is a member of a religious community in Gdansk, has been asked to join a community with similar beliefs in Surrey. He is an electrician by trade and in return for a small amount of pocket money, food and accommodation he has agreed to undertake maintenance and other work for the community.

Zofia hopes to work as a part-time translator for about 12 hours a week. She realises that this will not be sufficient to maintain her and has said that if it does not she will have to seek state assistance. However, for the past 12 months she has been running a successful on-line millinery mail order company. Until now her website has been in Polish but she hopes to launch an English language version once she is established in the UK.

Leon is a Peruvian national married to Jenny, a UK national, and they have two children. Leon has been deported from the UK on two occasions having entered the UK illegally but before his last deportation, (when he was in the UK illegally), he met and married Jenny. Although Jenny has had a successful career in Poland, the couple now wish to settle in Leicester where Jenny will divide her time between a university post and looking after the children who are still of school age. Leon has applied for the revocation of the deportation order and for entry clearance on the basis of marriage. He is concerned that this application may be rejected.

Sabina is a member of a group of activists who oppose the international arms trade. She was recently deported from the UK following her arrest for public order offences at two demonstrations. She was not charged or convicted of these offences. Whilst she was in the UK her group were under investigation as a result of allegations that it was working with a proscribed organisation. Sabina denies that she committed any offence and the allegation that she, herself, has had contact with a proscribed organisation. She is anxious to return to the UK where, until her deportation, she had lived with a UK national and his two children. She has decided therefore to seek revocation of the deportation order and if, as she expects it will be, revocation is refused, to appeal against such a decision.

Advise Filip, Zofia, Leon and Sabina of their position under UK and European law.

**(25 marks)**

**Question 2**

- (a) Jasmine is a member of New World, an opposition group in the State of Terranova. The Terranovan and UK governments have recently proscribed New World. The Terranovan government has alleged that New World were responsible for a recent spate of explosions in their country damaging government buildings and for hijacking buses and cars for use in large scale demonstrations at which civilians, police and military have been attacked and killed. Jasmine has been arrested several times by the Terranovan authorities and believes that if she returned to Terranova she would be arrested and held without trial and possibly tortured. New World was also proscribed by the British government as a result of inflammatory speeches made by members of New World in the UK that were later posted on the internet. Whilst accepting that she is a member of New World, Jasmine has denied that she or New World have been involved in the acts alleged by Terranovan government and has claimed that the speeches which have concerned the UK government, whilst strongly worded, are no more than a political organisation exercising its rights to free speech. Jasmine has arrived in the UK and has claimed protection under the Refugee Convention 1951.

Assess, by reference to decided cases, Jasmine's prospects of being granted protection by the UK under the 1951 Refugee Convention.

**(8 marks)**

- (b) Arun, a Myanmar citizen has claimed asylum in the UK and his claim is being processed under the New Asylum Model. The file on which Arun's first interview will be based contains the following key pieces of information:
- It appears that Arun did not travel direct to the UK but spent some (unspecified) time in France possibly with an aunt from where he travelled to the UK to claim asylum
  - The passport he has produced cannot be authenticated
  - Arun claims to have lost his travel documents from Myanmar to France
  - He has been evasive about the extent of his alleged persecution in Myanmar and apparently cannot recall specific incidents of state persecution

You have been asked to interview Arun on behalf of the UKBA as part of the assessment of his claim. Explain your approach to assessing Arun's credibility referring to the Immigration Rules, and to current legislation.

**(9 marks)**

- (c) Mya, Arun's partner, and his two children, Chit, aged 16 and Kyi, aged 19, hope to travel from Myanmar to join Arun in the UK if he is granted asylum and she wishes to know whether this is possible under the Immigration Rules.

Explain whether the family members will be able to join Arun should he be granted asylum and identify any evidence that they may be required to produce to the immigration authorities.

**(8 marks)**

**(Total: 25 marks)**

### Question 3

Rupa, who originates from Bangladesh, has a right of abode in the UK. Since her arrival in the UK she has been providing financial assistance to her family in Bangladesh. Her family used to run a farm but this was totally destroyed by floods and members of the family are now homeless and have split up and live separate lives. They are now mainly financially dependent on Rupa and none has sufficient income to support any of the others.

The family consists of: Zahir, Rupa's father, aged 70, who has recently divorced her mother and lives alone. Her mother Mita, aged 63, is also living on her own and is in poor health. She has a share of the compensation paid to Zahir when the farm was destroyed. Parvaz, Rupa's brother, aged 35, suffered a permanent injury in the floods and cannot work. He lives with Anjana, his daughter aged 14. Parvaz receives a small pension from the Bangladeshi government.

Rupa is very concerned about the family's circumstances and is anxious to find out whether any of them could join her in the UK. She has approached a firm of immigration specialists, Kempston, Manor & Co, for advice on whether it would be possible for any of the family members to join her under the current immigration rules and, if so, whether there would be any restrictions on employment and time they could stay in the UK.

What advice should Kempston, Manor & Co give Rupa on the prospects of any of her family members being able to come to join her in the UK **and** on any conditions that may be imposed on them? Will Rupa have any liability for them whilst they are in the UK?

**(25 marks)**

**Question 4**

- (a) Davi, who comes from Brazil, has indefinite leave to remain in the UK. He has a low paid job as a care assistant and lives on his wages and an allowance from his parents. His family in Brazil have encouraged him to contact Sinita, a girl living in Brazil whom he has never met, as they believe that she would make a suitable wife for him. Davi made contact with Sinita, who is 18 years old, on the internet and after a period of six months his proposal of marriage was accepted although the couple have never met in person. They wish to get married in one year's time but cannot make up their minds whether the wedding should be in Brazil or in the UK. They intend to live in the UK after the wedding. Davi proposes to continue with his job after the wedding but the couple have agreed that in the light of the financial support promised by their parents, which will make them self sufficient, Sinita will not work.

The couple are now seeking your advice on the immigration implications of the two options that they are considering, to marry in the UK or to marry in Brazil.

Evaluate the two options from an immigration law perspective referring where appropriate to decided cases.

How would your answer differ if Sinita decided to delay coming to the UK to live until she was 21 years old?

**(15 marks)**

- (b) Marcos, Davi's brother, who lives in Brazil and is a Brazilian citizen (i.e. he is not a visa national), has decided to visit Davi in the UK to assist Davi with the arrangements for his future wedding. Marcos does not know how long he will be staying and, although, Davi is not aware of this, Marcos is seriously considering settling in the UK and with this in mind has made several job enquiries. In addition to this, when Marcos left Brazil he took unauthorised leave from his job, gave up his flat, drew out all his savings and only bought a one-way ticket. His savings will not be sufficient for him to maintain himself for more than a two-week visit.

When he arrived at Gatwick airport, he was stopped by an immigration officer who expressed concern that Marcos is not a genuine visitor to the UK.

Explain the rules relating to the admission of visitors into the UK **and** discuss the factors that the immigration officer will need to take into account when considering whether Marcos is a genuine visitor.

If Marcos is accepted by the immigration officer as a genuine visitor, are there any steps that he could take to ensure that he could stay in the UK for a period exceeding six months?

**(10 marks)**

**(Total: 25 marks)**

**End of Examination Paper**

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