



## 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 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, 7<sup>th</sup> edition, Phelan and Gillespie, Oxford University Press 2011.**
- 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 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 CILEX qualifications: **LEVEL 6 CERTIFICATE IN LAW, LEVEL 6 PROFESSIONAL HIGHER DIPLOMA IN LAW AND PRACTICE** and the **LEVEL 6 DIPLOMA IN LEGAL PRACTICE**

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

1. (a) Analyse, with reference to decided case law, the impact of the Human Rights Act 1998 on asylum cases. Include in your answer the cases concerning lack of medical treatment in the receiving state.  
**(18 marks)**
- (b) Explain the circumstances in which a person may be granted humanitarian protection or discretionary leave and the factors which may influence the type of leave granted and its duration.  
**(7 marks)**

**(Total: 25 marks)**

2. Compare and contrast the ways in which someone can enter or remain in the UK for business or employment under Tier 1 and Tier 2 of the Points Based System.

**(25 marks)**

3. (a) Assess the impact of the British Nationality Act 1981 (as subsequently amended) on the ways in which a person born in the UK can become a British citizen by birth or parentage. How is the situation different if a person is born outside the UK?

**(15 marks)**

- (b) Explain the processes of registration and naturalisation as a British citizen and the main categories of people that can acquire British citizenship in this way.

**(10 marks)**

**(Total: 25 marks)**

4. Explain and analyse the ways in which people can be deported or administratively removed from the UK and the ways in which they can oppose removal or deportation.

**(25 marks)**

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

**Question 1**

Maryam is 23 and a citizen of Pakistan. On 5 August 2012 she married Sajid, a British citizen. Sajid is 24. The marriage was arranged by their parents and took place in Pakistan. Maryam had met Sajid once before the marriage. They stayed in the same house for three days but did not speak to each other in order to conform to their religious custom. After marrying they spent two months together in Pakistan before Sajid returned to the UK.

Sajid is a student at Collingwood University and Maryam also hopes to study in the UK. When Sajid returned to the UK on 2 October 2012, Maryam applied to the British High Commission in Islamabad for a visa to enable her to join Sajid in the UK as his wife. She explained in her application that she and Sajid would be studying for the next three years and would be able to live with Sajid's parents in their four bedroomed detached house. Sajid's father is a retired doctor. His mother works part-time in a local call centre. Sajid's older brother, who lives in the family home, is a computer programmer and earns a good wage. He is happy to help Sajid and Maryam financially if needed. Sajid now also has a part-time job in the local call centre and his weekly earnings are just under the current income support level for a couple. Sajid and Maryam will not have to pay Sajid's parents for board and lodging.

- (a) Advise on the issues which Maryam will need to deal with in making her application, outlining the relevant immigration rules, the leave that will be granted if her application is successful and when she will be able to apply for indefinite leave to remain.

**(18 marks)**

- (b) How would your advice differ if Maryam and Sajid had not married in Pakistan but instead wished for Maryam to come to the UK first and for the marriage to take place here? Set out in your answer the ways in which the immigration rules would be different and also how the leave granted would be affected, including the time when she can apply for settlement.

**(7 marks)**

**(Total: 25 marks)**

## Question 2

Rose is a 19 year old asylum seeker from Moyale in Kenya. A year ago her father joined the Mungiki sect which promotes traditional African values and culture and enforces Female Genital Mutilation/female circumcision (FGM). Although the sect is outlawed in Kenya, the Amnesty International annual report on Kenya states that the police do not protect people from the sect and the Mungiki freely commit acts of unlawful violence, including FGM. The US Department of State report indicates that women have very few employment opportunities and that violence and rape against women is widespread. It states that the police do not adequately investigate incidents of violence.

A few months after joining the sect Rose's father, with other members of the sect, forcibly performed female circumcision on her mother. She died as a result of her injuries.

Shortly afterwards Rose was gang raped and severely beaten by five members of the sect. She reported the incident to the police but they did not record the incident.

A few months later Rose's father forcibly circumcised her sister and told Rose that she would be next. Again she tried asking the police for help but they told her to respect her father's wishes or they "would show her what happens to disrespectful women".

Rose managed to escape to her maternal aunt and uncle's house in Nairobi. She remained in hiding there for a month while they raised the money for her to flee. Since arriving in the UK her father has been to her aunt and uncle's house looking for her. He told them that when he found Rose he would ensure she was circumcised.

Rose then fled to the UK and claimed asylum. She fears that if she is returned to Kenya she will be forcibly circumcised and risk dying from her injuries like her mother did. She also fears being raped again. She does not feel safe anywhere in Kenya and would not be able to support herself or live safely in another area of the country. She only has family in Moyale and Nairobi.

Advise Rose as to whether she could be recognised as a refugee in the UK. Also consider in your answer what argument the Home Office may raise to say her fear is confined to one area of Kenya and whether this is a reasonable alternative to international protection in this case.

**(25 marks)**

### Question 3

Juan and Manuel are both 19 years old and from Cuba. They both live in family homes in Cuba with parents and siblings. They have friends who are studying in the UK and wish to join them here. Manuel is currently working as a bar manager in Cuba but his employers are happy for him to take six months off his job and return to work after this period. Juan is not working as he intends to study.

Juan has been accepted on a course in Cybernetics at the University of Knowledge in Berkshire. He wishes to live in student halls of residence. He has £2,500 in savings which he wishes to use to travel the UK and to supplement his income while he is studying in the UK. His parents are funding his studies and giving him money to live on. They have recently transferred £15,000 to his bank account for his first year of course fees.

Manuel simply wishes to visit his friends in the UK for five or six months. He has an aunt and uncle who live near the University of Knowledge and are happy for him to stay at their house during his visit. They do not want him to pay any board as he is family. Manuel thinks that if he then decides he would like to try one of the courses at the University he could change to being a student and enrol on one of them. He thinks he could then stay in the UK longer if he wished to. Manuel has £3,000 in savings which he thinks will be sufficient to fund his five or six month visit.

Juan and Manuel have found flights for £430 for an open return fare and £330 for a single fare. Manuel intends to buy a return ticket and Juan a single ticket. They will use some of their savings to pay for this if they are granted entry clearance.

(a) Advise on the requirements of the immigration rules that Juan and Manuel will have to meet in order to succeed in their applications.

**(18 marks)**

(b) If the applications were refused, what rights of appeal would they have and within what time frame?

**(7 marks)**

**(Total: 25 marks)**

**Question 4**

Susanna is a Spanish national. She is a qualified physiotherapist and wishes to come to the UK to work. She has recently been offered a post as a physiotherapist on a part-time basis with a privately funded hospital in England. Susanna has an 8 year old daughter, Maria, who is also Spanish and dependent on Susanna. Susanna has recently married Paulo, a Brazilian national. Paulo is not Maria's father. Paulo and Maria live with Susanna in Spain. They both wish to live in the UK with Susanna. Paulo works in a bar and is sure he will be able to get work in the UK once they are here.

Susanna and Maria recently arrived in England for Susanna to take up her post. Paulo is hoping to join them in a couple of month's time after saving some more money. Susanna has applied for a registration certificate to enable her to work and reside in the UK for five years. The Home Office has now refused this saying that she is not a qualified person as the post at the hospital is only part-time.

Susanna has £3,500 in savings which, if necessary, she can use for her and Maria to live on while she seeks alternative employment. She intends to sign on at her local job centre. She also wishes to explore the possibility of setting up her own business as a mobile physiotherapist if she is unable to take up the position. She would, however, prefer to work at the hospital so she has more time to spend with her daughter.

With reference to decided cases and relevant EU law provisions, explain the rights which Susanna has in these circumstances to reside and work in the UK and the rights of her husband and daughter to live with her.

**(25 marks)**

**End of Examination Paper**

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