

## OISC LEVEL 1 ASSESSMENT

### MARK SCHEME AND SAMPLE ANSWERS

#### SECTION 1: MULTIPLE CHOICE QUESTIONS

*This examination is open book. You may refer to materials such as the OISC exam resource book, published texts and your own notes.*

*Please note there is only ONE correct answer for each of the questions in Section 1 so a maximum of ONE mark may be awarded for each.*

**Please ensure that you complete your answers in the grid as shown on the second page of your answer book and do not mark your answers on the question paper**

1. The new government has pledged to do which ONE of the following?
  - (a) Extend the 10 year long residence rule to 12 years
  - (b) Repeal the Human Rights Act 1998
  - (c) Close Tier 2 (General)
  - (d) Simplify the immigration rules
  
2. An appeal against the refusal of an application will initially be heard in the:
  - (a) First-tier Tribunal (Immigration and Asylum Chamber)
  - (b) Administrative Court
  - (c) Court of Appeal
  - (d) Asylum and Immigration Tribunal
  
3. The UKVI pages of the GOV.UK website contain the immigration rules, guidance to applicants and, separately, guidance to Home Office caseworkers. Which of the following statements most accurately reflects an adviser's use of this material?
  - (a) When giving advice to a client, the starting point will be the guidance to applicants. It will rarely be necessary to look at the immigration rules or the guidance to Home Office caseworkers as this simply reflects the guidance to applicants but in a more complicated way.
  - (b) Most advisers can give appropriate advice to clients by working solely with the applications forms and guidance notes accompanying the forms. It will not usually be necessary to consider any other information on the GOV.UK website.
  - (c) After looking at the immigration rules, it will often be useful to look at the guidance to Home Office caseworkers to see how the rules will be applied in a particular case.
  - (d) It really is a question of how the adviser's firm prefers to operate. There is no right or wrong approach.
  
4. A grant of ILR will lapse where the person has been outside the UK :
  - (a) For a continuous period of two years or more
  - (b) For more than 180 days in any one year
  - (c) For a continuous period of more than two years
  - (d) For more than 450 days in a five year period
  
5. Before rejecting an application that is invalid, the Home Office should contact the applicant to give them an opportunity to correct any omission or error. This is due to:
  - (a) Provisions in Part 1 of the immigration rules

- (b) Provisions in the Immigration Act 2014
  - (c) Procedural fairness
  - (d) The HO policy of evidential flexibility
- 6. In certain circumstances, a person applying for entry clearance under the partner category of Appendix FM will not need to meet the minimum gross annual income requirement. This will be where:**
- (a) The applicant relies on paragraph EX1
  - (b) The partner is living with the applicant outside the UK
  - (c) The partner is in receipt of particular disability related benefits
  - (d) The partner is a refugee
- 7. When submitting bank statements in support of the financial requirements under Appendix FM, they will need to show the closing balance:**
- (a) At a date no earlier than 31 days before the date of application
  - (b) At a date no earlier than 28 days before the date of application
  - (c) On the date of application
  - (d) Within 6 months of the application date
- 8. A Tier 4 migrant in the UK seeking an extension of stay as the fiancé of a British citizen will be able to do so:**
- (a) If they were previously granted leave for more than 6 months
  - (b) If they earn a minimum income of £18,600
  - (c) Only if they are a non-visa national
  - (d) None of the above
- 9. On which form will a person apply for settlement under the 10-year long residence category?**
- (a) SET(O)
  - (b) FLR(FP)
  - (c) SET(P)
  - (d) SET(LR)
- 10. If the wrong form is used for an application, the Home Office is likely to:**
- (a) Decide the application is invalid
  - (b) Refuse the application
  - (c) Give the applicant one opportunity to remake the application on the correct form
  - (d) Ignore the application
- 11. Recent amendments to paragraph 6 of the Immigration (EEA) Regulations 2006 are designed to:**
- (a) Restrict access to benefits
  - (b) Restrict the right of admission
  - (c) Restrict the rights of dual nationals
  - (d) Restrict the rights of Croatian nationals

**12. When considering whether your EEA national client is permanently resident, having spent five years in the UK, in which of the following circumstances will they have automatically broken their continuity of residence during that period:**

- (a) They spent six months absent from the UK in a 12 month period
- (b) They spent 12 months outside the UK due to pregnancy and childbirth
- (c) They were removed from the UK under the Regulations, but returned immediately and began work
- (d) They were made redundant, but registered with the jobcentre and found work three months later

**13. An EEA national will have which of the following rights under the Free Movement regime?**

- (a) A right of abode
- (b) Automatic leave to enter
- (c) A right of admission and residence
- (d) A right to ILR after 5 years of residence

**14. A person will have continuing leave under section 3C of the Immigration Act 1971 in which of the following circumstances?**

- (a) They have applied to extend their stay so long as they have not overstayed by more than 28 days at the date of application
- (b) They make a postal application to extend their stay on the final day of their leave
- (c) The leave they were granted has not yet expired
- (d) They apply to extend their stay, having overstayed their leave, and the application is granted

**15. A child born in the UK to parents who are neither British nor settled can apply to register as a British citizen when they have had how many years of residence in the UK?**

- (a) 5 years
- (b) 7 years
- (c) 10 years
- (d) Only if a parent becomes British or settled in the UK

**16. A person who uses deception in an application for leave to enter:**

- (a) Will face an entry ban of 10 years
- (b) Will face an entry ban of 10 years unless applying to enter under the provisions of Appendix FM
- (c) Will face a lifetime ban from the UK
- (d) May face an entry ban of 10 years at the discretion of the Entry Clearance Officer

**17. The Resident Labour Market Test:**

- (a) Requires an employer to test the skills of a prospective employee they wish to sponsor under Tier 2
- (b) Requires an employer to pay their Tier 2 employee a salary comparable to that which would be paid to a UK national in a similar job
- (c) Requires an employer to employ non-EEA nationals only in jobs on the Shortage Occupation List
- (d) Requires an employer to advertise the post in the UK before offering it to a non-EEA national

**18. The Home Office has in recent years sought to exercise more control over decision making under the points-based system by:**

- (a) Introducing 'genuineness' criteria
- (b) Increasing the number of points required by an applicant
- (c) Making the rules more complicated than most applicants can understand
- (d) Removing access to legal aid for applicants

**19. An applicant under Tier 2 (General) will need what level of English language to score the required points?**

- (a) Level A1
- (b) Level B1
- (c) Level C1
- (d) There is no English requirement under Tier 2 (General)

**20. Will a person applying for limited leave to remain in the UK have to pay a health surcharge?**

- (a) Yes
- (b) Yes, unless they are under 18
- (c) Yes, unless exempt under Schedule 2 of the Immigration (Health Charge) Order 2015
- (d) No

## **SECTION 2: SCENARIO BASED QUESTIONS**

*Please note that **MULTIPLE** marks can be gained for answers to each of the questions in Section 2. The maximum marks are indicated in brackets at the end of each question. A breakdown of marks within each question is also provided. You may use this as a guide for the number of points you should include in your answers.*

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**Total marks for this section: 33 marks**

### **Your instructions**

Your client, Humphrey (aged 48), a British citizen, seeks advice about his partner, Eduardo, a Brazilian national (aged 42). Eduardo is currently in the UK with a six month visa granted to him under the Tier 5 (Temporary worker) category. The visa is due to expire in two weeks.

Humphrey and Eduardo met and began a relationship shortly after Eduardo entered the UK. The couple have been cohabiting in Humphrey's rented bedsit for the last few weeks.

Humphrey wants to know if Eduardo can apply to remain with him in the UK so that they can get married and live together here.

Humphrey has recently become unemployed when his firm went into administration. Eduardo, a fluent English speaker, is a millionaire, having inherited the equivalent of £1 million pounds from his mother's estate some years ago.

### **Question 1**

Write a letter of advice to Humphrey;

- Explaining, with reference to the applicable rules, the application Eduardo will need to make, and the requirements he will need to meet to make such an application

**(12 marks)**

- Listing the evidence (including documentary evidence) they will need to provide to show that the relationship requirements are met,

**(6 marks)**

- Explaining the leave that Eduardo will be granted if the application is successful, and

**(3 marks)**

- The options Eduardo will have if the application is refused

**(4 marks)**

**(NB: An additional 2 marks can be awarded for the appropriate structure and language)**

**Total marks available for question 1 = 27**

**Question 2**

After receiving the letter of advice, Humphrey rings you. He tells you that Eduardo has recently told him that he was previously married in Brazil, but divorced his wife many years ago. They would prefer not to disclose this to the Home Office as they are worried that the Home Office may suspect their relationship is not genuine.

Draft an attendance note explaining the advice you gave to Humphrey.

**(6 marks)**

**Total marks available for question 2 = 6**

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Answer (b)

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Answer (a)

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Answer (b)

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- (a) Yes
- (b) Yes, unless they are under 18
- (c) Yes, unless exempt under Schedule 2 of the Immigration (Health Charge) Order 2015
- (d) No

Answer (c)

## **SECTION 2 WITH MARK SCHEME AND SAMPLE ANSWERS**

*Candidates should note that the answers provided in this scenario are presented to the level of a 'model' standard, as the heading above indicates i.e. the answers below were not written under examination conditions and are designed to show what could be considered to be a 'perfect' answer.*

*You should be mindful that although a letter composition is required, the OISC does not expect candidates to replicate the comprehensive answers found below to the exact specification or word count shown here, in order to score high or full marks in a live assessment. Therefore bullet point answers are provided as well as the larger bodies of text, to show exactly where individual marks are awarded in the paper.*

### **SECTION 2: SCENARIO BASED QUESTIONS**

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**Total marks for this section: 33 marks**

#### **Your instructions**

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Humphrey and Eduardo met and began a relationship shortly after Eduardo entered the UK. The couple have been cohabiting in Humphrey's rented bedsit for the last few weeks.

Humphrey wants to know if Eduardo can apply to remain with him in the UK so that they can get married and live together here.

Humphrey has recently become unemployed when his firm went into administration. Eduardo, a fluent English speaker, is a millionaire, having inherited the equivalent of £1 million pounds from his mother's estate some years ago.

#### **Question 1**

Write a letter of advice to Humphrey;

- Explaining, with reference to the applicable rules, the application Eduardo will need to make, and the requirements he will need to meet to make such an application

**(12 marks)**

- Eduardo must go home first (2)

- To apply for visa as a fiancé (NB: Not a proposed civil partner) (1)
  - Reasonable explanation of suitability (e.g. can be refused on grounds of criminality, or owing money to NHS) (2)
  - Genuine and subsisting relationship (1)
  - Seeking entry to enable marriage to take place (1)
  - All previous relationships must have broken down permanently (1)
  - Intend to live together permanently in the UK (1)
  - Can rely on Eduardo's savings to meet financial requirement (2)
  - Degree taught in English, or approved certificate (1)
  - Appendix O or 'approved' English language certificate (bonus)
- Listing the evidence (including documentary evidence) they will need to provide to show that the relationship requirements are met,

**(6 marks)**

- Statements or letters from Humphrey and Eduardo, detailing the development of their relationship, their feelings for each other and plans for the future (3)
  - Evidence of cohabitation – e.g. letters to both addressed to same address (or other sensible advice) (1)
  - Documentary evidence of any plans they have made for their wedding (1)
  - Letters from friends aware of their relationship (bonus)
  - Evidence of continuing contact when Eduardo returns to Brazil e.g. social media, itemised phone bills etc (1)
  - Anything sensible not in above list (bonus)
- Explaining the leave that Eduardo will be granted if the application is successful, and

**(3 marks)**

- 6 months leave to enter (1)
- No recourse to public funds, no employment (1)
- Can apply to extend when marriage has taken place (1)

- The options Eduardo will have if the application is refused

**(4 marks)**

- Appeal (1)
- To First Tier Tribunal (IAC) (1)
- Within 28 days of receipt of decision (bonus)
- Or make further application (1)
- Will need to refer to Level 2/3 adviser at that point (1)

**(NB: An additional 2 marks can be awarded for the appropriate structure and language)**

**Total marks available for question 1 = 27**

Sample letter

Date:

Your Ref:

Dear Humphrey,

**Re: Eduardo**

Thank you for coming to see me for some immigration advice about the situation of your fiancé, Eduardo. Here is the written advice that I promised to you at our meeting.

**Your instructions**

Just to confirm what you told me, you are a British citizen. You are engaged to Eduardo, who is from Brazil, and who is in the UK having been granted a six month visa under the Tier 5 (Temporary worker) category. The visa is due to expire in two weeks. You are currently unemployed, but Eduardo is a millionaire.

You sought advice from me as to whether Eduardo could stay in the UK so that you can get married and live here together.

**My advice**

As I advised you, as Eduardo was granted only six months permission to stay, he cannot apply for further permission to stay in the UK in order to marry you and settle down here. The immigration rules require him to go home in order to apply for a visa to return to the UK as your fiancé.

**Requirements for a fiancé visa**

I will explain what Eduardo has to show in order to succeed in an application for a fiancé visa.

Firstly, the rules require him to show he does not fall for refusal under what is called the 'suitability' criteria. Particularly, he can be refused on this basis, or his application can be delayed, if he has criminal convictions or owes more than £1000.00 for NHS medical treatment. You told me you would ask him if these might be issues in his case.

You will also need to show that:

- your relationship with Eduardo is a genuine and subsisting (i.e. ongoing) relationship;
- Eduardo is making a visa application to come to the UK so that you can get married;
- any previous similar relationships you or Eduardo might have had have broken down permanently;
- you intend to live together permanently in the UK;
- Eduardo can maintain himself in the UK without recourse to public funds – as you are not currently working we can rely on Eduardo's savings to meet this requirement;
- You have accommodation to live in together – you will need the exclusive use of at least one room. Your current bedsit is adequate for these purposes;

- That Eduardo speaks a basic level of English. He can show this if he has a degree, equivalent to a UK Bachelor's degree, which was taught in English. You were going to check this with Eduardo.

If Eduardo does not have such a degree, he will need to take an approved English language test. If necessary, I can send you a list of the approved tests, and the approved venues for taking the test.

### **Documents to show the relationship requirements are met**

To show that you and Eduardo are in a genuine and subsisting relationship, and that you intend to get married and live permanently together in the UK, you should provide:

- detailed statements or letters from both of you, detailing the development of your relationship, your feelings for each other and your plans for the future. You said you would discuss with Eduardo whether you need my help in drafting statements
- evidence of living together – e.g. letters addressed to each of you at your flat
- documentary evidence of any plans you have made for your wedding
- letters from friends and/or family members that know from their own experience that you and Eduardo are in a relationship
- evidence of continuing contact between you when Eduardo returns to Brazil e.g. social media, itemised phone bills etc
- anything else you can think of to show that you and Eduardo are in a relationship and planning to get married (e.g. photos or other evidence of the time you spend together)

### **Eduardo's visa**

If Eduardo's visa application is successful, he will be granted six months' permission to stay in the UK. You will be expected to get married in that period. When you do get married, he can then apply to extend his stay. He will be able to apply to settle in the UK permanently five years after that next application is granted (presuming your and Eduardo's circumstances remain the same).

Eduardo's visa will restrict him from working in the UK, and from claiming benefits. When he has extended his leave, the prohibition on employment will be removed.

If the application is refused for any reason, Eduardo can appeal that decision to the First-tier Tribunal (Immigration and Asylum Chamber). The appeal must be lodged within 28 days from the date he receives the Home Office's decision. As an alternative to appealing, it may make more sense to make a further application for a visa, depending on the reasons for refusal.

If the application is refused, I will refer you to a more experienced adviser to advise you further on the options at that point.

Please do not hesitate to contact me if you wish to discuss anything in this letter. I look forward to hearing from you further when you have considered this advice.

Yours sincerely

An Adviser  
Visas and Co

## Question 2

After receiving the letter of advice, Humphrey rings you. He tells you that Eduardo has recently told him that he was previously married in Brazil, but divorced his wife many years ago. They would prefer not to disclose this to the Home Office as they are worried that the Home Office may suspect their relationship is not genuine.

Draft an attendance note explaining the advice you gave to Humphrey.

**(6 marks)**

- Eduardo must disclose the marriage (1)
- Or he risks refusal (1)
- Good evidence of current relationship should suffice to show it is genuine (1)
- Will deal with this issue in his witness statement (bonus)
- Must provide divorce certificate (1)
- Cannot represent if does not disclose (1)
- Will be criminal offence to deceive (1)
- And to assist them in deception (bonus)
- Ss24 and 25 of 1971 Act (bonus)

**Total marks available for question 2 = 6**

### Sample attendance note

Phone attendance on Humphrey

Date:

Client rang. Told me Eduardo was previously married, but worried about disclosing this to HO as might make them think the relationship is not genuine.

I explained he must disclose this as the form requires this information. If he does not, and the HO find out, he will be refused. I said it should not detract from their current relationship, as we can provide good evidence of it being genuine. We can deal with all this in the statements. Eduardo should provide his divorce certificate.

Also professional duties – I can't represent him if he deceives the HO. Will also be a criminal offence for them and me (if I assist) – ss24/25 of the IA 1971.

15 mins.