

LEVEL 3 IMMIGRATION PAPER

INSTRUCTIONS TO CANDIDATES

Level 3 (81 Marks)

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

The Paper is divided into 5 parts. Questions in each part are numbered and the marks allocated to each are detailed in closed brackets at the conclusion of the relevant question.

You have 3 hours to complete this exam paper. You may begin reading as soon as the invigilators say so. You may begin writing whenever you have read the questions.

You may use bullet points to summarise your answers in non-drafting questions, and you may use reasonable abbreviations so long as their meaning is obvious.

Your Instructions

Marcel is from Mauritius and he is currently 24 years old. He entered the UK in September 1993 with his parents using visitor visas. His parents returned to Mauritius and Marcel remained in the UK with his maternal aunt Marie-Claude.

Marcel's parents are now deceased and he has no family left in Mauritius. He has spoken English all his life and has no awareness of life in Mauritius. He is aware of distant family members such as cousins in Canada along with the cousins he grew up with in the UK.

In 2007, Marcel entered into a relationship with Henrietta, a Spanish student who was studying in the UK, and they had a daughter named Marcella born on 15 June 2008. As a result of their relationship and Marcella's birth, Marcel suspended his studies to work in the family business so he could support Henrietta and Marcella.

In April 2008 Henrietta moved in with Marcel at his aunt's home. Henrietta has continued her studies in the UK and is willing to support Marcel in his studies now she has secured employment.

Marcel has never applied to regularise his status. He has completed his A levels and is now keen to go to University. However he has now learned that his precarious immigration status prevents his admission to university. He is also anxious to be deemed as a home student for the purpose of tuition fees.

PART 1

Question 1

What is the daughter Marcella's immigration status? (4 marks)

Question 2

What is Henrietta's immigration status? (4 marks)

Question 3

Explain the options available to Marcel to regularise his immigration status (11 marks)

PART 2

Question 4

Write a letter of advice to Marcel setting out the available option(s), why you recommend particular option(s) and why you do not recommend other option(s).

(22 marks)

PART 3

Marcel applies for and is granted the status/document you have suggested to him as the best option. He now seeks your advice on naturalisation.

Question 5

What advice do you give him as to timescales and other requirements for such an application? (7 marks)

PART 4

Question 6

Marcel informs you that he was declared bankrupt in 2011. What advice would you give Marcel in these circumstances? (2 marks)

PART 5

Despite your advice Marcel pursued an application for naturalisation and failed to declare his bankruptcy. His application has been refused for failure to disclose a material fact. He has also been charged with deception and the Home Office has notified Marcel that they are considering deporting him.

Question 7

What legal authorities will the Home Office rely upon in these circumstances? (3 marks)

Question 8

You receive a telephone call from Marcel's aunt Marie-Claude who states that Marcel has been taken into immigration detention following the service of a Notice of Intention to Deport.

Outline the processes, timescales and merits in respect of any advised course of action you have recommended in response to Marcel's detention and the decision to deport. (13 marks)

Question 9

Draft a skeleton argument on Marcel's behalf for his appeal (15 marks)

MODEL ANSWER

PART 1

Question 1

What is the daughter Marcella's immigration status? (4 marks)

- Permanent residence (1)
- Under EEA Regs 2006 (1)
- 5 years residence as a family member of an EU national(1)
- and as a European national in her own right (1)
- Will be able to register Marcella as a British Citizen (1 bonus)

Question 2

What is Henrietta's immigration status? (4 marks)

- Right to reside as an EU national (1)
- Permanent resident (1)
- Having resided for 5 years as a qualified person (1)
- Need to check if has health insurance (1 bonus)
- Qualifies for naturalisation as a British citizen (1)

Question 3

Explain the options available to Marcel to regularise his immigration status (11 marks)

- Extended family member (Reg 8) (1)
- durable relationship (1)
- Must apply for Residence Card (1)
- Could marry Henrietta Reg 7 (1)
- And would have right to reside instantly (1)
- Partner application (1)
- Exception EX.1 (1)
- Unreasonable for Marcella to leave uk (1)
- And/or insurmountable obstacles (1)
- Rule 276ADE 20 years continuous residence (1)
- Rule 276ADE (aged between 18 to 25, half life in UK) (1)

PART 2

Question 4

Write a letter of advice to Marcel setting out the available option(s), why you recommend particular option(s) and why you do not recommend other option(s).

(22 marks)

Logical and appropriate structure including use of language suitable for the intended recipient (2 marks).

Appropriate law and evidence (20 marks)

- Possibly an extended Family member of qualified person (1)
- Further instructions on durability of relationship required to clarify (1)
- Would need to apply for a residence card to establish EU rights (1)
- Could apply under Appendix FM partner category (1)
- As Henrietta present and settled (1)
- Need to show not reasonable for Marcella to leave or insurmountable obstacles (1)
- Their exercise of Treaty Rights should establish that (1)
- Will also qualify under private life provisions (1)
- EEA route cheaper (1)
- £55 as against £601 (1)
- Permanent residence in 5 years (1)
- Whereas will be 10 years under private/family life route (1)
- Will not be able to apply for loans or grants under 10 year route (1)
- But will have status in own right if granted leave under private life route (1)
- Evidential requirements of private life more onerous (1)
- Recommend Residence Card application as simpler, cheaper and quicker (1)
- Will also be quicker to naturalise (1)
- And refusal will give right of appeal (1)
- And possibly a private life application too (i.e. can do both) (1)
- Or can make private life application at later stage if Henrietta decides to leave UK (1)

Model letter

Dear Marcel

Re: Your immigration case

It was good to meet you last week. Here is the advice I promised you about your immigration situation.

Your instructions

To confirm your instructions, you are a national of Mauritius, aged 24, who entered the UK as a young child with your parents in September 1993 on a visit visa. You

have overstayed your visa and remained in the UK since then. You live with your Spanish partner and six year old daughter, and now want to regularise your stay in the UK.

Please do let me know if I have misunderstood what you told me.

My advice

You have various options to regularise your stay. I will explain them, and advise you of the best option. You have options both under European Union law, as Henrietta is Spanish, and under UK law.

Under European Union law

If you can show you are in a 'durable relationship' with Henrietta, you can apply for a EEA Residence Card to establish your right to reside in the UK under EU law.

Evidence that you have been living with Henrietta and your daughter as a family since 2008 should establish that you are in a durable relationship.

An application for a Residence Card costs £55.00. The card is issued for a 5 years period.

5 years after being issued with the Residence Card, presuming your family circumstances remain the same, you will automatically become permanently resident in the UK.

Under UK law

Alternatively, you can apply under UK law. There are two possible ways to do this.

Firstly, you can make an application on the basis of your family life in the UK. As Henrietta is permanently resident in the UK under EU law, she is treated as being settled in the UK under UK law. This means that you can make an application for leave to remain under the partner category of the UK immigration rules as the spouse of a person present and settled in the UK.

For a partner application to succeed, you will need to show that it is not reasonable for you all to live together in another country (i.e. Mauritius or Spain). We should have no difficulty doing that as Henrietta and Marcella have a right to live in the UK under EU law and the Home Office should not interfere with that right.

Secondly, you can apply to regularise your status on the basis of your 'private life' in the UK, now that you have been here over 20 years. You also qualify under the private life category on the basis that you are under 25 years old and have spent half your life in the UK.

An application under UK law would cost £601. If successful on either basis (i.e. family or private life) you will be granted leave to remain initially for 30 months, and would need to apply to extend your leave several times until you have been in the UK for 10 years. At that point, you can apply for Indefinite Leave to Remain.

My recommendation

I would recommend applying for a Residence Card under EU law.

It will be simpler, quicker and cheaper to regularise your stay in the UK in this way. The fee is £55 as opposed to £601. You will need to provide fewer documents to support your application, and you will become settled in the UK quicker (i.e. in 5 years rather than 10). Additionally, if the EU application is refused, you will have a right of appeal to the First-tier Tribunal, which you may not have if the family or private life application is refused. It will also be quicker for you to apply for British citizenship if granted a right to reside under EU law.

Both the EU and family life applications rely on your relationship with Henrietta continuing. Only the private life application will give you leave in your own right. So that is one advantage of making a private life application. However, if your relationship with Henrietta was to break down before you gained permanent residence or Indefinite Leave to Remain, you will almost certainly have an opportunity then to make an appropriate application to continue your residence in the UK (under the private life category or as the parent of Marcella).

It is possible to make both a residence card application under EU law, and a private life application at the same time, but I do not see much point in doing that.

So my conclusion is to recommend that you make an application for an EU residence card on the basis of your durable relationship with Henrietta.

As this is all very complicated, please do not hesitate to contact me to discuss your options further. I will be happy to arrange a further meeting at your convenience to answer any questions you may have. I look forward to hearing from you.

Yours sincerely

OISC Adviser

PART 3

Marcel applies for and is granted the status/document you have suggested to him as the best option. He now seeks your advice on naturalisation.

Question 5

What advice do you give him as to timescales and other requirements for such an application? (7 marks)

- Can apply for permanent residence document (1)
- 5 years after granted residence card (1)
- Presuming retains a right to reside for that period (1)
- Must then wait for 1 year (1)
- KOLL requirements (1)
- Maximum of 450 days outside UK, and 90 days in final year (1)
- Must maintain good character (1)

PART 4

Question 6

Marcel informs you that he was declared bankrupt in 2011. What advice would you give Marcel in these circumstances? (2 marks)

- Will be relevant to good character requirement (1)
- Will need further instructions on circumstances (1 bonus)
- Will need to consider guidance in Nationality Instructions (1)

[INSTRUCTIONS TO MARKER – LEVEL 2

As indicated in the course of the text bonus marks may be allocated on this paper at specific points. Beyond these a further 5 bonus marks may be awarded for matters which do not appear in the marking scheme but which you consider are appropriate to award in order to recognise the merit of an unexpected answer].

Total Marks for the Level 2 paper is 50

PART 5

Despite your advice Marcel pursued an application for naturalisation and failed to declare his bankruptcy. His application has been refused for failure to disclose a material fact. He has also been charged with deception and the Home Office has notified Marcel that they are considering deporting him.

Question 7

What legal authorities will the Home Office rely upon in these circumstances? (3 marks)

- Offence under BNA 1981 (1)
- Deportation: not conducive to public good (1)
- Reference to 1971 Act or Part 13 of Immigration Rules (1)
- Reference to Reg. 19 EEA Regs (1 bonus)

Question 8

You receive a telephone call from Marcel's aunt Marie-Claude who states that Marcel has been taken into immigration detention following the service of a Notice of Intention to Deport.

Outline the processes, timescales and merits in respect of any advised course of action you have recommended in response to Marcel's detention and the decision to deport. (13 marks)

- can apply for temporary release (1)
- CIO bail (1)
- And Tribunal bail if necessary (1)
- Will be strong case for release given family life (1)
- Will prepare urgent reps requesting release (1)
- And bail application on form B1 (1)
- Hearing listed in 3 days if not released by then (1 bonus)
- Should appeal against the deport decision (1)
- lodge appeal within 5 working/business days (1)
- of receipt of the notice (1)
- IAFT-1 or online (1)
- No fee for appeal (1 bonus)
- Appeal on EEA grounds (1)
- And Article 8 (1)
- Very strong case on both grounds (1)

Question 9

Draft a skeleton argument on Marcel's behalf for his appeal (15 marks)

Logical and appropriate structure including use of language suitable for the intended recipient (2 marks).

Appropriate law and evidence (13 marks)

Marks are awarded for:

- Header (1)
- Structure (1)
- outline the facts (1)
- Private life (1)
- Family life (1)
- Reference to paras 398/399 of IRs (1)
- No ties to another country (1)
- Reference to Ogundimu on 'no ties' (1)
- Section 55 argument (1)
- Reference to applicable case law concerning A8 and new rules (e.g. MF(Nigeria), Izuazu, etc) (1)
- Reference to Maslov, Uner, Boulif criteria (1 bonus)
- Proportionality (1)
- EEA Argument (1)
- Test is Imperative grounds of public security (1)
- Clearly his offending does not reach that threshold (1)
- No current threat (1 bonus)
- Appeal must be allowed on these bases (1)

Model skeleton argument

IN THE FIRST TIER TRIBUNAL (IAC)

APPEAL NO...

IN THE MATTER OF AN APPEAL AGAINST DEPORTATION

BETWEEN:

MARCEL

APPELLANT

V

SSHD

RESPONDENT

APPELLANT'S SKELETON ARGUMENT

1. The Appellant (A), appeals a decision of the Secretary of State to deport him from the UK.

Brief facts:

2. The decision to deport the Appellant was taken on conducive grounds, following his criminal conviction for applying for British citizenship by deception; he had failed to disclose in his application for naturalisation that he had faced bankruptcy proceedings in the UK.
3. The Appellant is a Mauritian national with permanent residence in the UK under s15 of the Immigration (EEA) Regulations 2006. He has resided in the UK since 1993. He lives in the UK with his Spanish partner and their daughter.

Documents:

4. The appellant relies on a bundle of documents to establish the above facts.

Argument:

5. It is contended that the decision appealed against is unlawful. Particularly, the decision was made in breach of the immigration rules, in breach of the

Appellant's right to respect for his family and private life in the UK, in breach of his partner and child's right to respect for their family life, and in breach of his rights under the EU treaties.

6. In regard to his private life, the Appellant has now lived in the UK for over 27 years. He arrived at the age of 3 years. He has no ties to Mauritius, his country of nationality. His parents are now deceased and he has no family left in Mauritius. He has spoken English all his life and has no awareness of life in Mauritius.
7. Further to paragraph 398(c) of the immigration rules, it is contended that his Article 8 private life rights would be breached for reason that he clearly meets the requirements of paragraph 399A(a).
8. In respect of our submission that he has no ties to Mauritius, we rely on the reported decision in Ogundimu.
9. In any case, it is our contention that by reason of MF (Nigeria), even if it were found that the immigration rules did not prevent the Appellant's deportation, that would not be the end of the matter. The decision to deport him would remain in breach of his and his family's Article 8 rights. It would be disproportionate. In this regard we submit that the Secretary of State has had no proper regard to the principles laid out in decisions of the European Court of Human Rights in Boultif, Maslov and Uner.
10. In regard to his family life, it is also contended that it would be unreasonable for his partner and child to live with him in another country. They are Spanish citizens, permanently resident in the UK, and have lived in the UK for over 10 years. It would be both unreasonable and a breach of their Treaty Rights to expect them to live with the Appellant in Mauritius.
11. We further rely on the principles outlined in s55 of the 2009 Act, and in ZH (Tanzania), to contend that the best interests of the Appellant's daughter far outweigh the Appellant's offending behavior.
12. Lastly, in regard to the Appellant's EU Treaty Rights, we ask the Tribunal to note his 27 years of residence in the UK. Under Regulation 21 of the Immigration (EEA) Regulations, a relevant decision may not be taken except on imperative grounds of public security. By no way, shape or form can the Appellant's deportation be said to meet that threshold. His offending does not engage public security. In any case, the Secretary of State has failed to assess the proportionality of her decision, nor show that the Appellant is a current risk.

13. It is contended that the appeal against deportation must be allowed for these reasons.

Note to marker: 5 bonus marks are available in addition to the marking grid.