

LEVEL 3 ASYLUM PAPER

INSTRUCTIONS TO CANDIDATES

Level 3 (84 marks)

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

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.

You are provided with all the country information that is necessary to answer the questions within the exam paper itself. No marks will be awarded for references to other country evidence that may be within your personal knowledge.

This exam paper has four pages. If you do not have four pages, please inform the invigilator at once.

Your Instructions

You have taken over the case of Fatima, who was born in June 1980, whose instructions to you are as follows when she comes to see you in your office and explains that she is an asylum seeker. She lived in the centre of Mogadishu. She married her husband Abdi in September 1996. They are both from the Ashraf minority clan. Abdi left the country in 2004 with their children because it was not possible for him to continue running his jewellery shop due to attempts at violent extortion by the militia. She worked as a singer from 2006, performing at weddings, and in public at hotels and community houses. In 2008 Al Shabaab, the fundamentalist militia, sent a message via her father that she should stop singing.

Her father was subsequently murdered by Al Shabaab in the first month of 2010 in a raid on the family home, because that fundamentalist militia learned that she had continued her performances. Following his death she limited her performances to private weddings and parties, only involving herself in a limited number during her last year in Somalia. She was once stopped on the street by Al Shabaab members a few months after her father's death and asked why she had not stopped singing. Some old men passed by and they let her go.

After the peacekeeping forces arrived in her district Al Shabaab started calling her on the telephone saying that she was acting in an un-Islamic way and would be raped or tortured if she continued with her activities. She went to the local community leaders but they told her that they could not help. The international peacekeeping forces who came to Mogadishu did not act as a police force: they simply carried out military activities. Eventually she decided she could not live with this level of pressure upon her and she made arrangements to leave the country using an agent.

Before coming to the United Kingdom, she had travelled to Kenya on several occasions by lorry as Abdi was living there. She would stay with relatives in Somalia on her way to see him before crossing the border. She obtained a passport in Somalia in 2009. She had used that to travel into Kenya to visit him. She and Abdi have two children who he was forced to

leave with relatives in Kenya, a boy and girl, aged fifteen and seventeen respectively. She had last stayed with him in October 2011: after that he had come to the United Kingdom and claimed asylum. She travelled to Kenya from Mogadishu by road. She applied for entry clearance as a visitor in June 2012, the application form being completed by agents in Kenya but this was refused: she did not seek to appeal. She left Somalia last on 15 December 2012, flying to an unknown country, then to France, and then travelled onto the United Kingdom, using an American passport provided by her agent (which she later destroyed in the airport toilets), arriving on 20 December 2012. She claimed asylum on 30 December 2012.

Country Evidence

Reviewing the Country Guidelines regarding Somalia, you see that in *AMM* the Tribunal found:

- (a) There remained a general risk of harm from the armed conflict to returnees who lacked recent experience of life in Mogadishu, though no risk arises for a person connected with powerful actors or belonging to a category of middle class or professional persons, who can live to a reasonable standard in circumstances where the risk from harm, which exists for the great majority of the population, does not apply – however the significance of this category, which requires the identification of cogent evidence (which turns on whether socio-economic protection is available in all the circumstances), should not be overstated;
- (b) A returnee from the United Kingdom who is fit for work or has family connections may be able to avoid having to live in a camp for the internally displaced: a returnee may, nevertheless, face a real risk of Article 3 harm, by reason of his or her vulnerability;
- (c) Outside Mogadishu, a person with recent experience of life under Al Shabaab would not be at risk of serious harm from them subject to avoiding identification as a recent returnee and having struck up an accommodation with them in the past: the frequent changes in Al Shabaab leadership prevent the possession of family members in a particular locality from securing one's safety, and having to "play the game" in terms of behaving consistently with Al Shabaab expectations would in itself constitute persecution where the returnee did not genuinely share their religious beliefs;
- (d) Women travelling without male friends or relatives are in general likely to face a real risk of sexual violence.

The last Country Guidelines determination that addresses the circumstances of minority clan members in particular is *AM & AM* where the Tribunal found "that the situation in Mogadishu for the great majority of residents is currently precarious. In our view the situation of minority clans in Mogadishu would be a fortiori precarious."

Recent newspaper reports from July 2013 set out that Mogadishu has recently suffered a series of military incursions from Al Shabaab and there is fighting on the streets: civilians are being injured in large numbers due to random shell-fire. They additionally report that discrimination against women continues to be rife.

Fatima was refused asylum by letter of 11 July 2013. You do not yet have the refusal letter (which she received by post) as she has lost her copy but another one is being faxed to your office by the Secretary of State imminently.

Part 1 – The Questions (52 marks)

Question 1 (2 marks)

What legal sources would you look at in anticipating what credibility points might be raised by the Secretary of State? Identify the provisions in question.

Question 2 (16 marks)

Bearing in mind the credibility points that might be raised by the Secretary of State, what further questions might you need to put to Fatima regarding the credibility of her asylum claim. Draft a letter to Fatima raising these points, on the basis that you wish her to think about particular issues before attending your office to determine the merits of her lodging an appeal against the refusal of her asylum claim.

Question 3 (5 marks)

From the information above, both particular to Fatima and the country evidence generally, how would you argue that she might be at risk on a return to Somalia? Cite any relevant legal presumptions that might be applicable.

Question 4 (3 marks)

What is the legal test you would have to satisfy to demonstrate that any problems Fatima faces in the future amount to persecution as opposed to something falling short of that? Cite the relevant provisions.

Question 5 (4 marks)

Applying the legal provisions identified in the last question to the facts of the case, how would you argue that Fatima faces persecution?

Question 6 (4 marks)

In what circumstances will any decision received determining this application be an appealable immigration decision?

Question 7 (5 marks)

When will the deadline for lodging Fatima's grounds of appeal expire? Explain your calculations by reference to the facts of her case, the relevant Procedure Rules addressing the period available to lodge an appeal, service, and whether these are working or non-working days.

Question 8 (5 marks)

Fatima's appeal succeeds on grounds that have the consequence that the Secretary of State awards her Humanitarian Protection. In what circumstances will she be able to obtain travel

documents, on the basis that there is no appropriate agency of the Somali authorities in the United Kingdom from where she can obtain a document?

Question 9 (8 marks)

Fatima and Abdi wish to bring their children to this country. Abdi has now been granted asylum. What matters would you need to investigate in determining whether an application for the children to join them here might be viable?

Part 2 – The Appeal Determination

An appeal is brought against the immigration decision accompanying Fatima's refusal of asylum and the appeal is dismissed in a determination by IJ Smith dated 2 August 2013 which contains the following reasoning in dismissing the appeal.

It is probably true that she is a Somali, probably from Mogadishu. She has given general details of her claimed clan that are consistent with the known background information about the Ashraf. So it is found that she is a member of the Ashraf clan. Her story is plausible when read against the country evidence so her credibility is accepted.

However she was not found to be at risk of persecution. Al Shabaab had not returned to harm her after issuing the claimed threats to her, and she had travelled across Somalia without adverse attention from the militia. Whether or not her father was killed by Al Shabaab it was nevertheless thought that she was not at risk merely because of his demise.

Given that the country evidence showed that some members of the minority clans had found protection from major clans, and that some discrimination might still prevail in Somalia, overall her history suggested that she had found a clan or personal patron who would prevent her from being at risk in Somalia. Her ability to remain in Somalia for so long and to travel around the country on her way to visit her husband indicated that she had no real problems there.

No country can eliminate every risk to its citizens and the international forces present in Somalia combined with the local authorities were doing their best to protect people against harm.

There may be an intermittent civil war in Somalia but this does not give rise to a valid asylum claim.

Question 1 (32 marks total)

Draft grounds of appeal to the Upper Tribunal against this determination relating to *all* relevant grounds of appeal raised by the evidence above.

LEVEL 3 ASYLUM PAPER: MODEL ANSWERS

Part 1 – The Questions (52 marks)

Question 1 (2 marks)

What legal sources would you look at in anticipating what credibility points might be raised by the Secretary of State? Identify the provisions in question.

- *Section 8 Asylum and Immigration (Treatment of Claimants, etc.) Act 2004*
- *Immigration Rules e.g. Rule 339I*

Question 2 (16 marks)

Bearing in mind the credibility points that might be raised by the Secretary of State, what further questions might you need to put to Fatima regarding the credibility of her asylum claim. Draft a letter to Fatima raising these points, on the basis that you wish her to think about particular issues before attending your office to determine the merits of her lodging an appeal against the refusal of her asylum claim.

Specimen Letter

Dear Fatima

I write further to the preparation of your asylum claim.

As you are aware, your asylum claim has been refused. Before lodging an appeal against this decision, we should ensure that you are fully advised as to merits of your case. In determining whether there are merits, we need to find out some more details. Please understand that I am not criticising your case in raising these points: however we have to anticipate points that the Secretary of State or the Tribunal might take against your claim.

- *Why did you not claim asylum on arrival*
- *Why did you not claim asylum in France or Kenya*
- *Why did you destroy your passport*
- *You stayed with relatives during your journey to see Abdi in Kenya: did you have any problems when you were with them?*
- *Why did she not travel with Abdi when he came to the United Kingdom*
- *What is Abdi's immigration status (has his asylum claim been granted?)*

Please consider the issues above ready for our next appointment. I look forward to seeing you.

Yours sincerely

Your Lawyer

Marking scheme for Question 2

Credibility points (6)

Marks should be awarded for drafting thus (12)

- Structure (2)
- Use of appropriate simple and direct language (2)
- Ensuring the client understands the purpose of your enquiries (2)
- Good grammar and spelling (2)
- Succinctness (2)

Up to 2 marks may be deducted where the candidate adds misleading information which is not contained in the question

Question 3 (5 marks)

From the information above, both particular to Fatima and the country evidence generally, how would you argue that she might be at risk on a return to Somalia? Cite any relevant legal presumptions that might be applicable.

- A history of threats to her personally
- The killing of her father
- Being minority clan
- There is no positive evidence of any relationship with any powerful actors
- Immigration rule 339K raises a presumption of repetition of serious harm where there have been threats in the past

Question 4 (3 marks)

What is the legal test you would have to satisfy to demonstrate that any problems Fatima faces in the future amount to persecution as opposed to something falling short of that? Cite the relevant provisions.

- An act of persecution must be a violation of a non-derogable human right or
- an accumulation of measures to similar effect:
- Refugee or Person in Need of International Protection (Qualification) Regulations 2006 Regulation 5(1)

Question 5 (4 marks)

Applying the legal provisions identified in the last question to the facts of the case, how would you argue that Fatima faces persecution?

- Received threats of torture
- and of sexual mistreatment and
- Her father has been killed
- Additionally there are the risks arising from the general violence from armed conflict to which the minority clans such as the Ashraf are especially vulnerable

Question 6 (4 marks)

In what circumstances will any decision received determining this application be an appealable immigration decision?

- Where it is accompanied by an immigration decision defined in section 82 of Nationality Immigration and Asylum Act 2002 (2)

- *Providing that the Secretary of State has not certified it as “clearly unfounded” under section 94 Nationality Immigration and Asylum Act 2002 in which case it would be appealable only from abroad (2)*

Question 7 (5 marks)

When will the deadline for lodging Fatima’s grounds of appeal expire? Explain your calculations by reference to the facts of her case, the relevant Procedure Rules addressing the period available to lodge an appeal, service, and whether these are working or non-working days.

- *Fatima is not detained (she came to the office)*
- *So there are 10 days from service of the decision (Rule 7(1)(b)) (1 mark)*
- *Service was effected by post two days after it was sent (Rule 55(5)(a)) (1 mark)*
- *These are working days as this is a time limit of 10 days or less (Rule 57) (1 mark)*
- *So a decision made on Thursday 11 July will be deemed received Monday 13 July and time will run for 10 days, thus the last day for lodging notice of appeal will be Monday 27 July (1 mark)*

Question 8 (5 marks)

Fatima’s appeal succeeds on grounds that have the consequence that the Secretary of State awards her Humanitarian Protection. In what circumstances will she be able to obtain travel documents, on the basis that there is no appropriate agency of the Somali authorities in the United Kingdom from where she can obtain a document?

- *As she cannot obtain a national passport, Immigration Rule 344A(ii) applies (2)*
- *She must make a complete application (1)*
- *This will be granted “unless compelling reasons of national security or public order otherwise require”: there appear to be none present here (2)*

Question 9 (8 marks)

Fatima and Abdi wish to bring their children to this country. Abdi has now been granted asylum. What matters would you need to investigate in determining whether an application for the children to join them here might be viable?

- *Immigration Rule 352D provides for a person with refugee status to sponsor children to come here (1)*
- *They are under the age of 18 so satisfy the age requirements (2)*
- *Are they, given their age, unmarried and not independent (2)*
- *Were they part of the relevant family unit (family has complicated migration movements) (2)*
- *Have they conducted any excludable acts (1)*

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information about the Ashraf. So it is found that she is a member of the Ashraf clan. Her story is plausible when read against the country evidence so her credibility is accepted.

However she was not found to be at risk of persecution. Al Shabaab had not returned to harm her after issuing the claimed threats to her, and she had travelled across Somalia without adverse attention from the militia. Whether or not her father was killed by Al Shabaab it was nevertheless thought that she was not at risk merely because of his demise.

Given that the country evidence showed that some members of the minority clans had found protection from major clans, and that some discrimination might still prevail in Somalia, overall her history suggested that she had found a clan or personal patron who would prevent her from being at risk in Somalia. Her ability to remain in Somalia for so long and to travel around the country on her way to visit her husband indicated that she had no real problems there.

No country can eliminate every risk to its citizens and the international forces present in Somalia combined with the local authorities were doing their best to protect people against harm.

There may be an intermittent civil war in Somalia but this does not give rise to a valid asylum claim.

Question 1 (32 marks total)

Draft grounds of appeal to the Upper Tribunal against this determination relating to *all* relevant grounds of appeal raised by the evidence above.

Marks should be awarded for

General Drafting Points (14 marks)

- *Structure (2)*
- *Use of appropriate legal language (2)*
- *Appropriate but minimal introduction summarising facts (2) and the essence of the legal case put (2)*
- *Citation of appropriate authorities throughout (2)*
- *Good grammar and spelling (2)*
- *Succinctness (2)*

Up to 2 marks may be deducted where the candidate adds misleading information which is not contained in the question

Scenario Specific Points are as indicated in the model grounds of appeal (18 marks)

The First Ground – Risk (7 marks)

The Second Ground – State Protection (7 marks)

The Third Ground – Article 15(c) Qualification Directive (4 marks)

MODEL GROUNDS OF APPEAL

Introduction

IJ = Immigration Judge

1. *This is an appeal against the determination of 2 August 2013 by IJ Smith of the First-tier Tribunal Immigration and Asylum Chamber to the Upper Tribunal Immigration and Asylum Chamber, made initially to the First-tier Tribunal.*
2. *The Appellant is a citizen of Somalia who maintains that:*
 - (a) *she is a refugee who faces death, injury or sexual violence for reasons of her religion or minority clan membership against which there is no effective protection in Somalia (1951 Refugee Convention/Qualification Directive)*
 - (b) *she faces risks of serious harm as a civilian facing indiscriminate violence from the internal armed conflict in Somalia (Article 15(c) Directive 2004/83/Immigration Rule 339C(iv))*

The First Ground – Risk

3. *The IJ erred in law in finding that the Appellant did not face serious harm or persecution on a return to Somalia. Having accepted that she is a female from Somalia, applying the Country Guidelines determination of AMM, this is sufficient to provide her with a well founded fear of persecution given that there is no evidence to demonstrate that she has any meaningful associations with powerful or middle-class actors (3 marks).*
4. *Furthermore, she faces even greater risks given it is accepted that she is a member of a minority clan and the IJ was wrong to speculate based on factors not identified as relevant in the Country Guidelines determination that she might not face such risks (2 marks).*
5. *Additionally, the IJ erred in law in failing to consider that given there has been no real change in the country conditions, the Appellant's past experiences lead to a presumption of their repetition given the threats directly received by the Appellant: Immigration Rule 339K (2 marks)*

The Second Ground – State Protection

6. *The IJ erred in law in failing to apply the correct test for whether protection is adequate: the real question is whether the state or other parties controlling parts of the state take reasonable steps to prevent the persecution by operating an effective legal system for the detection, prosecution and punishment of acts to which she has access: Refugee or Person in Need of International Protection (Qualification) Regulations 2006 Regulation 6. The factors identified by the IJ have minimal relevance to this question. (3 marks)*
7. *Further and alternatively there are no state authorities in control of Somalia and there is nothing in the Country Guidelines to suggest that the international forces might provide protection. (2 marks)*

8. *In any event, the Appellant has asked local community leaders for assistance and they have been unable to help her and the IJ erred in law in failing to take this into account. (2 marks)*

The Third Ground – Armed Conflict

9. *The IJ erred in law in failing to recognise that there is a high level of indiscriminate violence in Mogadishu such that an ordinary civilian such as the Appellant faces threats to their life or person as a civilian from indiscriminate violence arising from an armed conflict notwithstanding their personal circumstances – see generally Article 15(c) Directive 2004/83. The Appellant being a vulnerable young woman will be additionally at risk for these reasons. (4 marks)*

Instructions to Marker

You may award up to 3 bonus marks on this paper (marks 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)