

LEVEL 3 IMMIGRATION PAPER

MARK SCHEME AND SAMPLE ANSWERS

INSTRUCTIONS TO CANDIDATES

Level 3 (90 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 4 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

Fatima from Sierra Leone seeks your advice. On 12/12/05, she arrived in the UK with leave to enter as a student. She completed her Master's and a PhD in the UK with leave. On 18/08/12, she was granted an extension of stay for 30 months as the partner of Mubin, a British citizen.

In December 2014, the couple's baby, Sophia, was born. Fatima was granted a further 30 months leave as a partner in February 2015.

A few weeks ago Mubin lost his job and started to receive Jobseekers Allowance for himself and Sophia. The couple's financial problems have caused them to argue a lot, and Mubin has become very depressed. The couple have decided to separate, amicably. Fatima and Sophia are staying with a friend of Fatima's on a temporary basis until she can find somewhere to live. They plan that Fatima will look after and be responsible for Sophia, but Mubin will have regular contact with her.

Fatima is worried about her immigration situation now that she has separated from Mubin, and how she will be able to support herself and Sophia. Fatima has no money or income of her own.

PART 1

Question 1

Write a letter to Fatima explaining, with reference to the applicable rules, what application she can make on the basis of her new family circumstances, the requirements she will have to meet, and the merits of making such an application. **(18 marks)**

Logical and appropriate structure and presentation (Total 2 marks)

Appropriate law and evidence (Total 16 marks)

Question 2

Fatima rings you on receiving your advice letter to ask if there is a fee for the application and whether she will be prohibited from claiming public funds as she remains destitute. Draft a file note of the advice you have given her. **(4 marks)**

Part 2

Question 3

What different application can Fatima consider making under the immigration rules on the basis of her immigration history? Draft a file note of your thoughts, explaining the timing, procedure, and requirements for such an application. **(10 marks)**

Question 4

Fatima tells you that Mubin's depression has worsened, and he is on heavy medication. He says he cannot face seeing her or Sophia until his health improves.

Can an application now be made for Fatima under EU law? If so, explain whether, and if so, how she can meet the requirements for such an application. **(8 marks)**

Part 3

Question 5

Make a note of the pros and cons of the various applications Fatima can make. **(15 marks)**

Question 6

If each of these applications were refused, how and where could Fatima challenge each refusal? **(3 marks)**

Part 4

Fatima makes an application under the immigration rules, but it is refused. The Home Office makes a decision to curtail her leave. The refusal letter states that they doubt Sophia has any relationship with her father, so Fatima can return to Sierra Leone with her and there will be no breach of her right to respect for her family life.

Question 7

How long does she have to lodge her appeal? Explain your answer. **(4 marks)**

Question 8

Some weeks after lodging her appeal, but before the date of hearing, Fatima realises that she has now clocked up 10 years of residence in the UK. How would you advise her in these circumstances? **(10 marks)**

Question 9

The Home Office writes to the Tribunal. They state that although Fatima may now meet the requirements of the 10 year long residence rule, it will not be a breach of her private life to refuse her leave as she has only been here 10 years and she would face no significant hardship in returning to Sierra Leone. They ask that the appeal be dismissed on both family and private life grounds. **(18 marks)**

Draft a skeleton argument for Fatima's appeal.

Logical and appropriate structure and presentation (Total 3 marks)

Appropriate law and argument (Total 15 marks)

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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.

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 skeleton argument and letter composition are 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.

Your instructions

Fatima from Sierra Leone seeks your advice. On 12/12/05, she arrived in the UK with leave to enter as a student. She completed her Master's and a PhD in the UK with leave. On 18/08/12, she was granted an extension of stay for 30 months as the partner of Mubin, a British citizen.

In December 2014, the couple's baby, Sophia, was born. Fatima was granted a further 30 months leave as a partner in February 2015.

A few weeks ago Mubin lost his job and started to receive Jobseekers Allowance for himself and Sophia. The couple's financial problems have caused them to argue a lot, and Mubin has become very depressed. The couple have decided to separate, amicably. Fatima and Sophia are staying with a friend of Fatima's on a temporary basis until she can find somewhere to live. They plan that Fatima will look after and be responsible for Sophia, but Mubin will have regular contact with her.

Fatima is worried about her immigration situation now that she has separated from Mubin, and how she will be able to support herself and Sophia. Fatima has no money or income of her own.

PART 1

Question 1

Write a letter to Fatima explaining, with reference to the applicable rules, what application she can make on the basis of her new family circumstances, the requirements she will have to meet, and the merits of making such an application. **(18 marks)**

Logical and appropriate structure and presentation (Total 2 marks)

Appropriate law and evidence (Total 16 marks)

- Structure/readability (2)
- Leave to remain as a parent (1)
- Suitability (1)
- Explaining to client that 'suitability' means criminal convictions, and owing money to NHS (1)
- Sophia is a British citizen child (1)
- Under 18 (1)
- Fatima must have sole parental responsibility (1)
- or the child normally lives with her and not Mubin (1)
- Mubin is British (1)
- she was last granted more than 6 months leave (1)
- requires adequate maintenance and accommodation (1)
- income support comparator (1)
- she cannot meet that requirement (1)
- so will need to meet requirements of EX1 (1)
- it would not be reasonable to expect Sophia to leave the UK (1)
- best interests of Sophia, as a BC child, is to live in UK(1)
- so there is merit in the application as Fatima meets the requirements (1)

Sample letter

Dear Fatima

Re: Your immigration matters

Thank you for coming to see me last week about your immigration case. Here is the written advice I promised you at our meeting.

Your instructions

To confirm what you told me, you are from Sierra Leone. You arrived in the UK on 12/12/05 as a student, and completed a Master's degree and PhD here. You then married a British citizen and were granted leave to remain on that basis until August 2017. You have a daughter, Sophia, born in the UK. You and your husband have decided to separate. You are staying with your daughter at a friend's house until you can find somewhere of your own to live. You have agreed that Sophia will stay with you, and your husband will have regular contact with her.

You sought my advice as to how your separation affects your immigration situation in the UK, and how you can support yourself and Sophia as you have no access to public funds, and no money of your own.

My advice

As I explained, you do not need to worry about your immigration situation, as there is an application you can make for further leave to remain as the parent of a British citizen child now that you are separated from your husband. In many ways, this will be similar to the application you made to remain as a spouse.

You will firstly need to show that you meet the 'suitability criteria'. For this reason, as I explained, you need to check with the hospital where Sophia was born to make sure the NHS hasn't recorded a debt against you for the medical fees for her birth. You told me you do not have any criminal convictions, so it is only the medical fees that might be an issue in respect of suitability. Let me know what the hospital tells you, so we can discuss this further if needs be.

Sophia must be a British citizen and under 18 years old, which is no problem. You must either show you are solely responsible for Sophia's care or, if not, that the child lives with you and not your husband, and that your husband is a British citizen. You must also have last been granted more than six months leave, which is also not a problem.

More of a problem is your lack of financial support, and the fact that you are not working. You will not therefore be able to meet the requirement that you can accommodate yourself and Sophia adequately without recourse to public funds (i.e. benefits). 'Adequate' in this regard means that your household income must be at least at the level that it would be if you were entitled to receive income support, which it is not.

As you cannot meet the financial requirement, you will have to rely on the exception in the rules referred to as 'paragraph EX1'. You will need to show that it is not reasonable to expect Sophia to move to Sierra Leone to live with you. This should not be difficult though as the Home Office, when considering the application will have to take account of Sophia's best interests. Sophia's best interests will clearly be to stay in the UK, so she can continue to see her father and for other reasons.

We can discuss all this further, and I can help you prepare the application, when you have had a chance to consider this advice. Please do not hesitate to ring me if you have any further questions, or wish to make an appointment to start preparing the application.

Yours sincerely

An Adviser

Question 2

Fatima rings you on receiving your advice letter to ask if there is a fee for the application and whether she will be prohibited from claiming public funds as she remains destitute. Draft a file note of the advice you have given her. **(4 marks)**

- Can apply for a remission of fees (1)
- And remission of health surcharge (1)
- On the basis of destitution (1)
- Form Appendix 1 FLR(FP) (bonus)
- Can also request that grant of leave does not prohibit recourse to public funds (1)

File note

Fatima rang – date

Answered client's questions. There is a fee - £649 - and health surcharge - £500. Can apply for fee and health charge waiver as is destitute. Needs to complete form Appendix 1 FLR(FP). Can also request that she is not prohibited from accessing public funds when we make application. Will discuss this further at next meeting (arranged for 5 June 2015, in diary)

Part 2

Question 3

What different application can Fatima consider making under the immigration rules on the basis of her immigration history? Draft a file note of your thoughts, explaining the timing, procedure, and requirements for such an application. **(10 marks)**

- ILR (1)
- On the basis of 10 years (1)
- Continuous (1)
- Lawful residence (1)
- para 276B, HC395 (1)
- Public interest considerations (bonus)
- Can apply up to 28 days before (1)
- the ten-year point on 12/12/15 (1)
- Has current leave so can wait to make the application (1)
- Needs to meet Appendix KOLL – take the Life in the UK Test (1)
- Form SET(LR) (1)

File note

Date

Considering file prior to meeting client. Client arrived on 12/12/05. Has continuous lawful residence. So can make 10-year long residence application under para 276B up to 28 days before 12/12/15, so from 14/11/15. Has current leave until 2017, so can wait until relevant date and make that application. Public interest consideration shouldn't be a problem. Will need to take the Life in the UK test. From SET(LR). Will discuss with client when I see her.

15 mins.

Question 4

Fatima tells you that Mubin's depression has worsened, and he is on heavy medication. He says he cannot face seeing her or Sophia until his health improves.

Can an application now be made for Fatima under EU law? If so, explain whether, and if so, how she can meet the requirements for such an application. **(8 marks)**

- Yes, or potentially (1)
- can apply for a Derivative Residence Card (1)
- Reg 18A (Immigration (EEA) Regs 2006) (bonus)
- As meets the requirements of Reg 15A(4A) (1)
- Ruiz Zambrano (bonus)
- Fatima is primary carer (1)
- As defined in Reg 15A(7) (1)
- Of Sophia, a British citizen child (1)
- Who would be unable to reside in the UK or in another EEA State if P were required to leave (1)
- As Mubin's health precludes him from looking after Sophia (1)

Part 3

Question 5

Make a note of the pros and cons of the various applications Fatima can make. **(15 marks)**

- Derivative Residence Card cheaper at only £65 (1)
 - No route to settlement (1)
 - No recourse (1)
 - But local authority or Children Act support available (1)
 - High evidential threshold to show Mubin cannot look after Sophia (bonus)
- ILR application would lead to immediate settlement (1)
 - And no prohibition on recourse to public funds (1)
 - But Life in the UK test (1)
 - Fatima will have to wait to make application (1)
 - With the risk of curtailment as she no longer meets the requirements of her current leave (bonus)
 - Application is expensive (1)
 - No fee exemption available (1)
- Parent application - fee exemption available (1)
 - Should not be prohibited recourse (1)
 - 10 years to settlement (1)

- Can make application immediately (1)
- Could possibly do parent now and long residence application later (1)

Question 6

If each of these applications were refused, how and where could Fatima challenge each refusal? **(3 marks)**

- All 3 (1)
- would have a right of appeal (1)
- to First-tier Tribunal (IAC) (1)

Part 4

Fatima makes an application under the immigration rules, but it is refused. The Home Office makes a decision to curtail her leave. The refusal letter states that they doubt Sophia has any relationship with her father, so Fatima can return to Sierra Leone with her and there will be no breach of her right to respect for her family life.

Question 7

How long does she have to lodge her appeal? Explain your answer. **(4 marks)**

- 14 days
- From date decision posted to her
- Rule 19
- The Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 (or Procedure Rules 2014)

Question 8

Some weeks after lodging her appeal, but before the date of hearing, Fatima realises that she has now clocked up 10 years of residence in the UK. How would you advise her in these circumstances? **(10 marks)**

- Must quickly pass Life in the UK test (1)
- Can then lodge s120 notice with SSHD (1)
- And Tribunal (1)
- Needs SSHD's consent to raise new matter (1)
- under section 85(5), 2002 Act (as amended) (bonus)
- Or can withdraw appeal and make long residence application (1)
- but will then be an overstayer (1)
- addressing implications of that (e.g. doesn't matter as Fatima not working or claiming benefits, but will not be able to look for work as an overstayer) (1)
- Home Office obligation to consider application if application lodged within 28 days of date she became an overstayer (1)
- Our advice is that it is better to raise the 10-year application as part of appeal, rather than withdraw appeal (1)
- some reasons for that advice (e.g. as she doesn't need to make further application/saves fee/protects existing leave) (1)

Question 9

The Home Office writes to the Tribunal. They state that although Fatima may now meet the requirements of the 10 year long residence rule, it will not be a breach of her private life to

refuse her leave as she has only been here 10 years and she would face no significant hardship in returning to Sierra Leone. They ask that the appeal be dismissed on both family and private life grounds. **(18 marks)**

Draft a skeleton argument for Fatima's appeal.

Logical and appropriate structure and presentation (Total 3 marks)

Appropriate law and argument (Total 15 marks)

- Header (1)
- Intro (1)
- Structure (1)
- Some semblance of *Razgar* approach (1)
- Breach of Fatima's Article 8 family and private life (1)
- Breach of Sophia's Art 8 rights too (1)
- Best interests (1)
- BC child (1)
- Ruiz Zambrano (1)
- ZH (Tanzania) (1)
- Entitled to develop relationship with father (1)
- Unlawful to expect Sophia to leave UK (1)
- *Sanade* or similar case (bonus)
- Also unlawful as Fatima's application meets requirements of immigration rules (1)
- 10 years and parent categories (1)
- No legitimate aim as has always acted in accordance with immigration rules (bonus)
- S117B(6) (1)
- No public interest in removal (1)
- Disproportionate interference in both private and family life. (1)
- Entitled to ILR (1)

Sample skeleton argument

IN THE FIRST-TIER TRIBUNAL (IAC)
IA/12345/2015

APPEAL REF:

YORK HOUSE

BETWEEN:

FATIMA

V

SSHD

APPELLANT'S SKELETON ARGUMENT

1. The Appellant (A) appeals a decision of the Respondent (R) dated xxx to refuse her application for leave to remain as the parent of a British citizen child under Appendix FM, HC395.

Summary of facts

2. It is not contentious that A arrived lawfully in the UK as a student in 12/12/05, and has had continuous lawful residence in the UK since then, firstly extending her stay as a student, to complete her PhD, and then as the spouse of a British citizen. The appeal relates to her application made under the parent category following the breakdown of her marriage. She has a British citizen daughter, Sophia, born in the UK in December 2014.

Documents

3. A. relies on a bundle of documents submitted in accordance with directions, and the s120 notice submitted to R. on xxxx.

The Respondent's case

4. It is R's case that as Sophia does not currently see her father, A. can return to Sierra Leone with her and there will be no breach of Sophia's right to respect for her family life. R. has also suggested that although A. now meets the requirements of the 10-year rule, she would face no significant hardship in returning to Sierra Leone, so removal would not breach her right to respect for her private life.

Submissions

5. A. contends that the decision to refuse her application breaches her right to a private life in the UK, and her daughter's right to a family and private life in the UK.
6. As a British citizen, it is in Sophia's best interests to live in the UK (*ZH (Tanzania)*). It will also breach the principle in *Ruiz Zambrano*, that Sophia is entitled to enjoy her EU citizenship by living within the EU.
7. Mubin, Sophia's father, is ill, but only temporarily (see medical letter in A's bundle p76). He has always had a full and loving relationship with Sophia and that relationship will resume when he is well enough, with the support of A. (see A's and Mubin's statements in A's bundle at pp12-16, and 23-25). Article 8 protects Sophia's right to develop a relationship with her father.
8. R's position that it is reasonable to expect Sophia to leave the UK with her mother is clearly unlawful. It should not have been contemplated (*Sanade*).
9. Applying the *Razgar* approach, there is family life between Sophia and her father. Sophia also has a private life in the UK. It cannot be contentious that it is in her best interests to continue to live in the UK. Furthermore, A. has a private life in the UK, developed during her ten years of lawful residence (see her statement in A's bundle at pp 6-10). The threshold for engaging Article 8 is not high (*AG (Eritrea)*). The removal of Fatima, and consequently Sophia, from the UK would be sufficiently serious to engage Article 8.

10. In respect of *Razgar's* third question, A's application under the Parent category of HC395 meets the requirements of the rules. She also meets the requirements for a grant of ILR under para 276B, HC395. She is also entitled to a Derivative Residence Card under Reg. 15A(4A) of the Immigration (EEA) Regs 2006. It would consequently be unlawful to remove A. from the UK.
11. As A. meets these three requirements, entitling her to remain in the UK, the decision of R. serves no legitimate aim. A. continues to reside in the UK lawfully, in accordance with the requirements of immigration control. In fact, she has always resided in the UK in accordance with immigration control. There is no issue here as to the maintenance of immigration control.
12. As the parent of a British citizen child, there is no public interest in removing A. from the UK (see s117B(6) of the NIA 2002).
13. For all these reasons, R's decision represents a starkly disproportionate interference with A. and her daughter's right to respect for their private and family life in the UK.

We respectfully ask that the appeal be allowed, and that the Tribunal direct that A. be granted ILR as a consequence of her meeting the requirements of para 276B of the immigration rules.