

**LEVEL 3 IMMIGRATION PAPER**

**SAMPLE QUESTION PAPER**

**INSTRUCTIONS TO CANDIDATES**

**Please note that the content contained in this sample assessment relates to the immigration rules as of November 2016**

**Level 3 (76 Marks)**

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

Questions are numbered and the marks allocated to each are detailed in closed brackets after 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**

John, a 45 year old man from Jamaica, seeks your advice about his immigration situation. He came to the UK in 2001, initially as a visitor, but then switched into student status (in the days when he could do that under the Rules). He was a qualified nurse in Jamaica, but has not been working in the UK. He completed his studies here, gaining some further nursing qualifications, but from 2008 has been an overstayer.

John was reluctant to go back to Jamaica when his leave ran out as his family were all in the UK. His parents are dead. His only siblings, 3 sisters, are British citizens, living in the UK. He has many nephews and nieces here too.

His sisters all work long hours, in low paid employment, so he has spent a lot of his time looking after his nephews and nieces, and has grown very close to them. His sisters rely on him enormously for this help. He feels particularly close to these children, partly, he thinks, because he is unable to have children of his own due to a childhood illness.

John is particularly close to his nephew, Mark, aged 15. Mark's father abandoned him and his mother when he was only four years old, so John has become like a father figure to him. Mark is having some problems at school, and has recently been diagnosed with Asperger Syndrome. He finds it difficult to relate to most people, but not John. Mark's school have been working closely with John to help Mark improve his social skills. They think John's role is hugely important for Mark's development and education. John is able to provide the kind of specialist support that would be very expensive for the school to buy in if he were not available.

John is supported, financially, by his family here, in return for his childcaring duties, and they are happy to pay any fees that arise in seeking to regularise his stay. He is not currently in a relationship.

You have met John, taken his initial instructions, and have promised to write him a letter of advice following your meeting with him.

## **PART 1**

### **Question 1**

Write a letter to John explaining, with reference to the applicable law:

(a) the application he may be able to make to regularise his stay;

**(5 marks)**

(b) the procedure for making the application; and

**(3 marks)**

(c) the facts he will need to establish for the application (note: without referring to the specific documents he will need to evidence these facts);

**(11 marks)**

A total of 21 marks is available for question 1. Two of the 21 marks will be awarded for structure, content, and use of language suitable for the intended recipient. Although you would usually confirm the client's instructions, it is not necessary to do so in this case.

### **Question 2**

Outline your legal argument (in note form), referring to the key facts as necessary, that John should be granted leave to remain in the UK

**(13 marks)**

### **Question 3**

Explain (with reasons) what type of expert might you consider approaching to commission a report to support John's case?

**(2 marks)**

## **Part 2**

Before you have prepared the application, you hear from John's sister that John has been detained by the immigration service, following some immigration checks being carried out at his local train station. You also understand he has received a notice of removal.

### **Question 4**

Explain, procedurally, how you would put John's case to the Home Office now that he is detained?

**(3 marks)**

### **Question 5**

What immediate additional application might you consider making on hearing this news?

**(1 mark)**

### **Question 6**

If John's application for leave to remain is refused by the Home Office, how would he challenge that decision? Explain the procedure, including any costs, timing and grounds for such a challenge.

**(5 marks)**

### **Question 7**

If the Home Office decide his claim is 'clearly unfounded', and make a decision to remove him, how would your answer to the above question differ?

**(4 marks)**

## **Part 3**

### **Question 8**

If John ultimately succeeds in his claim/application, when will he be able to apply for naturalisation (presuming he meets all the other requirements for doing so)?

**(2 marks)**

#### **Part 4**

John's application is refused by the Home Office. The refusal letter says that John's application does not meet the requirements of the immigration rules and, although the Home Office does not challenge the facts that John relies on, there are no exceptional circumstances. He is so upset and worried by the decision, that he delays seeking legal advice. By the time he does so, the deadline for lodging the appeal has expired.

#### **Question 9**

With reference to any relevant legal provisions, how will you deal with the fact that John has missed the deadline for appealing?

**(6 marks)**

#### **Question 10**

Who will be your most important witnesses at the hearing (without needing to give reasons for your answer)?

**(4 marks)**

#### **Question 11**

You are advised by a colleague that you should not prepare witness statements for the witnesses, as they may be cross-examined at the hearing. She explains that if they provide detailed witness statements, there is more chance of inconsistencies arising during cross-examination at the hearing.

Outline what you think of this advice, with reasons.

**(5 marks)**

#### **Question 12**

On the morning of the hearing, you receive a faxed copy of a criminal record, in John's name, appearing to show that he has been convicted of child abuse. A copy has been sent to the Tribunal. You note that the Home Office appears to have had this document for some weeks. John tells you that this criminal record does not belong to him, but to someone of the same name.

How will you respond to receiving this document, and John's instructions on it?

**(4 marks)**

### **Question 13**

Can you rely on evidence at the hearing which was not previously put before the Home Office? Answer this question in relation to the following two circumstances, and with reference to any relevant statutory provisions:

- (a) John now wants to rely on evidence that some time ago he won an important community award for his charitable work in his local community. He did not previously rely on this as he had not thought it relevant
- (b) John's girlfriend, a British citizen, with whom he was not in a relationship at the time of his application, has given birth to their baby (much to his surprise, as he honestly thought he could not have children).

**(6 marks)**

The Level 3 question paper with model answers included is found below.



## **LEVEL 3 IMMIGRATION PAPER**

### **SAMPLE ANSWER**

#### **INSTRUCTIONS TO CANDIDATES**

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John was reluctant to go back to Jamaica when his leave ran out as his family were all in the UK. His parents are dead. His only siblings, 3 sisters, are British citizens, living in the UK. He has many nephews and nieces here too.

His sisters all work long hours, in low paid employment, so he has spent a lot of his time looking after his nephews and nieces, and has grown very close to them. His sisters rely on him enormously for this help. He feels particularly close to these children, partly, he thinks, because he is unable to have children of his own due to a childhood illness.

John is particularly close to his nephew, Mark, aged 15. Mark's father abandoned him and his mother when he was only four years old, so John has become like a father figure to him. Mark is having some problems at school, and has recently been diagnosed with Asperger Syndrome. He finds it difficult to relate to most people, but not John. Mark's school have been working closely with John to help Mark improve his social skills. They think John's role is hugely important for Mark's development and education. John is able to provide the kind of specialist support that would be very expensive for the school to buy in if he were not available.

John is supported, financially, by his family here, in return for his childcaring duties, and they are happy to pay any fees that arise in seeking to regularise his stay. He is not currently in a relationship.

You have met John, taken his initial instructions, and have promised to write him a letter of advice following your meeting with him.

## **PART 1**

### **Question 1**

Write a letter to John explaining, with reference to the applicable law:

- (d) the application he may be able to make to regularise his stay;

**(5 marks)**

- (e) the procedure for making the application; and

**(3 marks)**

- (f) the facts he will need to establish for the application (note: without referring to the specific documents he will need to evidence these facts);

**(11 marks)**

A total of 21 marks is available for question 1. Two of the 21 marks will be awarded for structure, content, and use of language suitable for the intended recipient. Although you would usually confirm the client's instructions, it is not necessary to do so in this case.

**Firm's name and address**

**Firm's Ref No.**

**24 November 2016**

**John**

**John's address**

Dear John

Your immigration case

Thank you for instructing our firm to provide you with some immigration advice. As I promised in our recent meeting, here is the written advice about your situation.

Confirmation of Instructions

Not required for the purposes of this assessment

Our advice

In your circumstances, I recommend that you make an application for leave to remain in the UK relying on Article 8 of the European Convention of Human Rights. Article 8 requires the UK government to respect your right to a private and family life in the UK.

This application will be *outside the Rules*. That means that although we are unlikely to persuade the Home Office that the application will meet the requirements of the Immigration Rules, they should still grant you leave on human rights grounds.

How to make the application

We will make the application by post to the Home Office using application form FLR(FP). There will be a fee to pay, and the Immigration Health Surcharge which, if you are granted leave, will allow you access to NHS treatment without having to pay as a private patient.

The relevant facts to prove

To succeed in your application, we will need to prove certain facts. We can do this by sending the Home Office appropriate documentary evidence. The facts that need to be evidenced will include:

- your length of residence in the UK,
- what you have been doing with your life here,
- evidence of your studies,
- evidence your close relationship with your extended family in the UK, that they are British citizens, and that you have no family in Jamaica,
- particularly the very close and therapeutic relationship you have with Mark, and the school's support for that role,
- evidence of Mark's Asperger Syndrome
- evidence that you cannot have children of your own,
- your employability, including evidence that you are a qualified nurse,
- that you have been financially supported by your family, and your sister's reliance on you for childcare.

If you want our help to make the application, please collect together as much of the above evidence as you can, and we can then arrange another meeting to start preparing the application. We will also need to meet your sisters and Mark, so that we can prepare statements from them to support your application, and write to Mark's school for their support too.

If you wish to discuss this matter further, please do contact me.

Yours sincerely

An Advisor

## **Question 2**

Outline your legal argument (in note form), referring to the key facts as necessary, that John should be granted leave to remain in the UK

**(13 marks)**

### Draft case plan – points to make

1. Unlikely to meet Rules – less than 20 years, left Jamaica as an adult so will be difficult to show very significant obstacles to integration. Likely to be outside Rules.
2. Part 5A, 2002 Act criteria – speaks English, financially independent, but did develop private life whilst stay precarious (so little weight)
3. Will need to show exceptional circumstances/unduly harsh/disproportionate interference
4. Has lengthy residence, a large part of which has been lawful

5. Has extensive private life with entire family here as British citizens
6. Unusually close relationship with siblings who rely on him for childcare – which allows them to work
7. Relationship of emotional/therapeutic dependency with Mark – a critical role in his life - so may amount to family life (ie more than normal emotional ties)
8. Support he provides to family saves money for the public purse
9. Mark's best interests clearly a major factor here - and John's close relationship with other nephews and nieces
10. Has valuable nursing skills – a shortage occupation – reduces public interest
11. With no family in Jamaica, and inability to have children, cannot rebuild this quality of private/family life in Jamaica, so interference will be sufficiently serious to engage Article 8
12. Arguably, his and family's human rights outweigh the public interest

### **Question 3**

Explain (with reasons) what type of expert might you consider approaching to commission a report to support John's case?

**(2 marks)**

Will need consultant educational or child psychologist – to establish importance of John's role in Mark's life and development – and the effect emotionally and developmentally on Mark if he lost this support.

## **Part 2**

Before you have prepared the application, you hear from John's sister that John has been detained by the immigration service, following some immigration checks being carried out at his local train station. You also understand he has received a notice of removal.

### **Question 4**

Explain, procedurally, how you would put John's case to the Home Office now that he is detained?

**(3 marks)**

As John has been detained, he can make his Article 8 claim by completing a s120 notice/statement of additional grounds. We will need to make detailed representations and provide all the evidence as if we were making a valid application. Para GEN.1.9. of Appendix FM (family life) and para 276AO (private life) say that there is no need to make a valid application where the person is detained.

### **Question 5**

What immediate additional application might you consider making on hearing this news?

**(1 mark)**

We should also apply for temporary admission/temporary release.

### **Question 6**

If John's application for leave to remain is refused by the Home Office, how would he challenge that decision? Explain the procedure, including any costs, timing and grounds for such a challenge.

**(5 marks)**

Refusal of a human rights claim will be an appealable decision. Breach of Article 8. Appeal will be to First-tier Tribunal (IAC). We will need to lodge a completed Notice of Appeal within 14 days of the decision having been sent to him. Appeal fee for an oral hearing £800 (at time of writing – fee is currently £140 as of question publication date, April 2017).

### **Question 7**

If the Home Office decide his claim is 'clearly unfounded', and make a decision to remove him, how would your answer to the above question differ?

**(4 marks)**

The only remedy if the decision is certified is to seek judicial review (JR) of that decision. We would therefore need to refer him to a solicitor or direct access barrister for advice and

representation. A JR will succeed if we can persuade the Upper Tribunal (IAC) that there is a real prospect of Mark succeeding in his appeal. As Mark faces imminent removal, the judicial review application will have to be brought urgently.

### **Part 3**

#### **Question 8**

If John ultimately succeeds in his claim/application, when will he be able to apply for naturalisation (presuming he meets all the other requirements for doing so)?

**(2 marks)**

He will be on a 10-year route to settlement. He can apply for ILR after 10 years, and one year after being granted ILR can apply for naturalisation

### **Part 4**

John's application is refused by the Home Office. The refusal letter says that John's application does not meet the requirements of the immigration rules and, although the Home Office does not challenge the facts that John relies on, there are no exceptional circumstances. He is so upset and worried by the decision, that he delays seeking legal advice. By the time he does so, the deadline for lodging the appeal has expired.

#### **Question 9**

With reference to any relevant legal provisions, how will you deal with the fact that John has missed the deadline for appealing?

**(6 marks)**

I will complete and lodge a Notice of Appeal with the First-tier Tribunal (IAC), urgently, with an application to extend time (Rule 20 of the FTT(IAC) Procedure Rules). I will provide evidence of John's upset on receiving the decision to explain the delay. I will argue that time should be extended in light of the Tribunal's overriding object to make decisions on the basis of fairness and justice (Rule 2 of the FTT(IAC) Procedure Rules)

#### **Question 10**

Who will be your most important witnesses at the hearing (without needing to give reasons for your answer)?

**(4 marks)**

I will need to call the expert who prepared the report on Mark and his relationship with John. Other key witnesses will be those most involved with Mark: so Mark himself, his mother and his teacher.

### **Question 11**

You are advised by a colleague that you should not prepare witness statements for the witnesses, as they may be cross-examined at the hearing. She explains that if they provide detailed witness statements, there is more chance of inconsistencies arising during cross-examination at the hearing.

Outline what you think of this advice, with reasons.

**(5 marks)**

I will reject that advice, and will prepare witness statements for all the witnesses. There will usually be directions that witness statements *must* be provided. As well as helping to put their evidence before the Tribunal, witness statements are invaluable for preparing the witnesses to give their evidence. If I do not prepare witness statements, I can properly be criticised by the judge and it will not put my client's case in a good light.

### **Question 12**

On the morning of the hearing, you receive a faxed copy of a criminal record, in John's name, appearing to show that he has been convicted of child abuse. A copy has been sent to the Tribunal. You note that the Home Office appears to have had this document for some weeks. John tells you that this criminal record does not belong to him, but to someone of the same name.

How will you respond to receiving this document, and John's instructions on it?

**(4 marks)**

I will need to attend the hearing. It is unlikely that the Tribunal will refuse to accept such potentially important evidence, but I will need to request an adjournment to make enquiries to confirm this criminal record does not belong to John. Given the late service, it will be fair and just that we be given an adjournment. But given the late service, in breach of directions, I would consider applying to the Tribunal for a wasted costs order.

### **Question 13**

Can you rely on evidence at the hearing which was not previously put before the Home Office? Answer this question in relation to the following two circumstances, and with reference to any relevant statutory provisions:

- (c) John now wants to rely on evidence that some time ago he won an important community award for his charitable work in his local community. He did not previously rely on this as he had not thought it relevant
- (d) John's girlfriend, a British citizen, with whom he was not in a relationship at the time of his application, has given birth to their baby (much to his surprise, as he honestly thought he could not have children).

**(6 marks)**

Yes, you can rely on new evidence in both of the circumstances referred to in (a) and (b). Section 85(4) of the NIAA 2002 allows the tribunal to consider any matter relevant to the substance of the decision including matters that arise after the decision.

As the new baby might be considered to be a new matter, because it brings the partner and parent categories of the immigration Rules into play for the first time, it may be a good idea to seek the Home Office's permission to raise this new matter at the hearing (as required by section 85(5)).