

**LEVEL 3 ASYLUM PAPER**

**MAY 2019**

**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 comprises 12 questions. Each question is 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**

Mustafa is a 30 year old Sudanese citizen who is referred to you after making an international protection claim. Mustafa had been a school teacher living in Khartoum with his wife, Alaa, when he fled Sudan in December 2018. His flight was prompted by his detention overnight following his arrest by the security forces. Mustafa believes that he was arrested because of his brother's high-profile involvement in campaigning against the then-President Omar Al-Bashir even though Mustafa himself was not involved in the campaigning and disapproved of it. Mustafa was questioned about his brother and threatened with torture if he refused to cooperate with the authorities in the future. He was then released without charge.

After exiting Sudan, Mustafa flew from Ethiopia and transited in Paris before entering the UK on 1<sup>st</sup> January 2019 on a false passport provided to him by the agent facilitating his entry. The passport was then destroyed. Due to his fear of forcible return, he waited for 2 months before making his claim. Last month President Bashir was overthrown by a revolution and is currently under arrest by the interim government.

### **Question 1**

**Mustafa's substantive interview is due to take place next week. He wants to know whether anything he has done since leaving Sudan might make the Home Office suspicious about his credibility. How do you advise him?**

**(6 marks)**

### **Question 2**

**Are there any potential sources of evidence which you would need to consult or which you would wish to discuss with Mustafa, in case he could obtain such evidence to assist his claim?**

**(7 marks)**

### **Question 3**

**With reference to relevant sources of law and considering Mustafa's account, please write him a letter advising what he must prove in order to be recognised as a refugee. Mustafa speaks excellent English.**

**(14 marks)**

### **Question 4**

**The Home Office follows its own guidance and Mustafa's claim is successful. Referring to relevant law, what status and what documentation will he receive and for what duration?**

**(5 marks)**

### **Question 5**

**Mustafa tells you that he hopes the revolution which is currently unfolding in Sudan will improve his country; but he worries that in the future the political changes may impact on his status in the UK. How do you advise him?**

**(6 marks)**

### **Question 6**

You receive Mustafa's status document and he attends your office in order to pick it up. He seeks advice about the timescale for a future application for British citizenship.

**a) Referring to relevant law, how do you advise Mustafa about the usual timescale?**

**(4 marks)**

**b) Is there anything about his case which might affect that timescale?**

**(3 marks)**

### **Question 7**

You advise Mustafa about his right to be joined in the UK by his wife, Alaa. Mustafa decides to pursue this without your assistance. Unfortunately, Alaa's application is refused in a decision handed to her on 1st July 2019 and Mustafa returns to seek your advice.

**a) With reference to relevant law, can the refusal be challenged?**

**(3 marks)**

**b) What is the final date on which the challenge must be made? Explain your answer with reference to relevant Rules.**

**(3 Marks)**

### **Question 8**

The ECO has refused Alaa's application because he is not satisfied about the couple's marriage certificate. He accepts that the couple are not within the prohibited degree of relationship and that Alaa would not be excluded from the Refugee Convention if she sought asylum. Therefore the ECO is not satisfied that Alaa has met the requirements of the Immigration Rules. Nor are there any exceptional circumstances. The couple have no children. You agree to represent on a fee-paying basis and you are instructed to lodge the notice of appeal against the ECO's decision.

**Considering relevant statute, on what grounds can the decision be challenged?**

**(2 marks)**

### **Question 9**

Mustafa and Alaa submitted only the marriage certificate and Mustafa's UK status documents with the application to the ECO.

**a) What further evidence would you seek for the purpose of the appeal?**

**(6 marks)**

**b) What sources of law would guide your evidence-gathering and why?**

**(7 marks)**

### **Question 10**

You are visited by Mustafa. He tells you he has recently argued with Alaa, that she is tired of the appeal and they want to withdraw it.

**Referring to relevant law, what should you do?**

**(4 marks)**

### **Question 11**

The appeal goes ahead and is listed for hearing. You realise that you will not be available to present the appeal and are minded to instruct counsel. You identify suitable counsel.

**What essential steps must you now take regarding your intention to instruct counsel?**

**(4 marks)**

### **Question 12**

The appeal is allowed and Alaa enters the UK as Mustafa's spouse. Three months later she comes to see you and discloses that Mustafa has taken control of her bank account and has been insulting her and threatening to send her back to Sudan when she protested. Alaa has had enough and she wants out of the relationship. She seeks advice about whether any option is open to her regarding her immigration status.

**How do you advise Alaa?**

**(7 marks)**

## Model Answer

### Your Instructions

Mustafa is a 30 year old Sudanese citizen who is referred to you after making an international protection claim. Mustafa had been a school teacher living in Khartoum with his wife, Alaa, when he fled Sudan in December 2018. His flight was prompted by his detention overnight following his arrest by the security forces. Mustafa believes that he was arrested because of his brother's high-profile involvement in campaigning against the then-President Omar Al-Bashir even though Mustafa himself was not involved in the campaigning and disapproved of it. Mustafa was questioned about his brother and threatened with torture if he refused to cooperate with the authorities in the future. He was then released without charge.

After exiting Sudan, Mustafa flew from Ethiopia and transited in Paris before entering the UK on 1<sup>st</sup> January 2019 on a false passport provided to him by the agent facilitating his entry. The passport was then destroyed. Due to his fear of forcible return, he waited for 2 months before making his claim. Last month President Bashir was overthrown by a revolution and is currently under arrest by the interim government.

### Question 1

**Mustafa's substantive interview is due to take place next week. He wants to know whether anything he has done since leaving Sudan might make the Home Office suspicious about his credibility. How do you advise him?**

**(6 marks)**

- Use of passport not his own to pass through the UK border [1]
- Delay in claiming asylum [1]
- Because Home Office may allege absence of genuine fear [1]
- Failure to claim asylum in France, a safe country [1]
- Unless he did not have a reasonable opportunity to do so [1]
- S8 IAA 2004 [1]

### Question 2

**Are there any potential sources of evidence which you would need to consult or which you would wish to discuss with Mustafa, in case he could obtain such evidence to assist his claim?**

**(7 marks)**

- Any relevant Country Guidance cases [1]
- Reputable public domain country evidence [1]
- Home Office Country Policy and Information Notes on Sudan [1]
- Any publicly available evidence of his brother's campaigning [1]
- Evidence that Mustafa is related as claimed to his brother [1]

- Any evidence obtained directly from his brother to confirm Mustafa's account [1]
- Any evidence obtained directly from his wife to confirm Mustafa's account [1]
- Any other sensible evidence [bonus]

### **Question 3**

**With reference to relevant sources of law and considering Mustafa's account, please write him a letter advising what he must prove in order to be recognised as a refugee. Mustafa speaks excellent English.**

**(14 marks)**

#### SAMPLE LETTER

Firm's name and address

Firm's Ref No.

Date

Mustafa

Mustafa's address

Dear Mustafa

#### **Re: Your asylum case**

Thank you for coming to see me yesterday to discuss your asylum case. We discussed the claim you have made under the Refugee Convention and the other laws which might give you international protection and protect your human rights, but it is your refugee claim which is most important so I will focus on that.

#### **Your instructions**

[Although you would usually confirm the client's instructions, it is not necessary to do so for the purposes of this assessment.]

#### **My advice**

In order for you to be recognised as a refugee by the Home Office, you must show that you have a well-founded fear of persecution for one of the five reasons mentioned in the Refugee Convention: race, religion, nationality, political opinion or membership of a particular social group.

It is your responsibility to show that, because of your own circumstances and the conditions in Sudan, there is a real risk that you personally would be persecuted if you had to return. Persecution is treatment which is serious enough to be a severe violation of your human

rights. This includes things like killing, torture, acts of violence and prosecution which discriminates against you or punishes you disproportionately.

You need to show that you could be persecuted either by state officials (such as police officers or soldiers) or by individuals who do not work for the state (such as unofficial militias or political activists). If the persecutors do not work for the state you must prove that the state is unable or unwilling to protect you via an effective legal system. You must also prove that you could not relocate to another part of Sudan where you would be safe or that it would be unreasonable to expect you to internally relocate.

The law which is followed by the Home Office is found in the Refugee (Qualification) Regulations 2006 and Part 11 of the immigration rules – para 339O deals with internal relocation.

In your case, the Home Office will follow the ‘country guidance’ decision of the specialist judges in the Upper Tribunal. In the case of **IM and AI (Risks - membership of Beja Tribe, Beja Congress and JEM) Sudan CG [2016] UKUT 188 (IAC)** the judges decided that a person would be at risk if they are likely to be perceived as a potential threat to the extent that they will be targeted by the authorities on return to Khartoum. Detention and questioning by the authorities for a short period of time would not, in itself, be enough to put you at risk.

We must show that you would be persecuted either because of the political opinions which the Sudanese authorities believe you to hold (even though you do not) or because you are related to your brother. In other words, you are part of the social group which is your family. There is a UK court judgment which deals with this (**K and Fornah [2006] UKHL 46**).

The fact that you have been threatened with torture should strengthen your case because if we can show that you have suffered persecution or serious harm or direct threats of those things in the past, that will provide a serious indication that you have a well founded fear of persecution in the future (para 339K of the immigration rules).

Because a real risk of future persecution is the key thing we must prove, we must think about the political changes which have taken place in Sudan since you left and show that there has not been such a change in the circumstances inside the country that you would no longer be at risk of persecution.

### Conclusion

I hope I have been able to explain clearly what we must prove in your case. We now need to help you explain your own history in your own words and get any available documents about you which can help to show the Home Office that you are telling the truth. At the same time we will use court judgments and specialist reports from the Home Office and human rights organisations which show that people in your situation face a real risk of persecution.

I will be in contact shortly. In the meantime, if you have any questions, please contact me.

Yours sincerely,

An Adviser

#### **Question 4**

The Home Office follows its own guidance and Mustafa's claim is successful. Referring to relevant law, what status and what documentation will he receive and for what duration?

(5 marks)

- Limited leave as a refugee / refugee status [1]
- Immigration Rules, para 334 [1]
- Or Refugee Qualification Directive, Art 24 [bonus]
- (Biometric) Residence Permit will be issued [1]
- Valid for 5 years [1]
- Para 339Q(i) [1]

#### **Question 5**

Mustafa tells you that he hopes the revolution which is currently unfolding in Sudan will improve his country; but he worries that in the future the political changes may impact on his status in the UK. How do you advise him?

(6 marks)

- Very unlikely to be immediate / short term impact on his status [1]
- Given how recent his grant of status and uncertainty of events in Sudan [1]
- But refugee status may be revoked / not renewed [1]
- If circumstances leading to recognition as refugee cease to exist [1]
- Immigration Rules, paras 338A / 339A [1]
- Home Office would have to consider whether change in country was significant and non-temporary [1]
- Any risk would tend to arise at time of a refugee settlement application [bonus]

#### **Question 6**

You receive Mustafa's status document and he attends your office in order to pick it up. He seeks advice about the timescale for a future application for British citizenship.

a) Referring to relevant law, how do you advise Mustafa about the usual timescale?

(4 marks)

- Application possible after 5 years lawful residence [1]
- Plus 12 months ILR / absence of time restriction [1]
- Provided 450 days / 90 days absence not exceeded [1]
- BNA 1981, Sch 1(1)(2) [1]



**b) Is there anything about his case which might affect that timescale?**

**(3 marks)**

- Failure to claim within 4 weeks of entry to UK [1]
- Likely to lead to refusal on good character grounds [1]
- Until 10 years have elapsed from claiming asylum [1]
- Discussion of Nationality Guidance: Good character requirement / Refugee Convention Art 31 [bonus]

### **Question 7**

You advise Mustafa about his right to be joined in the UK by his wife, Alaa. Mustafa decides to pursue this without your assistance. Unfortunately, Alaa's application is refused in a decision handed to her on 1st July 2019 and Mustafa returns to seek your advice.

**a) With reference to relevant law, can the refusal be challenged?**

**(3 marks)**

- Alaa can appeal to the First-tier Tribunal (IAC) [1]
- against the decision to refuse a human rights claim [1]
- Under s82(1)(b) NIAA 2002 [1]

**b) What is the final date on which the challenge must be made? Explain your answer with reference to relevant Rules.**

**(3 Marks)**

- 29<sup>th</sup> July 2019 [1]
- 28 days from date decision received (1)
- FtT Procedure Rule 19(3)(b) [1]
- Procedure Rule 20 provides for out of time appeals (bonus)

### **Question 8**

The ECO has refused Alaa's application because he is not satisfied about the couple's marriage certificate. He accepts that the couple are not within the prohibited degree of relationship and that Alaa would not be excluded from the Refugee Convention if she sought asylum. Therefore the ECO is not satisfied that Alaa has met the requirements of the Immigration Rules. Nor are there any exceptional circumstances. The couple have no children. You agree to represent on a fee-paying basis and you are instructed to lodge the notice of appeal against the ECO's decision.

**Considering relevant statute, on what grounds can the decision be challenged?**

(2 marks)

- The available ground is that the decision would be unlawful under s6 HRA 1998 [1]
- Under s84(2) NIAA 2002 [1]

### **Question 9**

Mustafa and Alaa submitted only the marriage certificate and Mustafa's UK status documents with the application to the ECO.

**a) What further evidence would you seek for the purpose of the appeal?**

(7 marks)

- Evidence about the reliability of the marriage certificate [1]
- Alternative evidence that the marriage took place (eg wedding photographs etc) [1]
- Evidence about the substance of the relationship in Sudan [1]
- Such as evidence about cohabitation after marriage, witness statements etc [1]
- Evidence about the relationship since Mustafa came to the UK [1]
- Such as Personal Information Form / Record submitted with protection claim, asylum screening interview record [1]

**b) What sources of law would guide your evidence-gathering and why?**

(7 marks)

- Evidence required to show that family life exists [1]
- Which engages Art 8 ECHR [1]
- Relevant Immigration Rules are para 352A [1]
- If rules are met, decision will be disproportionate under Art 8 [1]
- ***TZ (Pakistan) and PG (India) v SSHD [2018] EWCA Civ 1109*** or other relevant case law [1]
- UK shall ensure that refugee family unity is maintained [1]
- ***Refugee Qualification Directive, Art 23 / UNHCR Handbook*** [bonus]
- Home Office guidance on 'Family Reunion' would assist [1]

### **Question 10**

You are visited by Mustafa. He tells you he has recently argued with Alaa, that she is tired of the appeal and they want to withdraw it.

**Referring to relevant law, what should you do?**

(4 marks)

- Alaa is the Appellant [1]
- So you must obtain clear instructions from her [1]

- Because only Alaa has authority to withdraw the appeal [1]
- Under FtT Procedure Rule 17 [1]
- Reference to *Anwar (rule 17(1): withdrawal of appeal) Pakistan (Rev 1) [2019] UKUT 125 (IAC)*, or *AP (Withdrawals – nullity assessment) Pakistan [2007] UKAIT 0002* or other relevant authority or source of law [bonus]

### **Question 11**

The appeal goes ahead and is listed for hearing. You realise that you will not be available to present the appeal and are minded to instruct counsel. You identify suitable counsel.

**What essential steps must you now take regarding your intention to instruct counsel?**

**(4 marks)**

- Obtain consent to instruct counsel [1]
- Which must be written [1]
- OISC Code of Standards 38 [bonus]
- Confirm level of counsel's fee and payment arrangements [1]
- Provide sufficiently detailed instructions to counsel [1]
- Any other sensible suggestion [bonus]

### **Question 12**

The appeal is allowed and Alaa enters the UK as Mustafa's spouse. Three months later she comes to see you and discloses that Mustafa has taken control of her bank account and has been insulting her and threatening to send her back to Sudan when she protested. Alaa has had enough and she wants out of the relationship. She seeks advice about whether any option is open to her regarding her immigration status.

**How do you advise Alaa?**

**(7 marks)**

- Alaa was granted limited leave as a partner of a refugee under para 352A [1]
- Appendix FM, Para E-DVILR.1.2 [1]
- Mustafa's behaviour arguably meets the definition of domestic abuse [1]
- If the relationship has broken down permanently as a result of domestic abuse [1]
- She is eligible to apply for ILR [1]
- Must not fall for refusal under suitability [1]
- Evidencing the abuse might not be straightforward / Discussion of Modernised guidance: domestic violence [1]
- Consider whether there is any conflict of interest which would prevent you acting [bonus]