

LEVEL 2 IMMIGRATION PAPER

MAY 2019

INSTRUCTIONS TO CANDIDATES

Level 2 (55 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 2 hours and 15 minutes 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

Precious is a 25 year old citizen of South Africa. Precious came to the UK in June 2015 with 6 months entry clearance as a visitor. She overstayed and remained living in the UK. She met Pedro in December 2017. Pedro is 30 years old, was born in Brazil and is settled in the UK. Precious and Pedro have been living together as a couple (in a home which Pedro inherited) since they met. Three months ago Precious got in contact with the Home Office and was placed on immigration bail. She and Pedro married a month ago after a Home Office investigation accepted they were in a genuine relationship. They have no children. Pedro has not worked for several years and the couple's sole source of financial resources is a £300 monthly inheritance received by Pedro. Neither Precious nor Pedro receives any benefits nor do they have any insurance or any criminal convictions.

Precious has already been properly advised by a Brazilian lawyer that an application to reside in Brazil as Pedro's wife would be straightforward but they both want to remain in the UK. She seeks advice from you about whether she might be able to remain in the UK as a result of the marriage.

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Question 1

Having advised Precious at your meeting, you must now write a letter to confirm your advice, explaining your answers by referring to any relevant rules. The letter should be structured to separately address the questions in a) to d) below.

- a) **Is there a paid application which Precious could now make?**
(3 marks)
- b) **What requirements would Precious have to meet to be granted Leave?**
(6 marks)
- c) **What is your assessment of her prospects of succeeding in her application? Please provide reasons.**
(8 marks)
- d) **If an application were made and refused, would Precious have any legal remedy?**
(3 marks)

Question 2

Having received your advice, Precious decides not to make the application you have discussed. She attends your office again, this time with her husband Pedro. It transpires that Pedro is a dual Brazilian and Portuguese national. He describes himself as settled due to having worked in the UK and having been issued with a document certifying permanent residence in January 2014, which he shows to you. Between October 2014 and October 2017 Pedro left the UK and lived back in Brazil before returning to the UK on his Portuguese passport. He had thrown away all his other documents when he left the UK in 2014 and has been unable to obtain replacements. Pedro is anxious about the UK's withdrawal from the European Union and is anxious about his own position.

Referring to relevant regulations, please explain Pedro's current immigration status.

(5 marks)

Question 3

- a) **Is there any application Pedro could now make which would address his anxieties and put him in a secure position?**
(2 marks)
- b) **What status is available to applicants under this route?**
(3 marks)

c) With reference to your instructions and relevant rules, what are Pedro's prospects of success?

(13 marks)

Question 4

Precious has listened to the advice you have given to her husband and asks for advice about regularising her own situation.

Could Precious make an application and what would be the likely outcome? Please explain your answer.

(6 marks)

Question 5

Precious and Pedro make their applications. Precious is granted a temporary status and wants to know your view about whether she could challenge the decision and any likely result.

With reference to relevant rules, how do you advise her?

(6 marks)

Model Answer

Your instructions

Precious is a 25 year old citizen of South Africa. Precious came to the UK in June 2015 with 6 months entry clearance as a visitor. She overstayed and remained living in the UK. She met Pedro in December 2017. Pedro is 30 years old, was born in Brazil and is settled in the UK. Precious and Pedro have been living together as a couple (in a home which Pedro inherited) since they met. Three months ago Precious got in contact with the Home Office and was placed on immigration bail. She and Pedro married a month ago after a Home Office investigation accepted they were in a genuine relationship. They have no children. Pedro has not worked for several years and the couple's sole source of financial resources is a £300 monthly inheritance received by Pedro. Neither Precious nor Pedro receives any benefits nor do they have any insurance or any criminal convictions.

Precious has already been properly advised by a Brazilian lawyer that an application to reside in Brazil as Pedro's wife would be straightforward but they both want to remain in the UK. She seeks advice from you about whether she might be able to remain in the UK as a result of the marriage.

Question 1

Having advised Precious at your meeting, you must now write a letter to confirm your advice, explaining your answers by referring to any relevant rules. The letter should be structured to separately address the questions in a) to d) below.

a) Is there a paid application which Precious could now make?

(3 marks)

b) What requirements would Precious have to meet to be granted Leave?

(6 marks)

c) What is your assessment of her prospects of succeeding in her application? Please provide reasons.

(8 marks)

d) If an application were made and refused, would Precious have any legal remedy?

(3 marks)

SAMPLE LETTER

Firm's name and address

Firm's Ref No.

Date

Precious

Precious's address

Dear Precious

Re: Your immigration matter

Thank you for coming to see me yesterday about your immigration case. I am now writing to confirm the advice I gave you at our meeting.

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

I will now answer the specific questions which you have asked.

a) Is there a paid application which you could now make?

Now that you are married, you meet the definition of a partner under Appendix FM of the government's immigration rules (para GEN.1.2). Pedro can sponsor you because he is present and settled in the UK (para E-LTRP.1.2.(b)). So it is possible to make an application under the immigration rules to stay in the UK as Pedro's partner. The application must be made online using the form 'FLR(FP)'. The application fee would be £1,033 and there would also be a mandatory Immigration Health Charge of £1000.

b) What requirements would you have to meet to be granted Leave?

You would need to show that you meet the 'suitability' requirements of the rules (section S-LTR). Certain types of past behaviour such as criminal convictions, dishonesty or other conduct can justify refusal of an application by the Home Office.

There are also 'eligibility' requirements to meet. Regarding your relationship, the main requirements are that the relationship is genuine and subsisting and that you both intend to live together in the UK. You would also have to show that you and Pedro are at least 18 years old, have met in person, are legally married and any previous relationship has broken down permanently (paras E-LTRP.1.3-1.12)

Regarding immigration status, applicants must not be in the UK as a visitor or with leave granted for 6 months or less, nor can they be in breach of immigration laws or on immigration bail, unless they can show that an exception applies (para EX.1(b)). In your circumstances, you would need to show that there are 'insurmountable obstacles' to your family life with Pedro continuing outside the UK.

What the rules mean by insurmountable obstacles is that you and Pedro would face very significant difficulties in continuing your family life together outside the UK, difficulties which could not be overcome or would entail very serious hardship for you or Pedro (para EX.2).

If you could prove such insurmountable obstacles you would not have to meet the English language or financial requirements, such as having a minimum income of £18,600 per year.

c) What is my assessment of your prospects of succeeding in your application?

Unfortunately, in my view your prospects of succeeding in an application as a partner are poor. The strengths of your case are that there appears to be no reason to refuse you on suitability grounds and the Home Office are very likely to accept that you meet the relationship requirements because they have already authorised your marriage.

But the major weakness of your case is that the Home Office is very unlikely to decide that there are insurmountable obstacles in your case as defined by para EX.2. The public interest in immigration control is believed to be so strong that where a person (like yourself) has begun what is called a 'precarious' family life because they have no leave to remain, it is only insurmountable obstacles which can outweigh the public interest. In your case there is

no legal or (as far as I am aware) practical barrier, to you and Pedro continuing your family life in Brazil. Nor is your desire to continue living in the UK enough to meet the high threshold of very significant difficulties leading to very serious hardship.

The strict approach adopted by the Home Office has been upheld by the courts, for example by the UK Supreme Court in the case of *Agyarko and Ikuga [2017] UKSC 11*.

Unless there are some other exceptional circumstances which would mean that a refusal would breach your rights to respect for your private and family life under Article 8 of the European Convention on Human Rights, the Home Office will refuse your application. In your case, there do not seem to be any factors which would mean that refusal would result in unjustifiably harsh consequences for you, Pedro or any other family members (para GEN.3.2).

For all these reasons, although you could make an application, it is very likely to be refused.

d) If an application were made and refused, would you have any legal remedy?

If you went ahead and made an application which was then refused, you would have a right to appeal to the First-tier Tribunal (Immigration and Asylum Chamber). This is because your application would be treated as a human rights claim the refusal of which triggers a right of appeal (s82(1)(b) Nationality, Immigration and Asylum Act 2002). Any appeal would have to be lodged with the Tribunal not later than 14 days after you are sent the notice of the Home Office decision. In my view, the appeal would be unlikely to succeed for the reasons I have already explained.

Conclusion

I am sorry that I am unable to be more positive in my advice. If you have any questions you would like to ask or if you wish to make an application anyway, please do not hesitate to contact me.

Yours sincerely,

An Adviser

Question 2

Having received your advice, Precious decides not to make the application you have discussed. She attends your office again, this time with her husband Pedro. It transpires that Pedro is a dual Brazilian and Portuguese national. He describes himself as settled due to having worked in the UK and having been issued with a document certifying permanent residence in January 2014, which he shows to you. Between October 2014 and October 2017 Pedro left the UK and lived back in Brazil before returning to the UK on his Portuguese passport. He had thrown away all his other documents when he left the UK in 2014 and has been unable to obtain replacements. Pedro is anxious about the UK's withdrawal from the European Union and is anxious about his own position.

Referring to relevant regulations, please explain Pedro's current immigration status.

(5 marks)

- He lost his right of permanent residence by his absence from the UK for more than 2 years [1]
- EEA Reg 15(3) [1]
- He had an initial right of residence for three months after his return to the UK [1]
- But since then, he has not met the definition of a qualified person [1]
- Discussion of EEA Regs 6 and 4 in light of instructions [bonus]
- Pedro currently has no right to reside in the UK and no leave to remain [1]

Question 3

e) Is there any application Pedro could now make which would address his anxieties and put him in a secure position?

(2 marks)

- He could apply for ILR / settled status [1]
- Under Appendix EU [1]

f) What status is available to applicants under this route?

(3 marks)

- An application under Appendix EU may result in either ILR or Limited Leave to Remain [1]
- Limited Leave to Remain would be granted for 5 years [1]
- Paras EU2 and EU3 [1]

g) With reference to your instructions and relevant rules, what are Pedro's prospects of success?

(13 marks)

- Pedro has very good prospects of being granted ILR [1]
- Under Para EU11, Condition 1 [1]
- As he is a relevant EU/EEA citizen [1]
- With a documented right of permanent residence [1]
- Who has resided in the UK for a continuous qualifying period [1]
- Beginning before the specified date (of 31 December 2020) assuming the UK withdraws with a withdrawal agreement [bonus]
- And there has been no supervening event [1]
- Because his absence from UK was less than 5 years [1]
- As defined in Annex 1 of Appendix EU [1]
- He should meet the suitability requirements [1]
- As he is not subject to a deportation order or exclusion decision [1]
- Under para EU15 [1]

- As long as he does not provide any false or misleading information etc [1]
- Para EU16(a) [1]
- Extremely unlikely that provisions at para EU16(b) will be applied simply for non-exercise of Treaty rights [bonus]

Question 4

Precious has listened to the advice you have given to her husband and asks for advice about regularising her own situation.

Could Precious make an application and what would be the likely outcome? Please explain your answer.

(6 marks)

- Precious could apply under Appendix EU [1]
- As a family member (spouse) of a relevant EU/EEA national [1]
- Her marriage certificate would count as the required evidence of relationship [1]
- There is nothing to suggest suitability requirements will not be met [1]
- She would receive limited leave / pre-settled status [1]
- Because she has completed a continuous qualifying period of less than five years in the category of family member [1]

Question 5

Precious and Pedro make their applications. Precious is granted a temporary status and wants to know your view about whether she could challenge the decision and any likely result.

With reference to relevant rules, how do you advise her?

(6 marks)

- She could apply for Administrative Review [1]
- Of the decision to grant her limited leave not ILR [1]
- Appendix AR(EU)1.1. (b) [1]
- But there does not appear to be any basis to argue the decision was incorrect [1]
- Appendix AR(EU)2.1. [1]
- Administrative Review would not succeed [1]

