

LEVEL 2 IMMIGRATION PAPER

NOVEMBER 2021

INSTRUCTIONS TO CANDIDATES

Level 2 (52 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.

PART ONE

Alexandra is a Russian citizen who is married to Samuel, a South African who has been settled in the UK for a decade. She successfully applied for entry clearance as Samuel's partner in 2017. In 2018 the couple had a baby, Anna. In 2019 Alexandra renewed her leave. Alexandra is currently working part-time for £16,000 per year while Samuel earns much more from his consultancy business. They have no savings.

Unfortunately, Alexandra has been having heated arguments with Samuel for months. She is considering divorce but is worried that she could lose custody of Anna and be forced to leave the UK. She comes to you for immigration advice.

Question 1

If Alexandra were to separate from Samuel and move out of the marital home with the intention of seeking a divorce:

a) What would be the consequences for her current Leave? Please refer to relevant rules.

(5 marks)

b) What immediate action would she be expected to take and why?

(2 marks)

Question 2

A month later, Alexandra returns to your office and tells you that Samuel was verbally abusive and threatened her with violence. The relationship is over and she has arranged to move out but does not know if Anna will live with her or stay with Samuel. She is continuing to work as before. She asks you a number of questions and you advise her.

You must now write a letter to Alexandra to confirm your advice, referring to relevant rules. It should be structured to separately address the questions in a) to c) below.

a) What options are open to Alexandra to apply to remain in the UK?

(4 marks)

b) what requirements would she have to meet?

(15 marks)

c) What are the advantages and disadvantages of each option?

(10 marks)

Question 3

Alexandra opts to make an application arising from Samuel's verbal abuse and threats. If this application is refused, will she have a legal remedy?

(5 marks)

PART TWO

You receive an email enquiry from Isabel in Spain seeking advice about the status of her son, Jordi. Jordi was born in Barcelona in 2018. He has Spanish citizenship as a result of Isabel being a Spanish citizen. His father, Javier, was born in Barcelona in 1976. He later lived and worked in the UK for many years before eventually naturalising as a British citizen in 2012. He returned to Spain in 2016. Jordi's birth certificate confirms that Javier is the father.

Isabel wants to know if there is any application which could be made to confirm Jordi's right to live in the UK.

Question 4

a) **What further information do you need from Isabel before you can advise her? Please explain your answer.**

(4 marks)

b) **If Jordi does have a right to live in the UK, what application would you advise Isabel to make on his behalf?**

(1 mark)

Question 5

Isabel is unconfident in written English so you agree to represent her and Jordi in making the application on Jordi's behalf. Isabel sends you copies of documents to check. You notice Javier's birth certificate has some suspicious features and ask Isabel about it. After some discussion she admits that the document is not authentic but assures you that Javier is genuinely Jordi's father. She wants to include the document with the application because she has lost the original document and cannot get a replacement.

What is your advice to Isabel?

(6 marks)

The Level 2 question paper with model answers included is found below.

Model Answer

PART ONE

Alexandra is a Russian citizen who is married to Samuel, a South African who has been settled in the UK for a decade. She successfully applied for entry clearance as Samuel's partner in 2017. In 2018 the couple had a baby, Anna. In 2019 Alexandra renewed her leave. Alexandra is currently working part-time for £16,000 per year while Samuel earns much more from his consultancy business. They have no savings.

Unfortunately, Alexandra has been having heated arguments with Samuel for months. She is considering divorce but is worried that she could lose custody of Anna and be forced to leave the UK. She comes to you for immigration advice.

Question 1

If Alexandra were to separate from Samuel and move out of the marital home with the intention of seeking a divorce:

a) What would be the consequences for her current Leave? Please refer to relevant rules.

(5 marks)

- Alexandra's Leave as a partner requires her relationship with Samuel to be subsisting [1]
- Appendix FM, Para E-LTRP.1.7 [1]
- And for the couple to have a continuing intention to live together permanently in the UK [1]
- Appendix FM, Para E-LTRP.1.10 [1]
- Therefore, Alexandra would be in breach of the conditions of her Leave [1]

b) What immediate action would she be expected to take and why?

(2 marks)

- She would be expected to inform the Home Office that her relationship is no longer subsisting [1]
- Because she knows that owing to a change in her circumstances, she no longer qualifies for leave as a partner [1]
- Immigration (Biometric Registration) Regulations 2008, Reg 18(d) / reference to potential curtailment of leave under Part 9 Immigration Rules [bonus]

Question 2

A month later, Alexandra returns to your office and tells you that Samuel was verbally abusive and threatened her with violence. The relationship is over and she has arranged to move out

but does not know if Anna will live with her or stay with Samuel. She is continuing to work as before. She asks you a number of questions and you advise her.

You must now write a letter to Alexandra to confirm your advice, referring to relevant rules. It should be structured to separately address the questions in a) to c) below.

- a) **What options are open to Alexandra to apply to remain in the UK?** (4 marks)
- b) **what requirements would she have to meet?** (15 marks)
- c) **What are the advantages and disadvantages of each option?** (10 marks)

SAMPLE LETTER

Firm's name and address

Firm's Ref No.

Date

Alexandra

Alexandra's address

Dear Alexandra

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) What options are open to you to apply to remain in the UK?

There are two main options open to you if you wish to apply for permission to stay in the UK.

The first option is to apply to vary or 'switch' your immigration status from that of a partner to that of a parent. You can apply for permission to stay as Anna's parent under Appendix FM

of the immigration rules. You would have to meet the requirements for limited leave to remain as a parent.

The second option is to apply to vary or 'switch' your status from that of a partner to that of a 'victim of domestic abuse'. This would be an application for indefinite leave to remain (settlement) under Section DVILR of Appendix FM of the immigration rules.

b) What requirements would you have to meet?

Leave to remain as a parent

In order to succeed you must make a valid application which meets the suitability requirements in Section S-LTR of Appendix FM of the rules (which assess your character, conduct and any criminal convictions) and the eligibility requirements in Section E-LTRPT of Appendix FM of the rules. There is no indication from you of any issues which might lead to you being considered unsuitable. Regarding your eligibility, I will assume that once you have moved out of the family home, Anna will be living either with you, or with Samuel, or she will live partly with you and partly with Samuel.

Relationship requirements

To be eligible you must meet the relationship requirements (paragraphs E-LTRPT.2.2 – 2.4 of Appendix FM). You must show that Anna is under 18, living in the UK and is British, which should be straightforward given what you have told us.

You must also provide evidence that one of the following applies:

- You have sole parental responsibility for Anna; or
- Anna normally lives with you and not Samuel; and you are not eligible to apply for leave to remain as a partner of somebody else in the UK; or
- Anna normally lives with Samuel and you have direct access to her, as agreed with Samuel or as ordered by a court; and you are not eligible to apply for leave to remain as a partner of somebody else in the UK.

Whichever of these circumstances applies, you must also provide evidence that you are taking, and intend to continue to take, an active role in Anna's upbringing.

Immigration status

You must not be in the UK as a visitor, with leave granted for 6 months or less, on immigration bail, or in breach of immigration laws (paragraphs E-LTRPT.3.1-3.2 of Appendix FM). None of these currently apply to you, so this part of your application is straightforward.

Financial requirements

You must show that you will be able to adequately maintain and accommodate yourself without recourse to public funds. If Anna is your dependant, you would also have to show you can adequately maintain and accommodate her (paragraphs E-LTRPT.4.1 - 4.2 of Appendix FM). For accommodation to be adequate it must not be overcrowded and must not contravene public health regulations. Your financial resources will be adequate if, after

income tax, national insurance contributions and housing costs have been deducted, you have the level of income or funds that would be available to you if you were in receipt of income support. At the moment it is unclear whether your financial resources and accommodation would be adequate.

English language requirement

You must continue to meet this requirement but assuming you successfully met the English language requirement in your successful application for leave as a partner in 2019, this part of your application should be straightforward (paragraph E-LTRPT.5.1 of Appendix FM).

Human rights

If you meet the suitability and the relationship requirements but cannot meet the immigration status, English language or financial requirements, the Home Office will consider whether any refusal would breach Article 8 of the European Convention on Human Rights by disproportionately interfering with your right to private and family life.

Because Anna is under the age of 18, in the UK and a British citizen, provided you could show you had a genuine and subsisting parental relationship with her, the Home Office would first consider whether, taking into account Anna's best interests, it would not be reasonable to expect her to leave the UK (paragraph EX.1 of Appendix FM).

Even if you could not meet this test, the Home Office would have to consider whether there were any exceptional circumstances in your case which meant that Article 8 would be breached because a refusal of permission would result in unjustifiably harsh consequences for you and/or Anna.

In making their decision the Home Office would have to follow the approach set out by the courts in leading cases, such as *ZH (Tanzania) [2011] UKSC 4* on the best interests of the child or *Razgar [2004] UKHL 27* on how to assess a person's human right to private and family life.

Indefinite leave to remain as a victim of domestic abuse

In order to succeed you must make a valid application which meets the suitability requirements in Section S-ILR of Appendix FM of the rules and the eligibility requirements in Section E-DVILR of Appendix FM of the rules.

As you were previously granted leave to remain as the partner of Samuel, a person present and settled in the UK, you may be eligible for settlement. You would need to provide evidence that during your last period of limited leave as Samuel's partner your relationship with him broke down permanently as a result of domestic abuse (paragraphs E-DVILR.1.2-1.3 of Appendix FM).

c) What are the advantages and disadvantages of each option?

Leave to remain as a parent

It is likely to be relatively straightforward to gather the necessary evidence that you meet the immigration status, English language and relationship. If it turns out that your available

financial resources do exceed the relevant level of Income Support, that should be relatively easy to prove with the right documents.

If you meet all the eligibility requirements of the rules, you would receive a grant of permission to stay for 30 months which usually has a condition of no recourse to public funds. At the end of the 30 months, you would need to apply for a further period of 30 months. After five years with permission as a parent it becomes possible to obtain settlement if you can show you meet the relevant rules for indefinite leave to remain as a parent.

However, there is a distinct possibility that you may be unable to meet the financial requirement and would have to rely on the human rights arguments I have outlined. In my view, your prospects of succeeding in a human rights claim are good given Anna's status as a British citizen and because strong arguments are available that it would be unreasonable to expect Anna to leave the UK or that refusing your application would be unjustifiably harsh. But if your application succeeded on human rights grounds, you could only apply to settle after 10 years comprising four successive periods of 30 months with permission as a parent.

The current cost of an application for permission as a parent is £1,523 and an immigration health charge of £1,560 must also be paid. It is possible to apply for some or all of these fees to be waived but you would have to provide detailed evidence to demonstrate that you are unable to afford the fee. Evidence of any impact on Anna would also have to be considered by the Home Office.

Indefinite leave to remain as a victim of domestic abuse

Your experiences count as domestic abuse which the Home Office defines as controlling, coercive or threatening behaviour, and psychological, sexual, financial or emotional abuse as well as physical violence. But in the absence of a criminal conviction or Samuel accepting a caution, I anticipate it may be difficult to provide sufficient evidence to satisfy the Home Office that you have experienced verbal abuse and threats – certainly more difficult than providing the evidence to succeed in an application for permission to stay as a parent.

If your application was successful, the main advantage is that you will be granted indefinite leave to remain immediately. The application fee for a victim of domestic abuse is currently £2,389 and there is no immigration health charge to pay. It is possible to apply for the fee to be waived if you can provide evidence that you are destitute. This means proving that you do not have adequate accommodation or any means of obtaining it, or you cannot meet other essential living needs.

Once you decide how you wish to proceed, we would discuss in more detail what evidence would need to be collected and submitted, taking into account the Home Office's policy guidance on ***Family life (as a partner or parent), private life and exceptional circumstances*** or on ***Domestic Violence***.

If you have any questions you would like to ask, please do not hesitate to contact me.

Yours sincerely,

An Adviser

Question 3

Alexandra opts to make an application arising from Samuel's verbal abuse and threats. If this application is refused, will she have a legal remedy?

(5 marks)

- The remedy will be Administrative Review [1]
- Unless a human rights claim was also made and refused by the Home Office [1]
- This would give rise to a right of appeal to the FtT(IAC) [1]
- s82(1)(b) NIAA 2002 [1]
- *MY (Pakistan) [2021] EWCA Civ 1615 / MY (Pakistan) [2020] UKUT 89 (IAC) [1]*

PART TWO

You receive an email enquiry from Isabel in Spain seeking advice about the status of her son, Jordi. Jordi was born in Barcelona in 2018. He has Spanish citizenship as a result of Isabel being a Spanish citizen. His father, Javier, was born in Barcelona in 1976. He later lived and worked in the UK for many years before eventually naturalising as a British citizen in 2012. He returned to Spain in 2016. Jordi's birth certificate confirms that Javier is the father.

Isabel wants to know if there is any application which could be made to confirm Jordi's right to live in the UK.

Question 4

c) What further information do you need from Isabel before you can advise her? Please explain your answer.

(4 marks)

- Whether Isabel and Javier were married / in a civil partnership at the time of Jordi's birth [1]
- If not, whether Isabel was married to another man at the time of Jordi's birth [1]
- In order to determine who will or could be treated as Jordi's father for the purpose of British nationality law [1]
- S50(9A) BNA 1981 [1]

d) If Jordi does have a right to live in the UK, what application would you advise Isabel to make on his behalf?

(1 mark)

- Application for a British passport is likely to be most straightforward option [1]

Question 5

Isabel is unconfident in written English so you agree to represent her and Jordi in making the application on Jordi's behalf. Isabel sends you copies of documents to check. You notice

Javier's birth certificate has some suspicious features and ask Isabel about it. After some discussion she admits that the document is not authentic but assures you that Javier is genuinely Jordi's father. She wants to include the document with the application because she has lost the original document and cannot get a replacement.

What is your advice to Isabel?

(6 marks)

- The document must not be submitted [1]
- As that would constitute deception [1]
- Alternative forms of evidence should be sought [1]
- If she insists on the document being submitted, you will have to cease acting [1]
- Otherwise you will be in breach of professional duty not to mislead a government department [1]
- OISC Code of Standards 14(c) [1]
- Any sensible discussion of whether a criminal offence would be committed [bonus]