



LEVEL 3 IMMIGRATION PAPER

MAY 2024

INSTRUCTIONS TO CANDIDATES

Level 3 (80 Marks)

This examination is open book. You may refer to materials such as the IAA 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.

PART ONE

Question 1

Rita is a Nigerian citizen who entered the UK in 2014 and gave birth to a British child in 2018. The child's father disappeared soon after the birth. In 2019 she considered applying for a Derivative Residence Card under Reg 16(5) of the *Immigration (EEA) Regulations 2016* but opted instead to apply for limited leave as a parent under Appendix FM, which was successful. She has now heard that a friend who is also a single parent with a British child who applied for leave under the EU Settlement Scheme has been granted settled status. Rita wants to make the same application under the EUSS to switch her own leave.

a) What kind of application does Rita have in mind?

(1 mark)

b) What advice should you give to Rita about making such an application?

(4 marks)

PART 2

Question 2

Katerina is a Polish citizen who met and married Jack, a British citizen, in Warsaw in 2021. She was granted entry clearance as Jack's partner in 2022. Sadly, the couple quickly separated but have not yet divorced. In 2023 Katerina met her new boyfriend, Michal, a fellow Pole who has limited leave to remain as a skilled worker. Katerina gave birth to Michal's son, Lukasz, in London last month. They registered the birth together and the birth certificate confirms that Michal is the father.

Michal wants to know if there is any application which should be made to confirm his son Lukasz's nationality.

How do you advise Michal? Please refer to the relevant statutory provision.

(5 marks)

PART 3

Question 3

Ana is a 50 year old Brazilian national and Martin is a 52 year old British citizen. Ana moved from Brazil to Spain in 2015 to work. She met Martin in Barcelona while he was on holiday in 2019 and they began a relationship. In February 2020 she flew to Heathrow airport and was granted 6 months leave to enter the UK as a visitor. Since then, she has remained in the UK, living with Martin. In March 2022 the couple married with the permission of the Home Office but have otherwise had no contact with the Home Office. Ana has a mother and sister in Brazil who she remains in contact with.

Martin is a self-employed gas engineer who has had his own business for 20 years. He has annual pre-tax earnings of £40,000. Neither Ana nor Martin has any children. Martin looks after his elderly father who is in the late stages of a debilitating neurological condition. He finds this caring responsibility very stressful.

Martin and Ana come to you for advice about whether Ana can live in the UK as Martin's spouse.

- a) Bearing in mind the date on which Ana entered the UK, what do you need to ask her about her past intentions and decisions?

(5 marks)

- b) Given that she wants to live in the UK as Martin's spouse, what are the two main options open to Ana?

(2 marks)

Question 4

You advise Ana that she does not meet the immigration status requirements for leave to remain as a partner, but she decides she wants to make such an application anyway. You should now write a letter of advice to her which explains what she must show before leave is exceptionally granted. Please refer to relevant rules. The letter should be structured to separately address questions a) and b) below.

- a) What are the legal tests in relation to her family life which the Home Office will require her to meet before leave is exceptionally granted?

(7 marks)

- b) Considering these legal tests and the information you have been given so far, what evidence should be obtained to support the application? Please give specific examples.

(12 Marks)

Question 5

Before the application is completed, Ana decides to renew her passport. You have recently been contacted by a reputable firm which specialises in obtaining rapid passport renewals for clients. They have offered to pay you a fee for each client referred to them.

Is there any regulatory consideration you should be aware of before deciding whether to take up this firm's offer?

(3 marks)

Question 6

You are instructed by Ana to prepare and submit the application you have discussed. You do this but unfortunately it is refused. Making reference to relevant statutory provisions and rules:

- a) Can Ana make any challenge to the refusal and, if so, to which body?
(3 marks)

- b) What grounds are available to her?
(2 marks)

- c) Is there a time limit for her to appeal?
(6 marks)

PART 4

Question 7

You lodge a notice of appeal and the Home Office serves its Respondent Bundle. The reasons for refusal states that Ana meets the suitability and relationship requirements but does not meet the immigration status requirements and there are no insurmountable obstacles or exceptional circumstances. The letter makes no reference to the supporting evidence which you gathered and submitted with the application.

The refusal also refers to Appendix Private Life. On reflection you conclude that, in this case, a private life claim for Ana is not arguable so an appeal skeleton argument should address only her family life claim.

Referring to material facts and relevant sources of law, please draft an appeal skeleton argument.

(12 marks)

Question 8

The day before you are due to represent Ana at her full hearing, you discuss the case with a colleague. He advises that since all tribunal hearings are now video-recorded, you no longer need to take a contemporaneous note at the hearing.

Is your colleague correct? Please explain your answer.

(3 Marks)

Question 9

The hearing takes place and the Judge allows the appeal. Ana is worried that the Home Office might seek to challenge the Judge's decision.

- a) If the Home Office were to challenge the Judge's decision, to which body would an application be made and for what purpose?

(2 marks)

- b) what legal test would the Home Office have to meet? Please refer to relevant law.

(4 marks)

PART 5

Question 10

In July 2023, a week before his leave as a student was due to expire, Peter applied to vary his leave to that of a skilled worker. In September 2023 he was refused (on suitability grounds) and made an in-time application for administrative review. Last week he was served with a notice of decision that the refusal was being upheld.

- a) Can Peter appeal or make any other legal challenge to the refusal and, if so, to which body?

(3 marks)

- b) Does any deadline apply?

(2 marks)

Question 11

Peter decides that he wants to pursue a legal challenge. As his instructed representative (who is authorised to practice at OISC Level 3) what action can you now take on his behalf?

(1 mark)

Question 12

You take this action on Peter's behalf. Referring to relevant statute, please explain what his immigration status is now.

(3 marks)

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

Model Answer

PART ONE

Question 1

Rita is a Nigerian citizen who entered the UK in 2014 and gave birth to a British child in 2018. The child's father disappeared soon after the birth. In 2019 she considered applying for a Derivative Residence Card under Reg 16(5) of the *Immigration (EEA) Regulations 2016* but opted instead to apply for limited leave as a parent under Appendix FM, which was successful. She has now heard that a friend who is also a single parent with a British child who applied for leave under the EU Settlement Scheme has been granted settled status. Rita wants to make the same application under the EUSS to switch her own leave.

a) What kind of application does Rita have in mind?

(1 mark)

- Application as a person with a Zambrano right to reside [1]

b) What advice should you give to Rita about making such an application?

(4 marks)

- It is too late to make a Zambrano application [1]
- It would be treated as invalid and not considered by the Home Office [1]
- Because it did not meet the required date / the required date for Zambrano applications was 9 August 2023 [1]
- Annex 1, Appendix EU [1]
- Any relevant reference to Zambrano case law or Immigration Staff Guidance [bonus]

PART 2

Question 2

Katerina is a Polish citizen who met and married Jack, a British citizen, in Warsaw in 2021. She was granted entry clearance as Jack's partner in 2022. Sadly, the couple quickly separated but have not yet divorced. In 2023 Katerina met her new boyfriend, Michal, a fellow Pole who has limited leave to remain as a skilled worker. Katerina gave birth to Michal's son, Lukasz, in London last month. They registered the birth together and the birth certificate confirms that Michal is the father.

Michal wants to know if there is any application which should be made to confirm his son Lukasz's nationality.

How do you advise Michal? Please refer to the relevant statutory provision.

(5 marks)

- Under British nationality law, Jack is the father of Lukasz [1]
- Because he was still Katerina's husband at the date of Lukasz's's birth [1]
- This is so despite Michal being the biological father, as recorded in the birth certificate [1]
- S50(9A) BNA 1981 [1]
- Application for a British passport would be possible [1]
- Any sensible discussion of evidence which may be required / Jack's willingness to cooperate, etc [bonus]

PART 3

Question 3

Ana is a 50 year old Brazilian national and Martin is a 52 year old British citizen. Ana moved from Brazil to Spain in 2015 to work. She met Martin in Barcelona while he was on holiday in 2019 and they began a relationship. In February 2020 she flew to Heathrow airport and was granted 6 months leave to enter the UK as a visitor. Since then, she has remained in the UK, living with Martin. In March 2022 the couple married with the permission of the Home Office but have otherwise had no contact with the Home Office. Ana has a mother and sister in Brazil who she remains in contact with.

Martin is a self-employed gas engineer who has had his own business for 20 years. He has annual pre-tax earnings of £40,000. Neither Ana nor Martin has any children. Martin looks after his elderly father who is in the late stages of a debilitating neurological condition. He finds this caring responsibility very stressful.

Martin and Ana come to you for advice about whether Ana can live in the UK as Martin's spouse.

- a) Bearing in mind the date on which Ana entered the UK, what do you need to ask her about her past intentions and decisions?**

(5 marks)

- What were her intentions on arrival in the UK? [1]
- What did she tell the immigration officer on arrival? [1]
- What was her reason for overstaying in 2020? [1]
- Why did she continue to overstay? [1]
- Why did she not make any application to regularise her stay? [1]
- Any specific mention of the coronavirus pandemic or any other sensible question [bonus]

- b) Given that she wants to live in the UK as Martin's spouse, what are the two main options open to Ana?**

(2 marks)

- Remain in the UK and apply for leave to remain as a partner / on human rights grounds [1]
- Depart the UK and apply for entry clearance as a partner [1]

Question 4

You advise Ana that she does not meet the immigration status requirements for leave to remain as a partner, but she decides she wants to make such an application anyway. You should now write a letter of advice to her which explains what she must show before leave is exceptionally granted. Please refer to relevant rules. The letter should be structured to separately address questions a) and b) below.

- a) What are the legal tests in relation to her family life which the Home Office will require her to meet before leave is exceptionally granted?
(7 marks)
- b) Considering these legal tests and the information you have been given so far, what evidence should be obtained to support the application? Please give specific examples
(12 marks)

SAMPLE LETTER

Firm's name and address

Firm's Ref No.

Date

Ana

Ana's address

Dear Ana,

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 are the legal tests in relation to your family life which the Home Office will require you to meet before leave is exceptionally granted?**

Although you married Martin with Home Office permission, because you have overstayed your leave as a visitor, you are still living in the UK in breach of immigration laws. This prevents you from making a straightforward application for permission to remain in the UK as Martin's partner.

However, you are able to apply for leave on the exceptional grounds that your right to a family life under Article 8 of the European Convention on Human Rights (ECHR) would be breached if you were not granted leave to remain. There are two parts of the Immigration Rules which are used to assess such applications:

- Section EX of Appendix FM of the Rules
- Paragraph GEN 3.2 of Appendix FM of the Rules.

What these Rules say is that there are a number of things which you must prove in order to be granted leave. I will explain these 'legal tests' first and then, later in this letter, I will advise you about the documentary evidence you will need to collect so you can submit it with your application to the Home Office.

You must show that you are a suitable person to be granted leave. This means that you must meet the requirements in Section S-LTR of Appendix FM of the Rules. The Home Office assesses your character, conduct and whether you have any criminal convictions. From what you have told me there does not seem to be anything in your past which would cause you to be refused under the suitability requirements but if there is anything which you think may cause a problem, please let me know. Failing to meet the suitability requirements would make it harder to succeed, but not impossible under paragraph GEN 3.2 of the Rules.

You must show, not only that you are married to Martin but that you are in a genuine and subsisting relationship with him and that he is a British citizen.

You must also show that there are insurmountable obstacles to you and Martin continuing your family life outside the UK. This means that you must show that it would be impossible for one or both of you if you had to continue your family life in Brazil, or it would cause very serious hardship to one or both of you (paragraph EX.1(b) of Appendix FM of the Rules).

On the positive side, you do not have to prove that you and Martin have a minimum income or that you have an English language test or an educational qualification showing that you speak and understand English to a minimum standard.

If you are unable to meet all of the above requirements, the Home Office will still have to consider whether refusing you leave to remain would breach your right to private and family life in the UK. This means they must consider all the relevant circumstances and decide whether a refusal would result in unjustifiably harsh consequences for you, Martin, or any other family member. That would include Martin's father but it could also include other members of his family if they would suffer unjustifiably harsh consequences.

In making their decision the Home Office would have to follow the approach set out by the courts in cases such as ***Razgar [2004] UKHL 27*** on how to assess a person's human right to private and family life under Article 8 ECHR.

b) **What evidence should be obtained to support the application?**

We will need to work together to collect the following evidence, copies of which will be submitted online to support your application to the Home Office:

- Martin's British passport (or alternative evidence of citizenship)
- Your marriage certificate
- A witness statement from you
- A witness statement from Martin
- Evidence that your relationship with Martin is genuine and subsisting, such as photos, communications via text or social media, joint bank or savings accounts, statements or letters from family and friends etc.
- Evidence of Martin's father's neurological condition, such as documents from his GP or other doctors with responsibility for his treatment
- Evidence confirming that Martin cares for his father, such as letters from social services or other official sources
- Evidence of the effect of Martin ceasing to exercise caring responsibilities, such as a letter from his father or evidence from a health authority or agency
- Evidence of any health condition suffered by Martin
- Evidence of whether and how well Martin can speak Portuguese
- Evidence about Martin's business and whether it could be replicated in Brazil
- Evidence about the conditions in which the couple would have to live in Brazil
- Evidence about Ana's relationship with her family in Brazil and their ability or willingness to help the couple relocate and settle.

If you have any questions about this advice, please do not hesitate to contact me. Once you have supplied as much of the evidence listed above as you can, I will arrange a meeting to discuss further details about submitting the application.

Yours sincerely,

An Adviser

END OF SAMPLE LETTER

Question 5

Before the application is completed, Ana decides to renew her passport. You have recently been contacted by a reputable firm which specialises in obtaining rapid passport renewals for clients. They have offered to pay you a fee for each client referred to them.

Is there any regulatory consideration you should be aware of before deciding whether to take up this firm's offer?

(3 marks)

- You would be in breach of the **OISC Code of Standards** [1]
- You must not accept any inducement, financial or otherwise, for referring a client [1]
- Code 21 of the **Code of Standards 2016**; Code 2.5 of the **Code of Standards 2024** (in effect Sept 2024) [1]
- Any other relevant reference to the Code of Standards, such as always acting in the client's best interests [bonus]

Question 6

You are instructed by Ana to prepare and submit the application you have discussed. You do this but unfortunately it is refused. Making reference to relevant statutory provisions and rules:

a) Can Ana make any challenge to the refusal and, if so, to which body?

(3 marks)

- She can appeal against the refusal of her human rights claim [1]
- s82(1)(b) NIAA 2002 [1]
- To the FtT (IAC) (1)

b) What grounds are available to her?

(2 marks)

- the decision is unlawful under s 6 HRA 1998 [1]
- S84(2) NIAA 2002 [1]

c) Is there a time limit for her to appeal?

(6 marks)

- Not later than 14 days [1]
- After she is sent the decision [1]
- FtT Procedure Rule 19(2) [1]
- There is a possibility of an out of time appeal [1]
- FtT Procedure Rule 20 [1]
- But this is at the discretion of the FtT and would require explanation [1]

PART 4

Question 7

You lodge a notice of appeal and the Home Office serves its Respondent Bundle. The reasons for refusal states that Ana meets the suitability and relationship requirements but does not meet the immigration status requirements and there are no insurmountable obstacles or exceptional circumstances. The letter makes no reference to the supporting evidence which you gathered and submitted with the application.

The refusal also refers to Appendix Private Life. On reflection you conclude that, in this case, a private life claim for Ana is not arguable so an appeal skeleton argument should address only her family life claim.

Referring to material facts and relevant sources of law, please draft an appeal skeleton argument.

(12 marks)

IN THE FIRST TIER TRIBUNAL

(IMMIGRATION AND ASYLUM CHAMBER)

APPEAL NO: HU/12345/2019

BETWEEN:

ANA

(APPELLANT)

AND

SECRETARY OF STATE FOR THE HOME DEPARTMENT

(RESPONDENT)

APPEAL SKELETON ARGUMENT

RB = Respondent Bundle

AB = Appellant Bundle

Brief summary of Appellant's factual case

1. The Appellant is a Brazilian national (DOB: XX/XX/XXXX). She has no other nationality [RB: pXX]. In 2015 she moved from Brazil to live in Spain [RB: pXX] where, in 2019, she met Martin (DOB: XX/XX/XXXX), a British citizen resident in the UK. They entered into a relationship. They communicate in English only.

2. In March 2020, as the Coronavirus pandemic was beginning, the Appellant entered the UK to visit Martin and has remained in the UK ever since. The couple have lived together since the Appellant was granted leave to enter the UK. In March 2022 the couple married with the permission of the Home Office [RB: pXX]. They have no children together or from previous relationships [AB: pXX].
3. The Appellant's mother and sister live in Brazil and the Appellant is in contact with them, but she has no accommodation available in Brazil and no source of income there [AB: pXX].
4. Martin is a self-employed gas engineer who has had his own business for 20 years. He has annual pre-tax earnings of £40,000. Martin has caring responsibility for his father (Mr X, DOB: XX/XX/XXXX) who is in the late stages of a debilitating neurological condition [AB: pXX]. Martin finds this caring responsibility very stressful [AB: pXX].
5. On [DATE] the Appellant submitted an application for leave to remain as Martin's spouse. On [DATE] the Respondent refused that application and refused the Appellant's human rights claim. On [DATE] the Appellant appealed to the First-tier Tribunal against the refusal of her human rights claim.

Schedule of issues

6. Because the Appellant has overstayed, the Respondent has considered the Appellant's application under the 10-year partner route within Appendix FM and under the exceptional circumstances provisions which assess potential breaches of Article 8 ECHR. The Respondent does not dispute that the Appellant meets the suitability requirements and the relationship requirements of the Immigration Rules.
7. The Respondent is not satisfied that:
 - The couple face insurmountable obstacles to continuing their family life together in Brazil (paras EX.1, EX.2)
 - There are any exceptional circumstances which would result in unjustifiably harsh consequences for the couple or any relevant family members (para GEN 3.2).
8. The Respondent has reached her decision without reference to the evidence submitted to support the Appellant's application [AB: pXX-XX].

Brief submissions on why the appellant disagrees with the respondent's decision

9. The Appellant appeals on the ground that the refusal of her human rights claim is unlawful under s6 of the **Human Rights Act 1998** – specifically, Article 8 ECHR.
10. Adopting the familiar **Razgar** approach, a family life has been established which the Respondent's decision interferes with, such interference having consequences of such

gravity as to engage Article 8. While the decision may be in accordance with the law it is not proportionate to any legitimate public end sought to be achieved.

Insurmountable obstacles

11. The Respondent has not considered the evidence that there are insurmountable obstacles to family life continuing in Brazil, in the sense that relocation to Brazil would cause very serious hardship due to an absence of accommodation and income available to the couple in Brazil. Relocation to Spain rather than Brazil has not been suggested by the Respondent and is not at issue.

Exceptional circumstances

12. Para GEN 3.2 requires consideration of whether there would be unjustifiably harsh consequences for all family members affected by the refusal decision. In the instant appeal this means as well as considering the absence of accommodation and income available to the couple in Brazil, there must be consideration of:
 - The impact on the Sponsor's father of losing care from his son
 - The impact on the public purse of requiring the Sponsor to leave the UK
 - The impact on the Sponsor of requiring him to relocate from his established family and ties in the UK, including abandoning the source of income which supports the couple.
13. In considering proportionality – the public interest question per s117A **NIAA 2002** – the Tribunal must have regard to the factors in s117B. It is relevant that:
 - The Appellant speaks English [AB: pXX].
 - The Appellant is financially independent [AB: pXX].
 - The couple commenced their relationship before the Appellant entered the UK and the coronavirus pandemic was a relevant factor once she had entered the UK [AB pXX].
14. Section 117B cannot put decision-makers in a strait-jacket which constrains them to determine claims under Article 8 inconsistently with the article itself (**Rhuppiah [2018] UKSC 58** [49]).
15. Taking all the relevant factors into consideration, the refusal to grant leave results in unjustifiably harsh consequences for the Appellant, the Sponsor and the Sponsor's father. The refusal does not strike a fair balance between the public interest in immigration control and the rights of the Appellant and her family members (**MM (Lebanon) [2017] UKSC 10**). It is disproportionate.

Conclusion

16. The Respondent's refusal breaches the Appellant's rights under Article 8 ECHR and is unlawful under s6 **HRA 1998**. The Respondent is invited to withdraw her decision

and grant leave to remain. In the alternative, if the matter proceeds to a full hearing, the Tribunal is invited to allow the appeal.

An Adviser

[DATE]

Question 8

The day before you are due to represent Ana at her full hearing, you discuss the case with a colleague. He advises that since all tribunal hearings are now video-recorded, you no longer need to take a contemporaneous note at the hearing.

Is your colleague correct? Please explain your answer.

(3 Marks)

- It is true that all tribunal hearings are video-recorded [1]
- But your colleague is wrong: you must still take a full written note during the hearing [1]
- So you have access to your own record of evidence and submissions to compare with what the Judge records in the determination / in the event of any future dispute [1]
- Any other good reason [bonus]

Question 9

The hearing takes place and the Judge allows the appeal. Ana is worried that the Home Office might seek to challenge the Judge's decision.

c) If the Home Office were to challenge the Judge's decision, to which body would an application be made and for what purpose?

(2 marks)

- An application to the FtT [1]
- For permission to appeal to the UT [1]

d) what legal test would the Home Office have to meet? Please refer to relevant law.

(4 marks)

- That it is arguable [1]
- the Judge has materially [1]
- erred in law [1]
- Rule 33(5), First-tier Tribunal Procedure Rules / Section 11, *Tribunal Courts and Enforcement Act 2007* / any relevant authority [1]
- Deadline no later than 14 days after the date on which the Respondent was sent the written reasons for the decision [bonus]

PART 5

Question 10

In July 2023, a week before his leave as a student was due to expire, Peter applied to vary his leave to that of a skilled worker. In September 2023 he was refused (on suitability grounds) and made an in-time application for administrative review. Last week he was served with a notice of decision that the refusal was being upheld.

c) Can Peter appeal or make any other legal challenge to the refusal and, if so, to which body?

(3 marks)

- Peter has no right of appeal to the FtT [1]
- His only remedy is judicial review [1]
- To the Upper Tribunal (IAC) [1]

d) Does any deadline apply?

(2 marks)

- Any application seeking permission for JR should be made 'promptly' [1]
- At most, not later than three months from the date of the decision [1]

Question 11

Peter decides that he wants to pursue a legal challenge. As his instructed representative (who is authorised to practice at OISC Level 3) what action can you now take on his behalf?

(1 mark)

- Prepare a Pre-Action Protocol Letter and send it to the Home Office [1]

Question 12

You take this action on Peter's behalf. Referring to relevant statute, please explain what his immigration status is now.

(3 marks)

- Peter is without leave [1]
- He had statutorily extended leave after making in-time applications and for the period pending the outcome of his administrative review, but that period has ended [1]
- Section 3C Immigration Act 1971 [1]