

IMMIGRATION & ASYLUM ACCREDITATION SCHEME

LEVEL 1 – WRITTEN EXAMINATION

INSTRUCTIONS TO CANDIDATES

This examination paper contains **14 pages**. Please check that you have all pages.

The time allowed for this examination is **3 hours with no reading time**.

Write in blue or black ink.

You must answer **all** questions.

VERY IMPORTANT: CANDIDATES ARE REMINDED THAT PROFESSIONAL CONDUCT IS A PERVASIVE TOPIC IN THIS EXAMINATION. THERE IS ALSO A COMPLUSORY PROFESSIONAL CONDUCT QUESTION.

IN ACCORDANCE WITH THE PUBLISHED GUIDANCE FOR THIS EXAMINATION; IF YOU DO NOT ANSWER THE PROFESSIONAL CONDUCT QUESTION, YOU WILL FAIL THE EXAMINATION IRRESPECTIVE OF THE OVERALL MARK YOU OBTAIN FOR THE WHOLE EXAMINATION.

VERY IMPORTANT: QUESTION 2a IS A COMPULSORY DRAFTING QUESTION. IN ACCORDANCE WITH THE PUBLISHED GUIDANCE FOR THIS EXAMINATION; IF YOU DO NOT ANSWER THIS QUESTION, YOU WILL FAIL THE EXAMINATION IRRESPECTIVE OF THE OVERALL MARK YOU OBTAIN FOR THE WHOLE OF THE EXAMINATION.

Please note that if you do not have sufficient time to set your answers out in full, credit will be given for answers which highlight the points to be made in brief form. Credit may also be given if you indicate matters that you would investigate by further research if you are not familiar with the detail of any particular issue from your practice.

Please note that all relevant country information is contained in the questions. No additional marks will be awarded for answers relying on more specialised knowledge.

To pass this assessment, candidates must obtain at least **50%** of the marks.

This paper was set on **8 June 2016** and candidates will obtain marks if they show an accurate knowledge of law on that date. Although no one will lose marks for making reference to later developments, this will not earn bonus marks.

PERMITTED MATERIALS

- i. Any edition of: Margaret Phelan & James Gillespie Immigration Law Handbook.

If a candidate is aware of another published book that contains only law, policy and procedure rules and no commentary, s/he should please contact the Law Society in advance of the exam so that a decision can be taken as to whether the book can be added to the permitted materials.

AND

- ii. Maximum one lever arch file containing any of the following:-
 - a) Published documents and printed materials from the Home Office website.
 - b) Published documents and printed materials from the Legal Aid Agency website.
 - c) A typed list/index of these documents.
- *The text of the book and of the printed materials can be high-lighted and/or annotated with hand-written notes but **candidates must not write on post-it or other sticky notes or paper and attach or add these to the book or to the printed materials.** Unmarked colour sticky tabs on the sides of pages are permitted.*
- *Candidates may take a pocket calculator into the examination.*
- *Candidates may **not** refer to any other electronic devices/materials during the examination.*

Completing the Answer Booklet

- Begin each part on a fresh sheet of paper.
- Write on one side of the paper only.
- Enter your ID Number on the top of each page. Please note your examination is blind marked. Do not write your name on the front of the answer booklet or on any of the answer sheets.
- At the end of the examination, please complete the box on the front of the answer booklet with the total number of answer pages you have written on (including continuation pages if applicable). Please also list the questions you have answered in the order you have answered them where indicated.

Part 1: Legal analysis and application

[30 marks]

You should refer to email 1 in the advance materials

1a. Explain why Florence and Mary may, or may not, meet the definition of a refugee within the United Nations Convention Relating to the Status of Refugees and its 1967 Protocol, including matters that are unclear and require further investigation.

(20 marks)

1b. You advise Florence and she decides to apply for asylum for herself and for Mary and an appointment is arranged for that purpose at Lunar House in ten days' time. In the meantime, Stella has given Florence and Mary an ultimatum to leave within the next two weeks; Florence and Mary, having no resources and no-one else to turn to, face destitution and homelessness thereafter.

Explain Florence and Mary's eligibility for accommodation and support from the Secretary of State for the Home Department.

(5 marks)

1c. You are required to assess whether Florence is eligible for Legal Help for advice and assistance in relation to the claim for asylum. What are the key factors, and are they likely to be satisfied?

(5 marks)

You should refer to email 2 in the advance materials

2a. **COMPULSORY DRAFTING QUESTION.**

During today's appointment with Kenneth, you should assume that you have taken a full, detailed statement from him, setting out the following:-

- (i) The details and history of his relationship with Jaden.
- (ii) The reason why he had to stop communicating with Jaden.
- (iii) His intention to marry and live with Jaden in the UK.

You have completed the entry clearance application forms online and printed off copies. You have made an appointment for Jaden to attend the Visa Application Centre (VAC), on Thursday 9th July 2016, with his signed application forms, passport and supporting evidence. Kenneth will email the application forms and a covering letter from you to Rose. She will take these to Jaden and they will attend the VAC together with the original documents.

Please now write a covering letter, to the Entry Clearance Officer, enclosing the copy applications forms and a list of what you consider to be relevant supporting evidence (assume that Kenneth can or has provided you with whatever documentary or other evidence you consider relevant), and making representations as to why Jaden's application should succeed.

(25 marks)

- 2b. Kenneth calls you to say that he is worried that there is insufficient, independent evidence of his relationship with Jaden. He has been talking to a friend in Jamaica, called Anne-Marie Kearney. Anne-Marie is a history teacher, who knew Kenneth when he was at school. She was always kind to Kenneth and he had confided in her, when he was a teenager, so she knows that he is gay. She has not actually seen Kenneth for 7 years and doesn't know Jaden, but she is very concerned about both of them. Kenneth tells you that Anne-Marie is willing

to provide a statement testifying that she has known Kenneth since he was 12, that he is gay and that she has known the couple since they got together in 2013. Kenneth thinks that this will be credible evidence as Anne-Marie will include her CV and school-teacher ID.

How would you advise Kenneth?

(5 marks)

PART 3: 5 Multiple Choice Questions

[15 marks]

Part 3 contains a total of five (5) MCQs. Where you are required to answer an MCQ you should indicate the correct answer to each question by WRITING THE NUMBER OF THE QUESTION IN THE MARGIN OF YOUR ANSWER PAPER AND THEN THE LETTER FOR WHICHEVER YOU BELIEVE IS THE CORRECT ANSWER NEXT TO THAT ON THE SAME PAGE. Thus, if you think the appropriate answer in any given case is (b), you need to WRITE THE QUESTION NUMBER IN THE MARGIN, E.G 3a AND THEN THE LETTER b NEXT TO IT IN THE ANSWER PAPER SO IT APPEARS AS FOLLOWS: Q3a = b. You should **give only one answer for each question**.

3a. Salim is a national of Afghanistan. 2 years ago his asylum claim was refused and he was granted discretionary leave to remain. Salim has asked if you will act for him in his application to extend his leave to remain. Salim continues to fear harm in Afghanistan and has fresh evidence that he wishes to present with the application.

When deciding which caseworker should have conduct of Salim's case, which of the following statements is/are correct?

(3 marks)

- (i) If Salim is over 18, a Level 1 accredited caseworker may have conduct of his Legal Help case.
 - (ii) If Salim claims on reasonable grounds to be under 18, a Level 1 accredited caseworker may have conduct of his Legal Help case.
 - (iii) If Salim is over 18, a Level 1 accredited caseworker may have conduct of his Controlled Legal Representation case.
 - (iv) If Salim claims on reasonable grounds to be under 18, a Level 1 accredited caseworker may accompany Salim to a screening interview under Legal Help.
-
- a. (i), (ii) and (iv) only
 - b. (i), (ii) and (iii) only
 - c. (i) only
 - d. (iii) and (iv) only

3b. In which of the following proceedings, would it be appropriate to apply for exceptional case funding?

(3 marks)

- (i) When Article 8 ECHR aspects arise in an asylum matter
 - (ii) To investigate the need for and/or merits of granting Exceptional Case Funding for advice and assistance.
 - (iii) For advice and assistance relating to a claim to be a victim of modern slavery where there has yet to be a reasonable grounds determination.
 - (iv) For advice and assistance for pre-action work for a judicial review of a decision that there are no reasonable grounds for considering a person to be a victim of modern slavery.
-
- a. (ii) only
 - b. (i), (ii) and (iii) only
 - c. (i), (ii), (iii) and (iv)
 - d. (iv) only

- 3c. Lucy is a lone parent with 2 dependent children under 18, living in her household. You are calculating her financial eligibility for legal help.

Which of the following items can be deducted from her gross income?

(3 marks)

- (i) Council Tax.
 - (ii) Rent payments net of housing benefit
 - (iii) Payments for board and lodge.
 - (iv) Mortgage repayment payments
-
- a. (ii) and (iv) only
 - b. (ii), (iii) and (iv) only
 - c. (i), (ii) and (iii) only
 - d. (iii) and (iv) only

3d. Which **one** of the following statements correctly sets out the standard of proof for a conclusive grounds decision in the National Referral Mechanism for victims of trafficking/modern slavery?

(3 marks)

- a. On the balance of probabilities.
- b. "I suspect but I cannot prove".
- c. A reasonable degree of likelihood.
- d. Beyond a reasonable doubt.

3e. Which **one** of the following statements is correct with regard to the three elements that must be established when making representations to a Competent Authority for a positive conclusive grounds decision?

(3 marks)

- a. Deprivation of liberty, ill treatment and sexual exploitation.
- b. Transportation across an international border, victimisation and physical ill treatment.
- c. Action by a particular means for the purpose of sexual exploitation.
- d. Action by a particular means for the purpose of exploitation.

Part 4: Questions arising from unseen facts

[25 marks]

Mrs Abebe Senai met with your supervisor two days ago regarding an application she would like make to remain in the UK. She would like to submit the application as soon as possible.

Mrs Senai is a 25-year old national of Ethiopia. She entered the United Kingdom in February 2009 with leave to enter until December 2010. In November 2010, she made a claim for asylum; her application was refused a month later and she did not appeal against that decision. She has made no other applications to regularise her stay in the UK and thus has remained in the UK without valid leave since December 2010.

On 28 April 2015 she married a French national, Mr Aziz Diop. Mr Diop is 39 years' old and works as a sous-chef at a restaurant in London on a full-time basis. Following her marriage, Mrs Senai applied for a residence card as the spouse of an EEA national (under the Immigration (European Economic Area) Regulations 2006). On 14 October 2015 she was issued with a residence card which is valid until 14 October 2020. She has been working full-time as a cleaner since May 2015. She has not travelled outside the UK since her arrival here in February 2009.

Unfortunately, the marriage has broken down because Mr Diop has been physically violent towards her.

There were three incidents of violence. The first incident took place in January 2016, after Mr Diop had become drunk one evening. He verbally abused and threatened to kill Mrs Senai, although there was no physical violence at that stage. She became quite afraid and left the matrimonial home to stay with her friend. Three weeks later she willingly returned home.

The second incident took place in March 2016. Mr Diop became aggressive and punched Mrs Senai in the face. The police were called but Mr Diop had left the house before the police arrived.

Five days later he returned home and threatened to harm her by throwing acid in her face. Mrs Senai called the police again. They arrived very quickly and found Mr Diop in the house. They arrested him and took him to the police station.

Mrs Senai instigated divorce proceedings on 10 March 2016 following the third incident. The Court granted her divorce two days ago. Mrs Senai states that she is very afraid of her husband.

The police have gathered sufficient evidence so that Mr Diop now faces criminal charges of assault and harassment.

4a. Explain whether Mrs Senai has any basis for remaining in the UK and the requirements she needs to meet in any application that she might make.

Support your answer by reference to relevant legal provisions.

(6 marks)

4b. What evidence should Mrs Senai produce in support of her application?

(6 marks)

4c. What is the procedure for making such an application?

(6 marks)

4d. Within what period of time should UKVI process the application? Support your answer by reference to relevant legal provisions.

(3 marks)

4e. Assuming that Mrs Senai's application will be successful; when will she acquire a permanent right of residence and what criteria would she need to satisfy in order to succeed in an application for permanent residence?

(4 marks)