

# **IMMIGRATION & ASYLUM ACCREDITATION SCHEME**

## **LEVEL 2 – WRITTEN EXAMINATION**

## INSTRUCTIONS TO CANDIDATES

This examination paper contains **18 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 COMPULSORY 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 ONE: Questions arising from advance fact pattern  
Legal analysis and application [30 marks]**

**You should refer to email 1 in the advance materials**

- 1a. With regard to the facts of Josephine’s asylum claim, what is/are the potentially applicable Refugee Convention reason or reasons and why?  
**(3 marks)**
- 1b. What is the first decision the National Referral Mechanism will make and within what time limit?  
**(2 marks)**
- 1c. Josephine was referred to the National Referral Mechanism 4 days ago and has not had a decision yet. Josephine and her Social Worker are particularly worried about Josephine attending an interview in the near future given her current mental state. What advice do you give to Josephine about what will happen next and what to do about the interview?  
**(6 marks)**
- 1d. With reference to the facts of Josephine’s case, identify two potential weaknesses in Josephine’s claim for asylum when considering risk on return?  
**(2 marks)**
- 1e. What evidence would you obtain to address these potential weaknesses?  
**(2 marks)**
- 1f. What duty, if any, does the Secretary of State have to trace Josephine’s family members either in the UK or Gambia?  
**(3 marks)**
- 1g. Assuming that there are no family members in Gambia or the UK, what leave, if any, would the Secretary of State be likely to grant Josephine, if she is refused asylum and given a negative conclusive grounds decision?  
**(3 marks)**

1h. Josephine is granted 30 months' leave to remain in the UK. She has not been granted refugee status and has heard that she may not be able to appeal the decision in-country because of the grant of leave. What is your advice to Josephine?

**(4 marks)**

1i. For the purposes of this question, assume that Josephine is able to appeal her decision and has lodged notice of appeal with the First-tier Tribunal. At the appeal hearing, the Home Office Presenting Officer (HOPO) indicates that she intends to withdraw the decision of the Secretary of State for the Home Department (SSHD). With reference to any applicable Rules, can the HOPO withdraw the decision?

**(5 marks)**

**Please refer to email 2 in the advance materials.**

Ha Le has come to see you and has given you the following documents:-

1. Her Vietnamese passport
2. Her biometric residence permit.
3. A letter from Dao Chi, dated today, confirming that she provides Ha Le with board and lodge and occasional basic provisions and that she cannot give any more money.

You have completed application form SET(DV) with He Le and she has signed it.

You have identified the relevant provisions of the Immigration Rules and these are set out below:

**Section DVILR: Indefinite leave to remain (settlement) as a victim of domestic violence**

DVILR.1.1. The requirements to be met for indefinite leave to remain in the UK as the victim of domestic violence

- (a) the applicant must be in the UK;
- (b) the applicant must have made a valid application for indefinite leave to remain as a victim of domestic violence;
- (c) the applicant must not fall for refusal under any of the grounds in Section S-ILR: Suitability-indefinite leave to remain; and
- (d) the applicant must meet all of the requirements of Section E-DVILR: Eligibility for indefinite leave to remain as a victim of domestic violence.

**Section E-DVILR: Eligibility for indefinite leave to remain as a victim of domestic violence**

E-DVILR.1.1. To meet the eligibility requirements for indefinite leave to remain as a victim of domestic violence all of the requirements of paragraphs E-DVILR.1.2. and 1.3. must be met.



E-DVILR.1.2. The applicant's first grant of limited leave under this Appendix must have been as a partner (other than a fiancé(e) or proposed civil partner) of a British Citizen or a person settled in the UK under paragraph D-ECP.1.1., D-LTRP.1.1. or D-LTRP.1.2. of this Appendix and any subsequent grant of limited leave must have been:

(a) granted as a partner (other than a fiancé(e) or proposed civil partner) of a British Citizen or a person settled in the UK under paragraph D-ECP.1.1., D-LTRP.1.1. or D-LTRP.1.2. of this Appendix; or

(b) granted to enable access to public funds pending an application under DVILR and the preceding grant of leave was granted as a partner (other than a fiancé(e) or proposed civil partner) of a British Citizen or a person settled in the UK under paragraph D-ECP.1.1., D-LTRP.1.1. or D-LTRP.1.2. of this Appendix; or

(c) granted under paragraph D-DVILR.1.2. E-DVILR.1.3. The applicant must provide evidence that during the last period of limited leave as a partner of a British Citizen or a person settled in the UK under paragraph D-ECP.1.1., D-LTRP.1.1 or D-LTRP.1.2 of this Appendix the applicant's relationship with their partner broke down permanently as a result of domestic violence.

### **Section D-DVILR: Decision on application for indefinite leave to remain as a victim of domestic violence**

D-DVILR.1.1. If the applicant meets all of the requirements for indefinite leave to remain as a victim of domestic violence the applicant will be granted indefinite leave to remain.

D-DVILR.1.2. If the applicant does not meet the requirements for indefinite leave to remain as a victim of domestic violence only because paragraph S-ILR.1.5. or S-ILR.1.6. applies, the applicant will be granted further limited leave to remain for a period not exceeding 30 months.

D-DVILR.1.3. If the applicant does not meet the requirements for indefinite leave to remain as a victim of domestic violence, or further limited leave to remain under paragraph D-DVILR.1.2. the application will be refused.

2a. **COMPULSORY DRAFTING QUESTION**

Based on the evidence before you, write a detailed letter of representations to accompany your client's domestic violence application. With your letter of representations, you will be enclosing the application form and a list of what you consider to be relevant supporting evidence (assume that Ha Le can or has provided you with whatever documentary or other evidence you consider relevant).

**Please confine your representations to the Domestic Violence application and do not make any Human Rights representations.**

The address to write to is:

Home Office - SET(DV)  
Indefinite Leave to Remain  
PO Box 492  
Durham  
DH99 1WU

**(25 marks)**

- 2b. For the purposes of question 2b, assume that Ha Le's application has been submitted to the Home Office and that they have confirmed receipt.

A few days later, Ha Le telephones you to say that her husband has discovered her address, has followed her home from an outing to the shops and is in her house now. She is clearly terrified and you believe that what she tells you is correct. You are urging her to call the police when the phone cuts out. You do not have her consent to call the police on her behalf.

Explain whether you are able to call for the assistance of the emergency services without Ha Le's instructions.

**(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 17-year old child of Afghan nationality, who is looked after by Kent County Council. Salim has instructed you to advise and assist with an application to extend the leave to remain that was granted to him when he was refused asylum over two years ago. Salim continues to fear harm in Afghanistan and has fresh evidence that he wishes to present with the application.

**(3 marks)**

In deciding which caseworker should have conduct of Ali's case, identify which of the following propositions is/are correct:-

- (i) Legal Help funding is available for a level 1 caseworker to accompany Salim to a substantive asylum interview.
  - (ii) A level 2 caseworker may have conduct of Salim's Legal Help matter.
  - (iii) If Salim's case progresses to an appeal, a level 1 caseworker may work on aspects of the Controlled Legal Representation work, as long as a level 2 caseworker retains conduct of the matter.
  - (iv) Legal Help funding is available for a level 2 caseworker to accompany Salim to an asylum screening interview.
- a. (ii) and (iv) only
  - b. (ii) and (iii) and (iv) only
  - c. (i) and (iii) only
  - d. (i) and (ii) only

3b. Which of the following propositions is/are correct in relation to making financial determinations for Controlled Legal Representation?

**(3 marks)**

- (i) A higher gross income cap applies to families with more than 4 child dependants.
  - (ii) You do not need to assess the capital of a person who is properly in receipt, directly or indirectly, of Income-Related Employment and Support Allowance.
  - (iii) You do not need to assess the capital of a person who is properly in receipt, directly or indirectly, of NASS support.
  - (iv) A person with assessed capital assets of £3,999 is not eligible for Controlled Legal Representation.
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- a. (i), (iii) and (iv) only
  - b. (i), (ii) and (iii) only
  - c. (ii) and (iv) only
  - d. (iii) only

3c. 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.
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- a. (ii) only
  - b. (i), (ii) and (iii) only
  - c. (i), (ii), (iii) and (iv)
  - d. (iv) only

3d. Lyra is a citizen of Australia, she has indefinite leave to remain and has lived in the UK for 10 years since 2006. Lyra has been sentenced to 12 months in prison for criminal damage, after she broke into a hotel where an “arms-fair” was being held, smashed up equipment and sprayed slogans like “stop the war” in red paint, all over the arms-dealers and the walls. Lyra asks your advice on what is likely to happen at the end of her sentence.

Which of the following statements is/are **CORRECT**?

- (i) The Secretary of State for the Home Department (SSHD) will consider whether the automatic deportation provisions should apply.
  - (ii) Lyra is excepted from automatic deportation as a Commonwealth citizen.
  - (iii) SSHD will consider whether to make a discretionary deportation decision.
  - (iv) Lyra is exempted from discretionary deportation under by virtue of being a Commonwealth citizen.
- a. (i) and (ii) only
  - b. (iii) and (iv) only
  - c. All four propositions are correct.
  - d. (i) and (iii) only

- 3e. You act for Sameena, a Citizen of Bangladesh. You have lodged her application for indefinite leave to remain as a victim of domestic violence and the Home Office has told you to expect a decision within 4 weeks. Sameena tells you that she can't wait that long, as her friend can no longer support her and she will have to move out within one week. Women's Aid have advised that they cannot get her into a refuge, because she does not have recourse to public funds. What can you do to assist at this stage? Which **one** of the following is correct?
- a. Make an application for "hard cases" support under section 4 Immigration and Asylum Act 1999.
  - b. Make an application under the Immigration Rules for discretionary leave as a victim of domestic violence.
  - c. Make an application for leave to remain under the Destitution Domestic Violence Concession.
  - d. Make an application for NASS support.

**PART 4: Questions arising from unseen facts**

**[25 marks]**

You are representing Imad who has recently claimed asylum in the UK. He is an Algerian national. His claim for asylum is based on a stated fear of Islamist groups. Imad works as a civil servant. He had been receiving written threats at work which had then started to be sent to his home address. Imad did not seek the help of the police because he did not believe that they would help him or be able to protect him. The last threat that Imad received said that he had to watch out on his journey to work because the Islamist group was watching him, knew his route to work and were intending to kill him. Imad has a wife in Algeria who was unable to travel with him to the UK. He is concerned about her safety. Imad has attended a screening interview and now has a date for his full asylum interview.

- 4a. Imad comes to see you before his asylum interview. He tells you that he is worried because he does not think his English is sufficient to understand the questions he is likely to be asked and asks for your advice.

What do you tell Imad? You must make reference to relevant Immigration Rules in your answer.

**(4 marks)**

- 4b. Imad has been refused asylum. The SSHD states that the written threats do not amount to persecution.

With reference to any applicable statutory instruments, is the SSHD correct in stating this?

**(5 marks)**

For the remaining questions, you should assume that Imad's appeal is dismissed and he eventually exhausts all of his appeal rights with regard to his protection claim. The Tribunal did not accept that Imad had a valid claim under the Refugee Convention.

Imad does not leave the UK and enters into a relationship with a British woman, Sarah, who has lived in the UK her whole life. Sarah and Imad start living



together. She has two children aged 8 and 6 years old respectively, both of whom are British citizens, from a previous relationship. Both children live with her and Imad but have some limited contact with their father. Sarah also has a job working night shifts and is a carer for her elderly mother. She relies on Imad for care for the children, particularly whilst she is at work.

Imad tells you that he no longer has contact with any family members in Algeria. Imad makes an application for leave to remain on the basis of his relationship with Sarah and her children. Whilst waiting for the decision on this application, Imad is arrested and charged with possession of a controlled drug and with intent to supply a Class B drug. He is sentenced to 18 months' imprisonment. The SSHD decides to deport Imad and issues a deportation order and a letter refusing his human rights claim. The SSHD certifies the claim under section 94B of the Nationality, Immigration and Asylum Act 2002. The letter refusing the human rights application and explaining the reason for certification states that the decision to certify has been taken because the SSHD is not satisfied that there will be a serious risk of irreversible harm if Imad has to pursue any human rights appeal from outside the UK. Imad is worried about this because there are no video facilities to enable him to take part in any future appeal hearing against the refusal of his human rights claim. Imad comes to ask you for advice about challenging the decision to certify his human rights claim.

4c. How can Imad challenge the decision and what steps would you take to challenge the decision?

**(4 marks)**

4d. With reference to the reason given within the refusal letter, has the SSHD applied the correct test in considering certification.

**(5 marks)**

4e. With reference to the facts of Imad's case, what potential arguments would you put forward on his behalf?

**(5 marks)**

4f. Imad is ultimately successful in his appeal against deportation. What leave will he be granted (assuming the SSHD does not challenge the Tribunal's decision)?

**(2 marks)**