

# Fee Paid Judge of the First-tier Tribunal, Immigration and Asylum Chamber (00482) Feedback Report

## Qualifying Test date: 10 May 2011

### Purpose

The purpose of this report is to provide general feedback on candidate performance in the Fee Paid Judge of the First-tier Tribunal, Immigration and Asylum Chamber qualifying test. The first part of the report describes how the Judicial Appointments Commission (JAC) developed the test and marking schedule, and how the test was structured.

The second part provides information on the overall performance of candidates in the test, identifying areas where they performed well and where they performed poorly.

The third part gives more detailed comments in areas where candidates could have attracted more marks in relation to Questions 2 and 3 in the test.

This report should be read in conjunction with the copy of the test and marking schedule which can be found on the JAC website.

### Qualities and abilities

The test was set to assess:

- Efficiency;
- Intellectual Capacity; and
- Authority and Communication skills.

### Development of the test

The test and marking schedule were devised by a Resident Senior Immigration Judge who is experienced in the Immigration and Asylum Chamber.

The aim was to set a test which could be attempted with a reasonable prospect of success by a candidate with no prior experience of this specialised jurisdiction provided adequate preparation was undertaken before the test. To this end a reading list and legal materials were made available to candidates.

The JAC Advisory Group, which is composed of senior judiciary and representatives of the legal profession, offered advice and guidance during the development of the test.

In common with all qualifying tests used by the JAC, both the test and marking schedule were subject to an extensive quality and equality assurance process. The effectiveness of the test was assessed by means of a dry run where a range of volunteer lawyers and judges, of various levels of experience and knowledge of this specialised area, took the test.

### **Structure of the test**

The 90 minute test presented candidates with three questions in relation to a scenario based on immigration and asylum law. The questions were not all of equal weight in terms of the marks allocated but the allocation of marks was specified on the paper. Candidates were advised that they could attempt the questions in any order. In order to do well, candidates had to answer all three questions satisfactorily.

### **Marking of the test**

Eight judges marked the test, all of whom were salaried Immigration Judges.

JAC staff provided a full briefing to the markers at the outset of the marking exercise.

A marking schedule was provided. It allowed for all answers that demonstrated the required qualities and abilities to be rewarded. 84 marks were available for responses against the marking schedule. No discretionary marks were available. Some candidates scored highly on one part of a question but reverted closer to the average in other parts.

All test papers were marked anonymously. The markers were divided into pairs in order for the marking to be carried out in parallel. One member of each pair marked question two, accounting for 50% of the overall marks, and the other marker marked questions one and three. Decisions on the interpretation of the marking schedule were taken after full discussion within the team. Such decisions were recorded and formed a precedent for the marking of subsequent test papers.

### **Moderation**

A twenty per cent sample of the test scripts were selected for moderation: those selected included the scripts identified as candidates for moderation by markers; samples of the high-, low- and mid-scoring test papers; all test papers close to the prospective cut-off point for invitation to selection days and a further random sample. Moderation took the form of markers cross checking each other's work.

The moderation process concluded that the markers had been consistent and fair during the first round of marking, and that marking overall had been fair and robust.

In accordance with JAC policy a Director and the JAC Commissioner assigned to the selection exercise undertook separate quality assurance checks. Their independent conclusion was that marking had been robust and consistent.

### **Distribution of marks**

The highest mark awarded was 52 out of a possible 84 and the lowest was 11.

## **General comments on candidate performance**

### **General approach taken by markers**

After consultation with the JAC Commissioner assigned to the selection exercise, the markers agreed that they would overlook minor errors made by candidates where the meaning was obvious or the mistake was not directly relevant to the question. For example, some candidates stated in response to Question 2 that the appellant was seeking entry clearance under sub-paragraph 281(i)(b) of the Immigration Rules, although according to the scenario only sub-paragraph 281(i)(a) would apply. In order to address the issues posed, however, it was not necessary to refer to either sub-paragraph. The mistake was not directly relevant to the issues and no marks were deducted.

### **Overall conclusion**

Approximately 900 people applied for what was a small number of posts, and given the number taken forward to selection day relative to the number of posts there were many candidates who answered the questions competently who did not get through to the next stage of the exercise. It was clear that preparation was the key to success and without adequate preparation a candidate had a limited possibility of doing well. The candidates who performed well were those who had assimilated the advance reading and were able to apply what they had learnt to the issues arising from the scenario.

### **Areas where candidates could have attracted more marks**

In answering Question 2, candidates did well when addressing the issues of whether the parties had met and the issues of maintenance and accommodation. Many candidates also satisfactorily addressed the subsistence of the marriage but then failed to consider adequately the related issue of the intentions of the couple to live together permanently as spouses. It was important to recognise that the intention of each party to the marriage had to be assessed on the basis of such evidence as was available, including evidence of communication between the couple and the evidence of family members as to why the match was considered suitable. The delay in applying for a visa was potentially relevant but very few candidates recognised this point and connected it to the age requirement of paragraph 277 of the Immigration Rules.

In Question 3 marks were awarded both for a general understanding of the application of Article 8 and for relating this to the relevant issues in the scenario. Many candidates showed an understanding of the relevant principles derived from the case law but had difficulty applying this to the scenario. In particular, candidates had difficulty with the relationship between Article 8 and the findings for the purpose of the Immigration Rules – in short, if the couple's intentions to live together were genuine then it would be disproportionate to refuse entry clearance unless family life could reasonably be carried on in Oman.