

Fee Paid Judge of the First-tier Tribunal (Immigration and Asylum Chamber)

Marking Schedule

Scenario/Question		Quality and Abilities Tested	Summary of Points Expected to be Covered	Total Marks Available
Q1(i)	Explain how you would address and resolve the absence of the Entry Clearance Officer's bundle and the withdrawal of the Presenting Officer	Intellectual Capacity Authority and Communication Skills Efficiency	<ul style="list-style-type: none"> • Withdrawal of the Presenting Officer invokes Rule 19 of the Procedure Rules. This gives the Tribunal discretion to hear an appeal in the absence of a party. As this power is discretionary reasons for exercising the discretion should be given, e.g. no reason given for the failure to instruct the Presenting Officer. • The Tribunal may adjourn on its own initiative under Rule 47. • Relevant considerations need to be taken into account eg whether the respondent's bundle is likely to be available within a reasonable period. • A reasoned conclusion should be given, e.g. that there is sufficient evidence for the appeal to be heard fairly in the absence of the respondent's bundle. Account should be taken of the over-riding considerations in Rule 4 that proceedings are handled as fairly, quickly and efficiently as possible. 	7
Q1(ii)	Explain how you would address and resolve the adjournment application arising from the absence of Tehira's father	Intellectual Capacity Authority and Communication Skills Efficiency	<ul style="list-style-type: none"> • Refer to Rule 21 of the Procedure Rules and set out relevant requirements including consideration of whether it was practical to notify other parties of the adjournment application, though as the application was made at the hearing no further notification may be required, and requirement for evidence in support of the application, e.g. copy of airline ticket, notification of brother's illness. • Formulate the issue under Rule 21(2), i.e. can the appeal be justly determined in the absence of the evidence of Tehira's father. • Tehira's mother may be able to give evidence in her father's place but she requires an interpreter and an enquiry should be made as to whether an interpreter will be available. A witness statement for Tehira's mother will also be required but this might be prepared during the course of the day. This would allow the appeal to be adjourned to later the same day. • Whether proceeding or adjourning reason should be given e.g. proceeding on the basis that Tehira's mother is available to give evidence provided an interpreter can be found or if no interpreter is available then Tehira's father might have to give evidence at a later date about not only his financial position but also how the marriage was arranged. 	10

<p>Q2</p>	<p>When the hearing proceeds, explain what Saeed would have to show for his appeal to succeed under the Immigration Rules.</p>	<p>Intellectual Capacity Authority and Communication Skills Efficiency</p>	<p>General Points:</p> <ul style="list-style-type: none"> • Paragraph 281 of the Immigration Rules sets out the requirements for leave to enter with a view to settlement as a spouse of a person present and settled in the United Kingdom. • In terms of paragraph 26 of the Immigration Rules an application for entry clearance is to be considered in accordance with the provisions in the Rules governing leave to enter substituting the term “Entry Clearance Officer” for “Immigration Officer”. • There are four issues in dispute under paragraph 281. The burden of proof is on the appellant. The standard of proof is the balance of probabilities. • In terms of section 85(5) of the Nationality, Immigration & Asylum Act 2002 in an appeal against refusal of entry clearance, the Tribunal may consider only the circumstances appertaining at the time of the decision to refuse. In terms of <u>DR</u> (Entry Clearance Officer – Post-Decision Evidence) Morocco [2005] UKAIT 00038 the Tribunal may have regard to post-decision evidence provided it relates to the circumstances appertaining at the date of the decision e.g. when assessing the parties’ intentions, the Tribunal may have regard to post-decision evidence to the extent to which it throws light on those intentions. • Section 85(5) is amended by UK Borders Act 2007 Act, section 19, but the amendment was not in force at the date of the test. <p>Have the parties met?</p> <ul style="list-style-type: none"> • The question whether the parties have met in terms of paragraph 281(ii) is one of the disputed issues. Relevant case law is to be found in <u>Meharban</u> [1989] Imm AR 57 or other appropriate authority. • As the scenario shows the parties met two years ago in Oman it appears likely this requirement is satisfied. There is no requirement to have spent time alone together as they have met only in the presence of their families. The apparent lack of contact between the parties may be relevant to their intentions. <p>Intentions of the Parties and Subsistence of the Marriage</p> <ul style="list-style-type: none"> • Under paragraph 281(iii) it must be shown that each of the parties intends to live permanently with the other as his or her spouse and the marriage is subsisting. The intention of each party to the marriage has to be assessed. • Whereas the wife, Tehira, is present at the hearing, the husband, Saeed, is overseas but he may have made written statements or been interviewed by the Entry Clearance Officer. • A finding as to intention is an inference from the primary facts and must be based on the evidence before the Tribunal. There is no presumption in an arranged marriage that the parties do not intend to live together, as 	<p>42</p>
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Q3	Assess the appeal under Article 8 of the European Convention on Human Rights	Intellectual Capacity Authority and Communication Skills Efficiency	<ul style="list-style-type: none"> • Article 8.1 sets out the right of respect for private or family life. This is a qualified right in terms of Article 8.2. The right must be taken into account by the Entry Clearance Officer as a public authority under section 6 of the Human Rights Act 1998. Entry clearance may be refused if it is not disproportionate to do so. • Reference should be made to the five questions arising from the case of <u>Razgar</u>, as set out <u>EB</u> (Kosovo) [2008] UKHL 41 at para 7. • In terms of <u>Huang</u>, as discussed in <u>EB</u> (Kosovo) at para 8, an appeal 	25
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