



.....

Qualifying Test Paper:

00482: Fee Paid Judge of the First-tier Tribunal,
Immigration and Asylum Chamber 2011

.....

RESTRICTED

This page is intentionally blank

RESTRICTED

This paper should be left in the test room at the end of the session. The contents of the test should not be discussed with or divulged to anyone.

RESTRICTED

CANDIDATE BRIEF

Please read carefully before you start

This test has been designed by judiciary from the Immigration and Asylum Chamber and will assess the following qualities and abilities:

Intellectual Capacity:

- Ability quickly to absorb and analyse information
- Appropriate knowledge of the law and its underlying principles, or the ability to acquire this knowledge where necessary

Authority and Communication Skills:

- Ability to explain the procedure and any decisions reached clearly and succinctly (in writing)

Efficiency:

- Ability to work at speed and under pressure

In accordance with the Lord Chancellor's guidance, the test is also designed to give an indication of candidates understanding of, or potential to learn, immigration law.

You have 90 minutes to complete the entire test

You should attempt to answer every question

The following is a breakdown of the marks available and should help you apportion your time between the questions:

Question 1 is worth a maximum of **17** marks (20%)

Question 2 is worth a maximum of **42** marks (50%)

Question 3 is worth a maximum of **25** marks (30%)

- **The answers will be marked anonymously, so please mark each page of your script with your candidate number only**
- **You do not have to answer the questions in any particular order, but please mark each section of your answer script clearly with the corresponding question number**
- **You should give reasons for each answer**
- **Bullet points can be used where you find this convenient**

RESTRICTED

This paper should be left in the test room at the end of the session. The contents of the test should not be discussed with or divulged to anyone.

RESTRICTED

Introduction

You are an Immigration Judge. You are asked to read and consider the fictional scenario relating to the appeal by Saeed and answer the questions which follow. You are expected to identify and analyse the issues. Your answers must be supported by reasons.

Case Scenario

Tehira is a British citizen, having been born in the UK to parents who were settled here. About five years ago, when she was aged 16, she was taken for the first time to Oman, which is her parents' country of origin. While there she underwent a ceremony of marriage with Saeed. The marriage was arranged between Tehira's parents and Saeed's family.

An application was recently made for Saeed to come to the UK as the spouse of Tehira. The application was refused by the Entry Clearance Officer (ECO) and the appeal against refusal comes before you for hearing. A copy of the refusal decision is before you, setting out the following four grounds of refusal. The ECO was not satisfied that

- (a) the parties to the marriage have met (281(ii));
- (b) each of the parties intends to live permanently with the other as his or her spouse and the marriage is subsisting (281(iii));
- (c) there will be adequate accommodation for the parties and any dependants without recourse to public funds in accommodation which they own or occupy exclusively (281(iv)); and
- (d) the parties will be able to maintain themselves and any dependants adequately without recourse to public funds (281(v)).

At the hearing Saeed is represented by a lawyer. A bundle of documentary evidence has been filed on his behalf. This includes witness statements by Tehira, her father and older brother. You note from the bundle that when Saeed arrives in the UK it is intended that he and Tehira will live rent-free in Tehira's family home, where they will have a room of their own. Tehira is a full time student entirely financially dependent upon her father. Saeed speaks English but has no employment arranged. Tehira's father is retired, having sold the business he owned, and has substantial savings and investments, including ownership of the family home. He undertakes to support the couple for as long as is necessary.

Tehira has returned to Oman once since the wedding. This was about two years ago. Tehira records in her statement that she saw Saeed when she was there. This was in the presence of both their families and she and Saeed have never been alone together. Copies have been filed of 20-30 emails the couple have exchanged in the last 18 months. There are also some greetings cards sent to Tehira by Saeed. In her statement Tehira records that she and Saeed talk by telephone every 2-3 days. The calls are made using pre-paid telephone cards and there is no documentary record of them.

RESTRICTED

This paper should be left in the test room at the end of the session. The contents of the test should not be discussed with or divulged to anyone.

RESTRICTED

At the beginning of the hearing the Presenting Officer, who represents the ECO, informs you that no bundle has been received from the ECO and she has no file. She is therefore without instructions and cannot provide further representation.

Saeed's lawyer informs you that Tehira's father was to give evidence of how the marriage was arranged but he has had to leave the country unexpectedly to see his brother, who is seriously ill. An adjournment is sought because of this. You are informed that Tehira is present, accompanied by her mother and brother.

The lawyer also informs you that although Tehira's mother might be able to give evidence in place of Tehira's father, there is no witness statement for her and she would require an Arabic interpreter. No interpreter has been arranged for this hearing.

Questions

Question 1 (Maximum of 17 marks; 7 for (i) and 10 for (ii))

Explain how you would address and resolve the following issues, setting out the relevant rules which you would consider:

- (i) the absence of the ECO's bundle and the withdrawal of the Presenting Officer; and
- (ii) the adjournment application arising from the absence of Tehira's father.

Question 2 (Maximum of 42 marks)

Assuming the hearing proceeds, either today or on a later date (depending on your response to the adjournment application), explain what Saeed would have to show for his appeal to succeed under the immigration rules. In your answer you should identify all the relevant factors having regard to the scenario including relevant rules and requirements to be considered.

Question 3 (Maximum of 25 marks)

As well as appealing under the Immigration Rules, Saeed seeks to rely on art.8 of the European Convention on Human Rights. On the facts so far as they are set out in the scenario, explain how you would assess the appeal under art.8.

RESTRICTED

This paper should be left in the test room at the end of the session. The contents of the test should not be discussed with or divulged to anyone.