

CANDIDATE BRIEF

Please read carefully before you start

You have 90 minutes to complete the entire test.

You should attempt to answer every question.

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

Question 1 is worth a maximum of **18** marks

Question 2 is worth a maximum of **10** marks

Question 3 is worth a maximum of **14** marks

Question 4 is worth a maximum of **26** marks

Question 5 is worth a maximum of **22** marks

- **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 your reasons for each answer.**
- **Bullet points can be used where you find this convenient.**

Salaried Immigration Judge Qualifying Test

Introduction

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

Case Scenario

Mr Adrijan Kos is 48 years old and is a national of Slovenia. He is well-known in Slovenia for his xenophobic and anti-Semitic opinions. In July 2006 he was convicted by the District Court in Ljubljana for inciting anti-Semitism. A number of violent crimes against Jews occurred in a very short period of time following Mr Kos's key-note speech to a rally. He was sentenced to four years imprisonment. His appeal against that conviction was upheld but he is to be retried. He is currently on bail. It is unlikely his retrial will start before December, 2010.

Mr Kos's sister works in Manchester. She lives alone and was recently diagnosed with breast cancer. Mr Kos is her only surviving close relative. He applied for the terms of his bail to be varied so that he might be allowed to leave Slovenia to visit his sister. His request was granted.

Mr Kos was invited during the time he was expected to be in Manchester to address the annual conference in Southport of the British Independence Front (BIF). BIF is a breakaway faction of a larger extreme right wing party and is generally regarded in the media as having been formed by individuals with violent racist and anti-Semitic views who regarded the larger party as too moderate.

Mr Kos arrived at Manchester Airport. An Immigration officer refused him admission on the grounds that his presence in the United Kingdom was contrary to public policy and/or public security because of his extreme political views and his past conviction. Mr Kos was informed that he could only appeal this immigration decision from abroad. Mr Kos returned to Slovenia and lodged his appeal.

The grounds of appeal were settled in the following terms.

"I am a European citizen and have rights to enter England. I have a right to express my opinions and my conviction has been overturned. There are family reasons why I need to see my sister."

Prior to the hearing, the Tribunal received a letter from Mrs Kupan, Mr Kos's Slovenian advocate. She says she will be attending the hearing on behalf of Mr Kos. In accordance with normal practice, a bundle of documents has been supplied by the Immigration Officer. This is not very large and the main items within it are a report by the Immigration Officer who interviewed Mr Kos at Manchester Airport before refusing him admission as well as several newspaper reports about Mr Kos's xenophobic comments in Slovenia.

Just before you start the hearing, your clerk informs you that there is no presenting officer. No reason is given for the absence of a presenting officer but it is clear from the Tribunal's file that notice of the time, date and place of the hearing was sent to both parties along with directions for documents to be exchanged prior to the hearing.

At the start of the hearing, Mrs Kupan makes several opening observations in what you consider to be very good English. Her comments are:

- She has not seen the Immigration Officer's bundle.
- She is concerned that her client might not receive a fair hearing before a judge who is Jewish and she asks you to specify any religious affiliation you may have.
- Mr Kos's sister wanted to come to the hearing but she was taken into hospital last night.
- She wishes to rely on a judicial report regarding the allegations against Mr Kos, but the report is only available in Slovenian.

QUESTIONS

Question 1 (*Maximum of 18 marks*)

Give your decision on each of the following issues and set out your reasons for your decisions:-

- (a) the absence of a Presenting Officer; (*Maximum of 4 marks*)
- (b) Mrs Kupan's comment that she has not seen the Immigration Officer's bundle; (*Maximum of 4 marks*)
- (c) the inquiry about your religious affiliation. (*Maximum of 10 marks*)

Question 2 (*Maximum of 10 marks*)

Give your decision on each of the following issues and set out your reasons for your decisions:-

After some discussion of the issues raised in the preceding question, Mrs Kupan applies for an adjournment, in terms of rules 21 and 47 of the Asylum and Immigration Tribunal (Procedure) Rules 2005 on the basis that:

- (a) Mr Kos's sister should be present at the hearing. (6 marks)
- and
- (b) time should be allowed for the Slovenian document to be translated (4 marks)

Please answer questions 3, 4 and 5 on the assumption that the hearing proceeds before you (either on the same day or at a later date, depending on your answer to question 2).

Question 3 (*Maximum of 14 marks*)

Identify and set out the provisions giving a right of appeal to Mr Kos and any restrictions on that right. Set out the substantive issues of law or fact you need to consider and determine in considering the appeal

Question 4 (*Maximum of 26 marks*)

Explain what decision you would reach on the refusal of admission on public policy or public security grounds under regulation 19(1). In your answer you should set out fully the factors you have taken into account and the reasons on which your decision is based.

Question 5 (*Maximum of 22 marks*)

Explain what decision you would reach on the application of the European Convention on Human Rights to the appeal. In your answer you should set out fully the factors you have taken into account and the reasons on which your decision is based.