TWAN

தமிழர் நலன்புரி சங்கம் (நியூஹாம்) ஐ.ரா.

TAMIL WELFARE ASSOCIATION (NEWHAM) UK

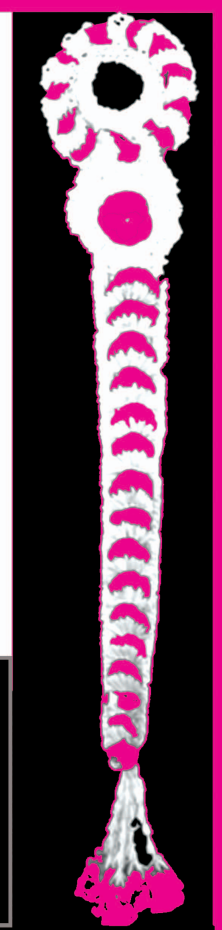
ANNUAL REVIEW REPORT 2008

Sri Valli's

Sri Valli's Branches in UK

East Ham -	345 High Street North,E12 6PQ
Manor Park -	76 Church Road, E12 6AF
Wembley -	29-33, Ealing Road, HA0 4YA
Croydon -	Opening Soon

தமிழ் மணம் வீசும் மதுரை மல்லிகை
புது மணம் வீசும் மலர்கள்
வண்ண மயமான நகைகள்



East Ham : 0208 471 5011
Manor Park : 0208 514 7777
Wembley : 0208 903 0888

TAMIL WELFARE ASSOCIATION (NEWHAM) UK.

தமிழர் நலன்புரி சங்கம் (நியூஹாம்) ஐ. ரா.

வாழ்த்து

நம் மானிடரின் நலனுக்காய்
ஓர் சங்கம் அமைந்து
உன் சேவைதனை இலவசமாய்
வழங்கி வரும்
தமிழர் நலன்புரிச் சங்கமே
வாழ்க....

தமிழர் நலன்புரிச் சங்கமே
உன் சேவைதனை
எழுத்தினால் செருக்க - முடியாது
உன் சேவை அழப்பெரியது
உன் சேவை மேன் மேலும்-தொடர
நம் வாழ்த்துக்கள்....

சுபம்

Annual Review Report - 2008

TAMIL WELFARE ASSOCIATION (NEWHAM) UK.

602 Romford Road, Manor Park,
London E12 5AF

Tel: 020 - 8478 0577 Fax: 020 - 8514 6790

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www.twan.org.uk

Company Registration No:2962857 Charity Registration No: 1047487

Message from the Chairman

As any passionate human being, one can expect to be nostalgic about the past. All that we have is memories some wonderful - some painful overall memorable memories. I sometimes wake up from a deep slumber to the rustle of the palmyra leaves only to be cheated to the sound of the council's electric car sweeping dust on the kerbside, outside my house in Ilford. None of us wished to live as refugees in foreign lands, we could have thought of visiting them when we were studying geography or history or lazing through colourful magazines and books borrowed from libraries, sitting in our veranda facing the cool breeze from the sea. But did we ever wish to condense all our memories into a bag with few photos, ID cards and certificates to flee as refugees?

Another 12 months have passed away, and I am here once again with a new message for this year. In 2008 report I wished the conflict would end soon in Sri Lanka and hoped we will have a peaceful solution for the Tamil people there. My words were not prophetic enough to stop the malevolent desires of the rulers of Sri Lanka. Once again the bloodletting has not ceased, another year for mother earth to be scarred with bullets, bombs, shells and graves, some shallow and some deep.

All this pain and sorrow has **not** made us weak, TWAN this year has been successful in what it has set out as its primary objective, the task of helping the Tamil refugees settle in UK. New ideas and strategies will be brought out the following year to secure our strong points and to develop in new areas the Tamil community may get challenged as they develop from a settling community towards an industrious and contributing community in UK.

This is an organisation for the community, by the community and from the community. We shall strive together to work towards delivering the service that our community needs at the moment and prepare for the future needs as well.

Finally I want to thank on behalf of the Board of Directors, the contribution made by our volunteers, staff, supporters, users and funders for their support, patronage and generosity without which TWAN could not have progressed so far.

And once again human resilience will continue to challenge the irrational action of fellow human beings and an overwhelmed Tamil heart will once again crave for peace and solace in its homeland and continue to be haunted by the rustling palms and breeze from the caressing sea.

R Rajanavanathan

TRUSTEE'S REPORT 2008

Our charity, Tamil Welfare Association (Newham), was formed 22 years ago in a view to share the experiences and issues faced by Tamil refugees amongst themselves and work towards their settlement in UK. The Tamil Welfare Association was officially registered as a company limited by guarantee in 1992 and subsequently in 1993 its application was accepted by the Charity Commission.

The organisation partly achieved its primary aim of helping to settle the Tamil refugees in UK fleeing from persecution and the war waged in Sri Lanka against the ethnic Tamil community by the Sri Lankan government. This brutal war has forced the Tamils to flee the island and seek asylum wherever possible to save their lives. This has entered a phase of mute genocide and the entire region of Vanni has been ethnically cleansed of Tamil people who are being pushed into a narrow strip of land by the systematic aggression of the Sri Lankan military, even as we are putting into ink, this Trustee Report.

Since the situation in Sri Lanka has not seen any change for the better, our primary task remains the same. We continued to provide the service of initial advice on application of asylum and specialist case work relating to the Tamil refugees. While the numbers of the settled communities has increased, our services have broadened up to other areas of service as well. Today the nature of our service and the functioning of our organisation are similar to Law Centres or Citizen Advisory bureaus.

The main sources of income for TWAN are from civil contract with the Legal Service Commission, grants and aid from London Council and other Trusts.

Annual General Meeting of 2008

The Annual General Meeting was held on 15th June 2008 at Manor Park Community Centre from 2pm to 6pm. After Lunch, the business of the day started with the election of the Chair. Mrs Baby Saroja Kanagu proposed the name of Ms Chandra Gopalasingam and was seconded by Mr Ponnuthurai and with no other person in fray she was elected unanimously.

Mrs M Balasundaram, Mrs S Kirupakaran, Mr V Janarthanan and Mr A Bhanot submitted their reports on the nature of work at TWAN and the difficulties, tasks and challenges faced by the staff at the office. This was followed by reports from the Secretary Mr P Chandradas and the Treasurer Mr S Muthukumarasamy.

The meeting unanimously elected the three outgoing Directors; Mr P Chandradas, Mr S Muthukumarasamy and Mr S Panneerchelvan.

There was a Q& A session and Mr Janarthanan answered various queries regarding Immigration and Asylum matters raised by members. He explained to the AGM council the questions raised in accordance with the laws, policies and instructions of the Home Office.

The newly appointed Directors thanked the members of the AGM for trusting them to lead TWAN. Mr Janarthanan ended the meeting with a vote of thanks.

Users benefited from the services

Around 3000 users benefited from the services by visits to our organisation during the year 2008.

Visits to our office and projects included assistance in immigration, housing, employment, welfare benefits, asylum, education, consumer rights, crime related issues, health advice, family issues and debt advice. We have also made referrals for 135 users to other specialists in the fields where we were not operating.

On an average we receive around 12 calls for telephone advice, during the telephone advisory sessions between 2pm to 4pm every Tuesday and Thursday. This advice is provided on all areas of advice covered by TWAN. This has benefited around 1200 users from London and rest of UK as well.

Our main area of work is in the asylum and immigration sector. We provided advice and specialist casework in 552 asylum related work and 835 immigration (non-asylum) related work.

The requirements of our stakeholders does not end with the grant of leave to remain, new issues crop up as they try to settle down. Our area of work has diversified into fields such as consumer rights, debt advice, health advice, welfare benefits amongst others. Welfare benefit is another sector in which 466 people sought our advice and specialist case work assistance in getting access to benefits.

Language continues to be an impediment to our users and the EEA Tamil nationals coming to UK for work, business or settlement also face a fair share of this problem in accessing welfare benefits.

Tamils from outside of Sri Lanka also make use of our services as there is a significant Tamil population form India, Malaysia, Singapore, Mauritius and South Africa living in Britain. Most of them access our immigration services in the non-asylum assistance like spouse visa, nationality, visa extension, minister of religion & study visa amongst others.

Our advisory and specialist caseworker service is provided from our Romford Road office. Drop in session and telephone advice is provided as well as outreach service provided to those held in detention, hospital, or physicaly immobile. We provide Telephone advice on Tuesdays and Thursdays between 2pm -4pm and Drop in sessions is available on weekdays between 9am to 1 pm. On Monday and Wednesday, it is available until 3 pm.

Volunteers and Staff

Two full-time and two part-time case workers provided the main services with support from 60 volunteers over different period of time in 2008. A third part-time case worker was recruited towards the end of 2008. TWAN encourages volunteering from the community as it is a mutually beneficial endeavour and enriches the experiences of our organisation and the volunteers personally.

Students from City University, University of Westminster and London School of Economics provided volunteer service and we also provided work experience to students from Redbridge Business education Partnership and Newham Trident's work experience team.

The organisation encourages service users to join the organisation and also provides them the opportunity to develop skills by participating in our volunteering projects. The 'Elders Day Centre' project has been successfully running with the support of our elderly volunteers. The supplementary education and fine arts project, conducted at the Little Ilford School has been feasible with volunteer's support only.

We thank the staff and volunteers for their support and hard-work in providing service to our Tamil community. We would also like to congratulate our staff member, Mrs Sujitha Kirupakaran who has been blessed with a baby boy in September this year.

Funding and Finance report

The Auditors reports for 2008 shows a favourable state of affairs of the organisation and its encouraging in the way our funds have been frugally utilised to benefit so many people with so little resources. This year we received restricted funds from grants and aids to the tune of £133,575 and un-restricted funds through donations, subscriptions and income generating activities totalling £8,056.

The total fixed assets are £158,734 and our current assets total £58,726. The current assets include £30,000 accrued from grants outstanding from the Legal Service Commission, which is expected to be received in early part of 2009. The grant from London Council has been utilised for general advisory and legal services. Grant received from LTSB, CPF and LSC have been used for salary of case workers and administration costs. Grants provided for specific purposes were used by TWAN for such projects only.

The major portion of expenditure has been for the employment of case workers. Salary totalling £50,164 was paid for the five employees. The Organisation also has borrowings in the figure of £55,633 of which £8100 is repayable in one year or less or on demand. We also paid interest of £4,172 on loans and overdrafts in 2008.

Management

The Board of Directors (BOD) are elected at the Annual General Meeting by members of TWAN. The BOD comprises of 10 members who at the first board meeting choose the office bearers and allocate roles and responsibilities to oversee the tasks of the organisation.

At the first board meeting the Executive Director attends the meeting and helps evolve the service delivery plan and helps in understanding the progress, review and monitoring of such plans. The executive Director is responsible for the implementation of the strategies and plans of the BOD.

Meetings are held on the last Wednesday of every month where the board meetings are facilitated by the Chairperson, who also acts as the tie-breaker in the event of a deadlock on a decision. The Secretary is responsible for maintaining of the financial records of the organisation and the Treasurer is in charge of the financial matters. There is also a Public Relation Officer responsible for marketing and publicising the work of the organisation as well as responsible for liaising, fostering and keeping up the good image of the organisation with the public and other stakeholders.

General achievement

This year we were able to run the day to day activities without any interruptions and had a good success rate for asylum cases that were taken to the courts. We have been able to achieve beyond the milestones set by LSC and London Council. For 2008 we have received increased funding from London Council and also been granted the Trusthouse Charitable Foundation fund which replaced the Awards from All England fund which formerly supported the Elders project.

The legitimacy of our organisation as a user-led organisation is based on the participation of its users by patronising the projects and schemes we provide. The advisory and specialist casework service and the other supplementary projects have been well utilised by the community members.

Summer Holiday Play Scheme was not conducted this year due to the lack of funding. This was a well received project and it is regretful that we were not able to continue this year. Hopefully we will be able to get the funds for the year 2009.

Assessment and review

In the last few years we have been thinking of achieving financial stability without dependence on external funding. As you are all aware that in the previous years we brain stormed in our board rooms meetings and came up with the Social Enterprise business proposals. We have been able to identify and have narrowed it to purchasing the building next door as a potential place for establishing a business. Two things have held us back in going further with this project; firstly the current climate of financial instability and decreasing property values and secondly the absence of capital to purchase the building.

This year we were owed around £30,000 from the LSC and we had to dig into our Reserve fund to the tune of £20,000 to keep our Current account in green. This situation may change once we get the money owed from LSC to be utilised as capital for purchase and hopefully the market may bounce back to normal in the coming years.

We have increased our asset value by the extension of the building at 602 Romford Road and also the purchase of a storage place in the previous years. Some work may be required on the storage space next year.

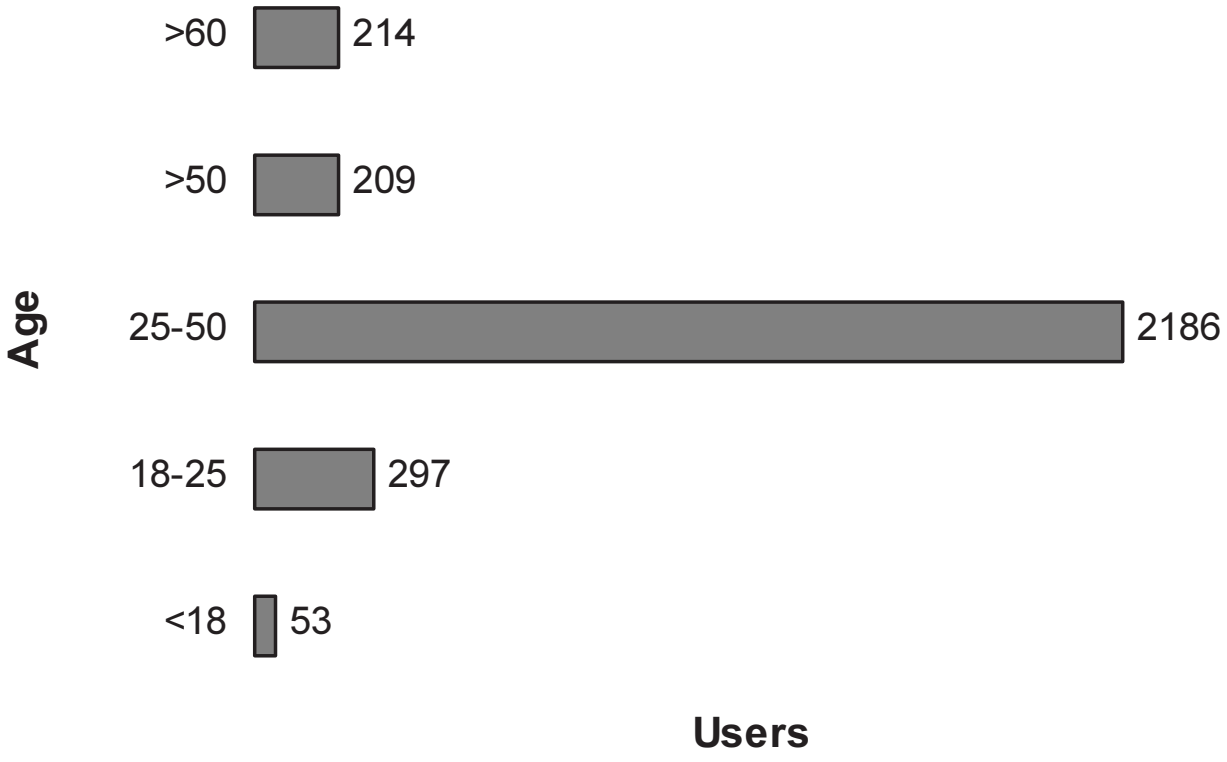
Conclusions

Looking back at the years of continued service provided by TWAN we can proudly say that we are one of the few Tamil and refugee based community organisation that has been able to provide an uninterrupted service to our community in London. The need of our community is what makes us to exist and that need is never been bigger then the current time.

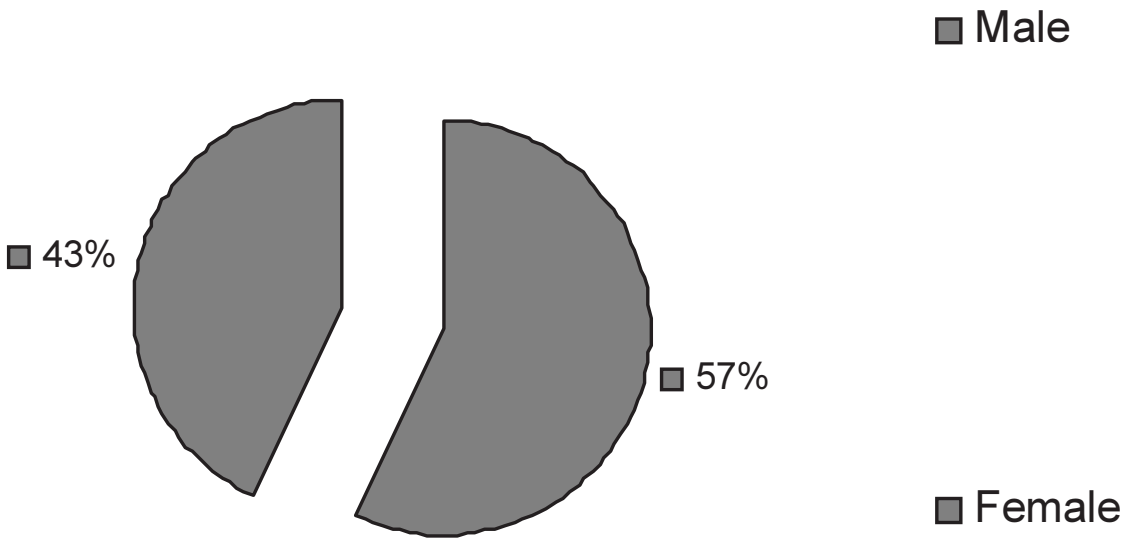
The various funds, grants and aids we have received over the years from the Legal Service Commission, London Council grants, KPMG foundation fund, Trusthouse Fund, Lloyds TSB funds, Awards from All England fund and various others as well as invaluable support and help from our volunteers, community members and staff and the Board of Directors have helped us to shape and create TWAN into its current form.

Twenty two years is not a very long time in history but for the Tamil people it has been a culmination of many evens that occurred to us in our outward journey from our homelands to places of safety provided by the generosity of some countries and through the endorsement of human rights and values as enshrined in various constitutions, treaties and law. As a persecuted nationality sans a nation we look forward to developing the countries we have made our current homes by helping and developing this economy and participating in the enrichment of this society and culture. ■

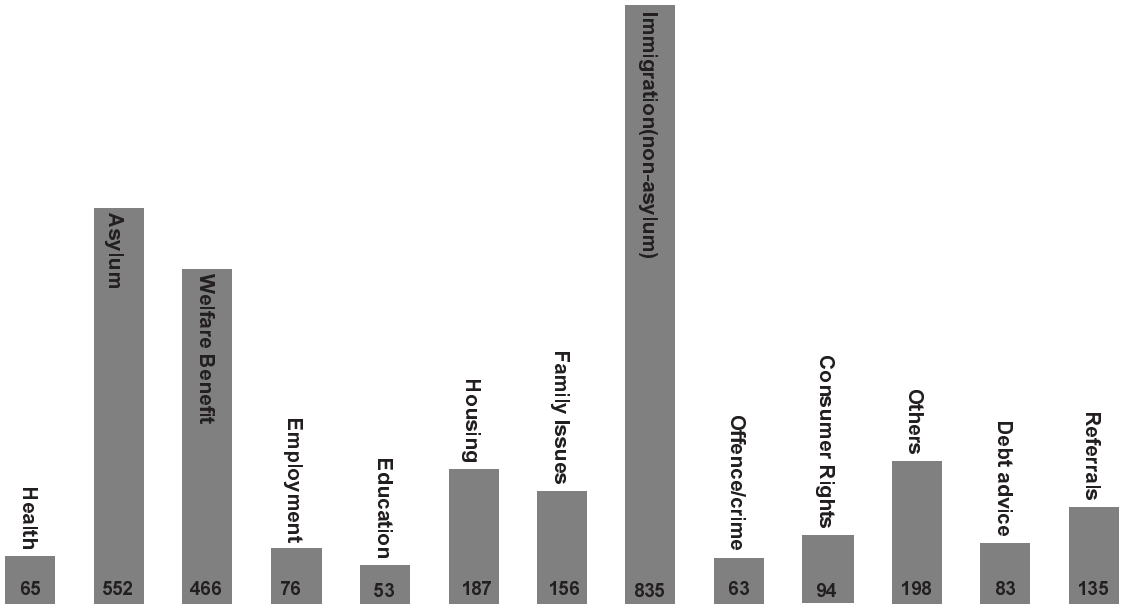
Age distribution of service users in 2008



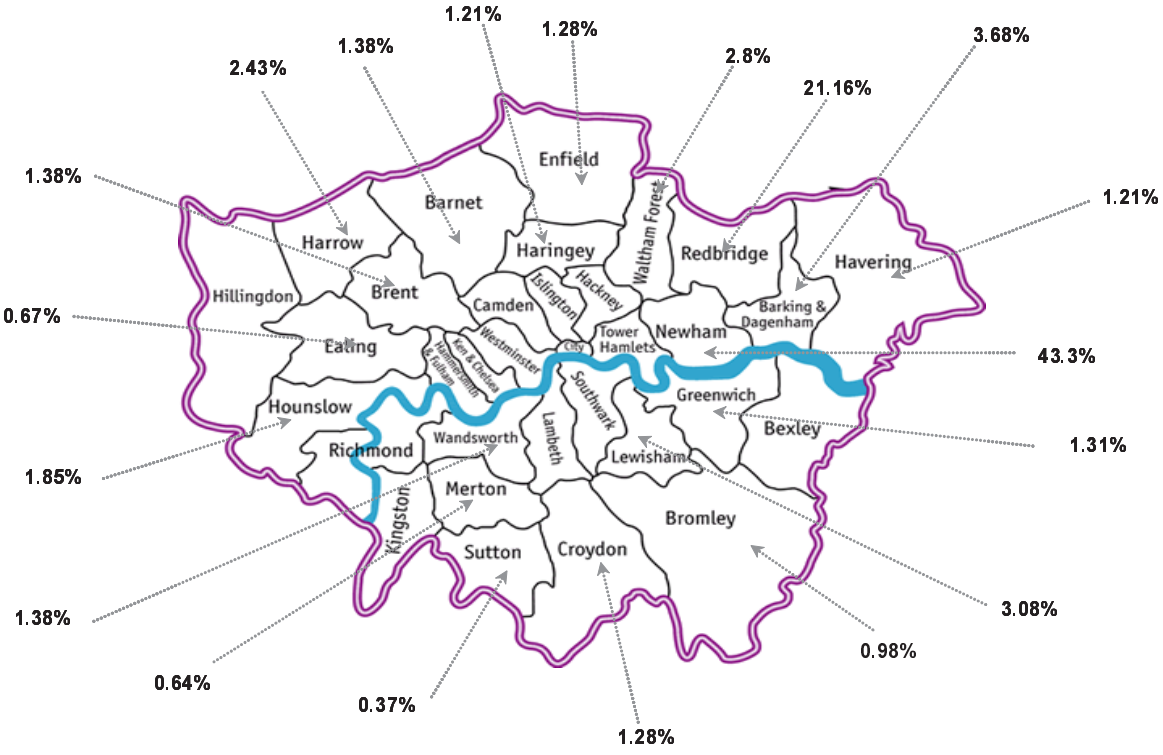
Gender distribution of service users 2008



Purpose of Visits by Users - 2008



Borough wise distribution of our Users



FINANCIAL STATEMENTS FOR THE YEAR ENDED 31ST DECEMBER 2008

TAMIL WELFARE ASSOCIATION (NEWHAM) UK

COMPANY NO: 2962857

CHARITY NO: 1047487

FINANCIAL STATEMENTS

- FOR YHE YEAR ENDED -

31ST DECEMBER 2008

ADVANCED ACCOUNTING PRACTICE
Certified Accountants
2nd floor, 4 Watling Gate
297-303 Edgware Road, London
NW9 6NB

TAMIL WELFARE ASSOSIATION (NEWHAM) U.K.

DIRECTORS

M Balasingham (Mrs)
P Chandradas Esq
T Janaka (Mrs)
S Kirubaharan Esq
S Ramanan (Mrs)
S Paneerchelvan Esq
R Rajanavanathan Esq
S Muthucumarasamy Esq
N Rakavan Esq
P Sivaraseswaran Esq

SECRETARY

P Chandradas Esq

REGISTRATED OFFICE & BUSINESS ADDRESS

602 Romford Road
Manor Park
London
E12 5AF

AUDITORS

Advanced Accounting Practice
Certified Accountants
2nd Floor, 4 Watling Gate
297-303 Edgware Road
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NW9 6NB

SOLICITORS

Jeya & Co
322 High Street North
Manor Park
London
E12 6SA

PRINCIPALS BANKERS

Barclays Bank Plc
Newham Business Centre
737 Barking Road
Plaistow
London E13 9PL

TAMIL WELFARE ASSOSIATION (NEWHAM) U.K.

REPORT OF THE DIRECTORS

The directors present their report and audited financial statements for the year ended 31st December 2008.

PRINCIPAL ACTIVITES AND BUSINESS REVIEW

The Association is a registered charity and the company is limited by guarantee and not having a share capital.

The Association's principal activity is to provide advisory, legal casework and representative services for the Tamil speaking community in the United Kingdom, to foster and promote good race relations between such persons pf all groups within the area of benefit.

DIVIDENDS

The directors recommended that £13,000 and £1,000 be transferred form the Restricted and Unrestricted funds respectively to the building Fund account.

The company is a registered charity and hence no dividends are payable.

DIRECTORS AND THIR INTERESTS

The directors do not have any interests in the capital or reserves of the company.

DIRECTORS' RESPONSIBILTITES

Company law requires the directors to prepare financial statements for each financial year which give a true and fair view of the state of affairs of the company and of the profit or loss of the company for that period. In preparing those financial statements, the directors are required to:

- select suitable accounting policies and then apply them consistently;
- make judgements and estimates that are reasonable and prudent;
- prepare the financial statements on the ongoing concern basis unless it is inappropriate to presume that the company will continue in business.

The directors are responsible for keeping proper accounting records which disclose with reasonable accuracy at any time the financial position of the company and to enable them to ensure that the financial statements comply with the Companies Act 1985. They are also responsible for safeguarding the assets of the company and hence for taking reasonable steps for the prevention and detection of fraud and other irregularities.

CLOSE COMPANY

The company is a close company as defined by the Income and Corporation Taxes Act 1988.

AUDITIORS

The auditors, Advanced Accounting Practice, are willing to be reappointed in accordance with section 385
of the Companies Act 1985.

By Order of the Board

Date: 31st March 2009

P Chandradas Esq
Secretary

TAMIL WELFARE ASSOSIATION (NEWHAM) U.K.

AUDITORS' REPORT TO THE MEMBERS OF TAMIL WELFARE ASSOSIATION (NEWHAM) U.K.

We have audited the financial statements of the company for the year ended 31st December 2008 which comprise the Statement of Financial Activities, the Balance Sheet and related notes set out on pages 6 to 10. these financial statements have been prepared under the historical cost convention, and the accounting policies on page 6.

The report is made solely to the company's members, as a body in accordance with section 235 of the Companies Act 1985. our audit work has been undertaken so that we might state to the company's members those matter we are required to state to them in an auditor's report and for no other purpose. To the fullest extent permitted by law, we do not accept or assume responsibility to anyone other than the company and the company's members as a body, for our audit work, for this report, or for the opinions we have formed.

RESPECTIVE REPSONSIBILTIES OF THE DIRECTORS AND AUDITIORS

As described in the Directors' Report the company's directors are responsible for the preparation of financial statements. It is our responsibility to form an independent opinion, based on our audit, on those statements and to report our opinion to you.

We report to you our opinion as to whether the financial statements give a true and fair view and are properly prepared in accordance with the Companies Act 1985. we also report to you if, in our opinion, the Director's Annual Report is not consistent with the financial statements, if the charity has not kept proper accounting records, or if we have not received all the information specified by law regarding director's remuneration and transactions with the company is not disclosed.

We read other information contained in the Director's Annual Report and consider whether it is consistent with the audited financial statements. We consider the implications for our report if we become aware of any apparent responsibilities do not extend to any information.

BASIS OF OPINION

We conducted our audit in accordance with Auditing Standards issued by the Auditing Practices Board. An audit includes examination, on a test basis, of evidence relevant to the amounts and disclosures in the financial statements. It also includes an assessment of the significant estimates and judgements made by the directors in the preparation of the financial statements, and of whether the accounting policies are appropriate to the company's circumstances, consistently applied and adequately disclosed.

We planned and performed our audit so as to obtain all the information and explanations which we considered necessary in order to provide us with sufficient evidence to give reasonable assurance that the financial statements are free from material misstatement, whether caused by fraud or other irregularity or error. In forming our opinion we also evaluated the overall adequacy of the presentation of information in the financial statements.

OPINION

In our opinion the financial statements give a true and fair view of the state of affairs of the company as at 31st December 2008 and of its incoming resources and application of resources, including its income and expenditure for the year then ended and have been properly prepared in accordance with the Companies Act 1985.

ADVANCED ACCOUNTING PRACTICE
Certified Accountants
Registered Auditors

2nd Floor, 4 Watling Gate
297-303 Edgware Road
London
NW9 6NB

Date: 31st March 2009

TAMIL WELFARE ASSOSIATION (NEWHAM) U.K.

STATEMENT OF FINANACIAL ACTIVITES FOR THE YEAR ENDED 31ST DECEMBER 2008

	Notes	Restricted Funds £	Unrestricted Funds £	Total 2008 £	2007 £
INCOMING RESOURCES FROM GENERATED FUNDS					
Voluntary Income					
Grants	2	133,575	-	133,575	139,181
Donations			1,523	1,523	699
Membership Subscriptions		-	837	837	741
Income from generating funds		-	5,137	5,137	10,735
Interest Receivable	4	-	559	559	1,008
Total Incoming Resources		133,575	8,056	141,631	152,364
RESOURCES USED					
Direct Charitable Expenditure		100,273	-	100,273	102,551
Governance costs	3	18,545	6,056	24,601	32,160
		118,818	6,056	124,874	134,711
NET INCOMING RESOURCES BEFORE TRANSFERS		14,757	2,000	16,757	17,653
Transfer to Designated funds		(13,000)	(1,000)	(14,000)	(15,000)
Net Movement in funds		1,757	1,000	2,757	2,653
Balance brought forward		11,519	5,732	17,251	14,598
Balances carried forward		13,276	6,732	20,008	17,251

The notes on pages 6 to 10 from part of these financial statements.

TAMIL WELFARE ASSOSIATION (NEWHAM) U.K.

BALANCE SHEET AT 31ST DECEMBER 2008

	Notes	2008 £	£	2007 £	£
FIXED ASSETS					
Tangible assets	7		158,734		157,821
CURRENT ASSETS					
Debtors	8	40,079		3,695	
Cash at bank and in hand		18,647		41,761	
		58,726		45,456	
CREDITORS: Amounts falling due within one year	9	(23,601)		(22,927)	
NET CURREMT ASSETS			35,125		22,529
TOTAL ASSET LESS CURRENT LIABILITIES			193,859		180,350
CREDITORS: Amounts falling due after more than one year	10		(47,533)		(50,780)
			146,326		129,570
CAPITAL AND RESERVES					
Designated Funds			125,320		110,320
Profit and loss account	12		21,006		19,250
SHAREHOLDERS FUNDS			146,326		129,570

The financial statements were approved by the board on 31st March 2009 and signed on its behalf by

S Muthucumarasamy Esq Director

The notes on pages 6 to 10 from part of these financial statements.

TAMIL WELFARE ASSOSIATION (NEWHAM) U.K.

NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENEDE 31ST DECEMBER 2008

1. ACCOUNTING POLICIES

1.1 BASIS OF ACCOUNTING

The financial statements have been prepared under the historical cost convention.

1.2 INCOMING RESOURCES

This includes grants received, membership fees, bank interest, donations received and rental income from subletting of tenanted premises.

1.3 DEPRECIATION

Depreciation is provided using the following rates and bases to reduce by annual instalments the cost, less estimated residual value, of the tangible assets over their estimated useful:-

Fixtures and fittings 15% Reducing balance

No depreciation is provided on freehold buildings as it is the company's policy to maintain these so as to extend their useful lives.

1.4 DEFERRED TAXATION

Deferred taxation is provided where there is a reasonable probability of the amount becoming payable in the foreseeable future.

1.5 LEASING AND HIRE PURCHASE

Rentals payable under operating leases are taken to the profit and loss account on a straight line basis over the lease term.

TAMIL WELFARE ASSOSIATION (NEWHAM) U.K.

NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 31ST DECEMBER 2008

2. GRANTS RECEIVED	2008	2007
	£	£
Analysis by: -		
CPF/LTSB Grant	12,000	2,000
ALG Grant	30,000	28,000
Legal Services Commission re: legal work	80,800	73,202
Education Project	5,000	8,324
Children's' Project	-	13,330
Age Concern Project	5,775	6,825
Comic Relief	-	7,500
	133,575	139,181

The grant received from Association of London Government has been used for general advisory and legal services. Similarly grants received from LTSB, CPF and Legal Services Commission were also used for salaries for caseworkers and administrations costs of the Association. Where grants were provided for a specific purpose the Association has used them solely for those purposes.

Included in the Legal Services Commission grants is £30,000 which has been accrued for and shown in debtors (see note 8 below).

3. NET INCOMING RESOURCES	2008	2007
	£	£
The net incoming resources is stated after charging:		
Depreciation	1,237	1,456
Audit services	2,448	2,404
Operating lease rentals:		
Land and buildings	7,280	7,280

4. INTEREST RECEIVABLE	2008	2007
	£	£
Bank and other interest receivable	559	1,008
	559	1,008

5. INTEREST PAYABLE	2008	2007
	£	£
On bank loans and overdrafts	4,172	4,483
	4,172	4,483

TAMIL WELFARE ASSOSIATION (NEWHAM) U.K.

NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 31ST DECEMBER 2008

6. DIRECTORS AND EMPLOYEES

	2008	2007
	£	£
Staff costs:		
Wages and salaries	46,566	46,638
Social security costs	3,598	2,827
	50,164	49,465

7. TANGIBLE ASSETS

	Land & Buildings	Fixtures & fittings	Total
	£	£	£
Cost			
At 1st January 2008	149,571	37,838	187,409
Additions	2,150	-	2,150
At 31st December 2008	151,721	37,838	189,559
Depreciation			
At 1st January 2008	-	29,588	29,588
Charge for year	-	1,237	1,327
At 31st December 2008	-	30,825	30,825
Net book value at 31st December 2008	151,721	7,013	158,734
Net book value at 31st December 2007	149,571	8,250	157,821

	2008	2007
	£	£
Analysis of net book value of land and buildings:		
Freehold		
	151,721	149,571

8. DEBTORS

	2008	2007
	£	£
Other debtors	3,776	42
Prepayments and accrued grant income	36,303	3,653
	40,079	3,695

Included in accrued grant income is £30,00 accrued for grants outstanding from Legal services commission which is expected to be received in early part of the forthcoming year.

TAMIL WELFARE ASSOSIATION (NEWHAM) U.K.

NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 31ST DECEMBER 2008

9. CREDITORS: AMOUNTS FALLING DUE WITHIN ONE YEAR	2008 £	2007 £
Bank loans and overdrafts	8,100	7,328
Other creditors	623	379
Accruals and grants received in advance	14,878	15,220
	23,601	22,927

10. CREDITORS: AMOUNTS FALLING DUE AFTER MORE THAN ONE YEAR	2008 £	2007 £
Loans	47,533	50,780
	47,533	50,780

11. BORROWINGS	2008 £	2007 £
The company's borrowings are repayable as follows:		
In one year, or less or on demand	8,100	7,328
Between one and two years	15,784	15,784
Between two and five years	23,675	23,675
In five years or more	8,074	11,321
	55,633	58,108

Details of security:
The bank loan is secured by way of a legal charge over the company's freehold property.

TAMIL WELFARE ASSOSIATION (NEWHAM) U.K.

NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 31ST DECEMBER 2008

12. PROFIT AND LOSS ACCOUNT

	2008 £	2007 £
Retained profits at 1st January 2008 as restated	19,249	16,597
Profit for the financial year	16,757	17,653
Transfer to Designated funds	(15,000)	(15,000)
Retained profits at 31st December 2008	21,006	19,250

Designated Funds represent the surplus income that the Association generated from it's internal fund raising events and other income generated through its own ability.
It also incorporates the surplus of restricted funds which, have been allocated towards the purchase and improvement of the Association's land and building.

13. REVENUE COMMITMENTS

The amounts payable in the next year in respect of operating leases are shown below, analysed according to the expiry date of the leases.

	Land and Buildings		Other	
	2008 £	2007 £	2008 £	2007 £
Expiry date:				
Within one year	7,280	7,280	-	-
Between one and five years	29,088	29,088	-	-

TAMIL WELFARE ASSOSIATION (NEWHAM) U.K.

DETAILS INCOME & EXPENDITURE ACCOUNT
FOR THE YEAR ENDED 31ST DECEMBER 2008

		2008		2007	
		£	£	£	£
Income					
Restricted Funds					
Grant received	(Sch)		133,575		139,181
Less: Expenditure					
Client disbursements		20,254		23,510	
Children's' project		788		11,335	
Education project		9,249		7,057	
Age concern project		6, 401		5,929	
Salaries and wages (incl. N.I)		50,164		49,465	
Volunteers and sessional workers		3,017		2,687	
Staff recruitment and training		950		643	
Rent, rates and insurance		9,450		9,303	
Light and heat		1,704		1,488	
Telephone and fax		2,534		2,189	
Printing, postage and stationery		2,440		4,101	
Office maintenance		3,067		2,732	
Organisation & Development		700		944	
Accountancy		2,448		2,404	
Security costs		352		349	
Travelling		592		981	
Bank charges		536		983	
			114,646		126,100
Net surplus			18,929		13,081

TAMIL WELFARE ASSOSIATION (NEWHAM) U.K.

DETAILS INCOME & EXPENDITURE ACCOUNT
FOR THE YEAR ENDED 31ST DECEMBER 2008

Unrestricted Funds		**2008**		**2007**
		£		**£**
Income				
Cultural activities collections		1,595		2,125
Membership fees received		837		741
Rent receivable		3,577		8,559
Donations and other income		1,488		750
		7,497		12,175
Less: Expenditure				
Cultural activities	3,296		1,080	
Meeting expenses	170		255	
Sundry expenses	129		91	
Membership and subscriptions	1,224		1,246	
Depreciation	1,237		1,456	
		6,056		4,128
Net Surplus		1,441		8,047
Gross Incoming Resources before Interest and other income		20,370		21,128
OTHER INCOME AND EXPENSES				
Interest receivable:				
Bank deposit interest	559		1,008	
		559		1,008
Interest payable:				
Bank interest	4,172		4,483	
		(4,172)		(4,483)
NET INCOMING RESOURCES		16,757		17,653

TAMIL WELFARE ASSOSIATION (NEWHAM) U.K.

DETAILS INCOME & EXPENDITURE ACCOUNT FOR THE YEAR ENDED 31ST DECEMBER 2008

Schedule – Grants received

	2008 £	2007 £
CPF/LTSB Grant	12,000	2,000
ALG/Advice UK Grant	30,000	28,000
Legal Services Commission re: Legal work	80,800	73,202
Education Project	5,000	8,324
Children's Project	-	13,330
Age Concern Project	5,775	6,825
Comic Relief	-	7,500
	133,575	139,181

Sri Lanka – a brief report

Tamil people living in UK belong to various nationalities with origins from Sri Lanka and India. The majority of the Tamil people using our services are from Sri Lanka's Tamil speaking provinces. In one of the biggest exodus of people escaping one of the cruellest wars on mankind; brought about by a state on its own citizens, in the name of supremacist politics, over 1.2 million Tamil asylum seekers have fled across the globe and over half a million live in mainland Europe and UK today. Over one hundred thousand Tamils have been killed in this tragic war. Extra-judicial killing is rampant in Sri Lanka and the dreaded 'white van abduction' by armed gunmen is an everyday narrative in the lives of the Tamil populace.

The internally displaced people live in barbed wired detention camps run by the government in which some of them have been living for more than a decade. Many people have been pushed of their lands to facilitate the army's occupation of their homes and fields. Whole fishing villages have been dismantled making people refugees overnight. It is in this sordid situation the Tamil people fled and flee holding on to dear life by bribing government agents to free themselves from detention camps, prisons and from the clutches of their abductors. They further sell what is left of their possessions and with help from friends and families pay agents to take them to safety abroad.

The situation in rest of Sri Lanka is also no different for the Tamil people who have been permanently resident or who tried to relocate to Colombo and other parts of the country. There is absolute denial of press freedom and over 16 journalists have been killed for being critical of the government policies. Five Tamil Parliamentarians have been killed in Colombo and many others have left the country. Tamil journalists languish in prison under emergency laws without a proper trial. The same can be said to be the fate of Sinhala journalist with liberal ideas too.

For ordinary Tamil citizens they face harassment at checkpoints on a regular basis and are victims of mass round ups. In Sri Lanka there is an 'Identity Card Regime', a person without an identity card is denied freedom of movement. Those with identity card will be identified to their place of birth. If the person is from North-East they will be put through scrutiny and harassment and detained for further interrogation. Most of the people who come to our organisation for legal assistance have faced difficulty in trying to relocate to other parts of Sri Lanka and lead a normal life

Computerised database show details of the identity card holders if they had been previously held and released or absconding from signing at police stations or army camps, leading to further harassment or detainment of such persons.

LTTE an armed militant group is fighting for the establishment of a separate state of Tamil Eelam. LTTE also known as Tamil Tigers controls and administers a part of the Northern Province. In the name of fighting the LTTE the government uses heavy weapons in the form of multi barrel rockets, heavy artillery and aerial bombardment on thickly populated areas under LTTE control. Though there is a general restriction of movement from LTTE administered territories people are allowed to travel for education, medical or cultural/ social reasons to government held territories through check points staffed by ICRC.

Aid organisations and the UN have been forced to withdraw from the conflict zones by the Sri Lankan government and a muted press is being established by lawful (emergency laws) and un-lawful enforcement.

There is no normal life for Tamils in any part of Sri Lanka due to the continued application of the state of emergency and the use of draconian laws in silencing fundamental rights of its own citizens. ■

PROJECT PROGRESS REPORT 2008

Introduction

The Tamil refugees set up the Tamil Welfare Association (Newham), also called TWAN. We cater our services to all Tamil speaking communities in the UK.

Tamil Welfare Association (Newham)'s main projects; Advisory Service and work in Legal Casework, progressed very well during the year 2008, as did our other initiatives – a Day Centre for Elders, Supplementary Education, and Fine-Art classes. This success was achieved in spite of funding difficulties this year. Unfortunately we were unable to run the Summer Holiday Project for school age children, as we could not manage to secure the necessary funding for the scheme. Apart from this setback, we are effectively and successfully following our service delivery plan to meet the needs of the community. Our main source of funding is the Legal Service Commission (LSC), under the immigration civil legal aid contract, which is around £80,000 this year.

London Council funding and additional funding from Lloyds TSB have been utilised for providing advisory service and immigration and asylum work, when LSC funding is not applicable to cases, which do not merit the criteria, set by LSC.

The continuous success in our legal work, allows us to meet the community's most pressing needs, whilst allowing us to branch out and take an advisory role in other areas such as housing, healthcare and employment. A part of this development is the winning of a new legal contract from the LSC, to provide family law services. This contract will enable us to provide legal advice from our Newham office in the areas of family law.

The organisation predominantly serves the members of the Tamil community drawn across London. However we have people using our services throughout the UK. Around 25 – 30 people a day approach us for advice and casework. A small number is being signposted to other appropriate service providers, whilst our advisory workers and caseworkers deal most matters. Approximately 45 casework files were closed each month, and 35 new case files were opened per month. Apart from immigration and asylum matters we provide assistance in other areas, such as: welfare benefits, housing, employment, consumer and money advice, health issues, and family matters. In these areas we usually deal with primary disputes and when it fails to come to a better solution we make referrals to specialist solicitors.

The number of Tamil asylum seekers increased significantly during this year. As usual most of the cases were initially refused by the Home Office, but allowed by the Immigration Judge after the hearing. Despite the intensification of the civil war in Sri Lanka, and the accompanying deterioration of human rights within that country, the UK Government continues to implement the forcible removal of failed Tamil asylum seekers to Sri Lanka in large numbers. We were unsuccessful in our efforts to challenge these removals under domestic law; however we have achieved a halt to a number of removals through the European Court of Human Rights (ECHR) under rule 39 of the European Convention on Human Rights. This prevented many Tamil asylum seekers being returned to Sri Lanka, where they would otherwise becomes victims of torture. The ECHR judgment, based on a test case *NA vs. the United Kingdom* deemed the unlawful removal of Sri Lankan Tamil asylum seekers, and the Home Office agreed to reconsider their cases falling within this category. However, not withstanding these developments the Home Office continued with the removal of failed asylum seekers wherever possible.

In another area of immigration case law, European Community law came under more scrutiny during the last year. In the case of *HB (EEA right to reside- Metlock),* both the Home office and the appellant challenged the definition of 'family members', of EU national, staying in UK. Families fleeing the civil war are frequently split up from family members and residing in different countries, where they later became residents of that country. As this situation develops, some asylum seekers in the UK face (residence card application) refusals by the Home Office and their appeals are being negatively determined by the Immigration Judges. However, for various reasons victims cannot return to Sri Lanka, but face removal by the Home Office. When the European community law came into force many Tamils, those who had obtained citizenship in Europe, moved to the UK to exercise their treaty rights and reunite with their siblings or other family members. The European Community law clearly suggests that EEA national's family members are entitled to obtain the immigration status of their European family member.

The European Court of Human Rights (ECHR) has given clear interpretation in this matter on various cases but UK Courts and Home office refused to accept this interpretation. We took one of our cases to the House of Lords (KG vs. SSHD [2008] EWCA Civ 13) without success. Now we are taking the complaint to the European Commission on this issue in order to force the Home Office and Courts to review their policy and law.

In nationality law we have received one refusal from the Immigration and Nationality Department, surprisingly stating that applicant's application for naturalisation has been refused because he was a full time member of the LTTE when he was in Sri Lanka many years ago. But the applicant fulfilled the entire requirements for Naturalisation. However the Home Office states the involvement with the LTTE waives the requirement of Good Character during his stay in the UK. Currently this matter is being dealt by the Senior Counsel to defend the Home Office's absurd reasoning.

Many failed asylum seeker's permission to work were refused by the Home office while their fresh or human rights claim are still under consideration. Those who were refused permission to work are also not entitled to National Asylum Support Services (NASS) or any social security benefits during this time pushing many families to severe hardship. Further hardship is also being created by the employers who do not read and understand the Home Office policy and law related to employer's penalty, but listen to the immigration officer who visit's the employment premises. Consequently, the immigration officer does not respond to our queries after suspending the permission to work of failed asylum seekers. Home Office policy states that any person employed before 30 April 2004 does not need to have their documents checked. However many employers are demanding documentation, with many people losing their jobs as a result. We are seeking clarification through judicial review on this issue, and the application for judicial review has been lodged. Two of our clients (KM & XS) restriction to work were cancelled and reinstated with grant of Leave to Remain in the United Kingdom after challenging the Home Office through judicial review process.

Lately, entry visa applications for spouses and unmarried partners living in this country have been refused by the Entry Clearance Officers. The British High Commission (Chennai) refused a family permit visa for one of our client claiming she had not produced documentary evidence as required.

Here we appealed the decision to the Asylum and Immigration Tribunal (AIT), which is pending consideration. We strongly believe the officer does not have the jurisdiction to refuse the application as the application was accompanied with relevant supportive documents. We are in the process of scrutinizing the practice of the entry clearance officers on this matter.

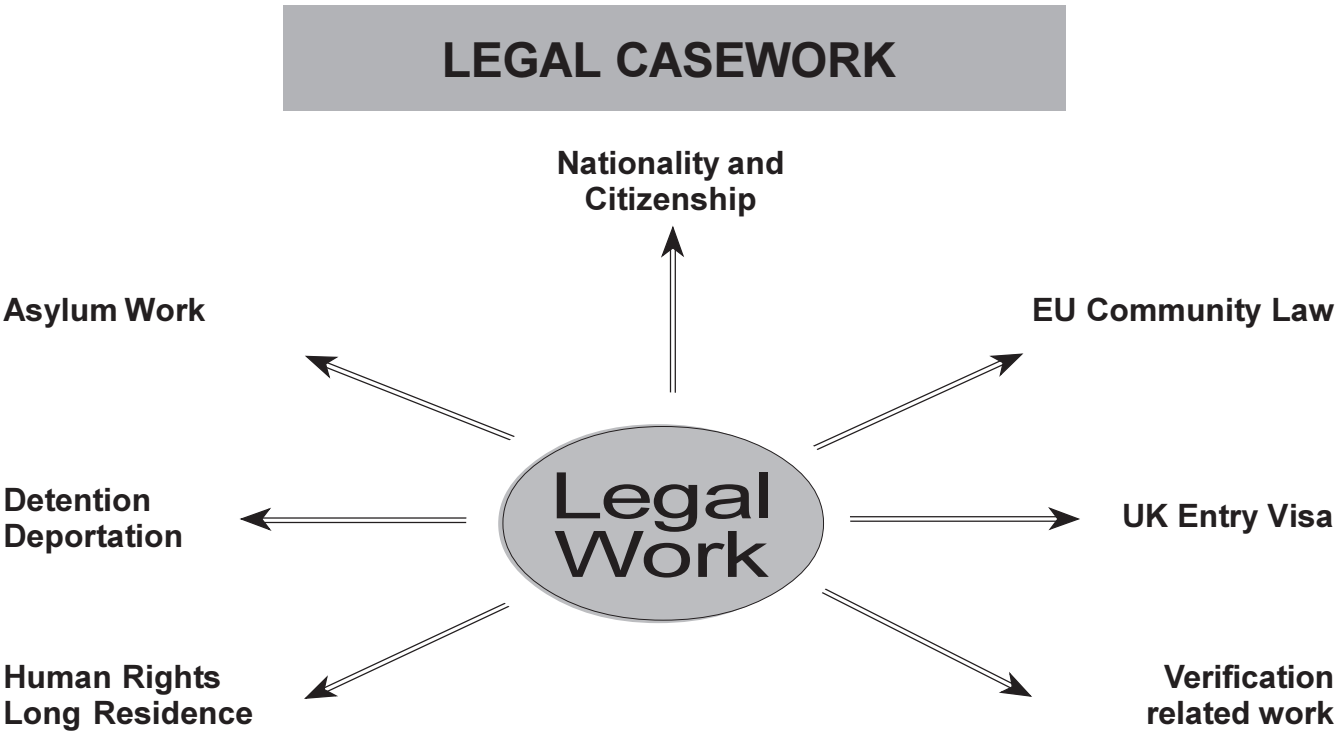
Other common areas of assistance for our clients are welfare benefits, housing, employment, health issues, consumer and debt advice, and family matters. On welfare benefits, most of our client's applications for benefits are refused in relation to their immigration status, the significance of which is wrongfully understood by the benefit officers or assessed wrongfully by the officers. On most occasions we managed to reverse the decision through review request. If this is not successful we take some cases to a benefit tribunal

court hearing. In Housing, most of our work is related to tackling homelessness of Tamil community and preventing members of our community from becoming homeless through advice and legal action. Due to Home Office policy on failed asylum seekers we have a number of cases to deal with in relation to homelessness and starvation. This issue of homelessness is also linked with mental health of some of our users. Post Traumatic Stress Disorder (PTSD) often caused by their past experiences of war and their uncertainty about their future in the UK. Mainly the victims of torture think that their life is helpless, hopeless and pointless.

The issue of employment is mainly related to immigration status. Many employers target on immigration status to dismiss a particular worker. The Home office policies are neither clear nor transparent on this issue. On some occasions there are contradictions between their policies on issuing permission to work for asylum seekers and failed asylum seekers. Moreover, lack of understanding about the employment law and system, coupled with language barriers, creates problems for some members of the community. Most of the matters are dealt through negotiations with employers or making representation to them. On few occasions we have lodged appeals with the employment tribunal.

Users continue to approach us for advice on their rights with relation to healthcare matters, which are frequently related to their immigration status. On some occasions, people with limited visas are issued with huge bills for their emergency hospital treatment. This is despite the fact that most of them are entitled for free NHS medicine under the NHS's guidelines. Guidelines in fact state that asylum seekers and failed asylum seekers can be deemed as 'ordinarily resident' in the UK and should not be charged for treatments that UK citizens are not charged for. Another common issue related to healthcare is the problem of GPs unwillingness to register asylum seekers or failed asylum seekers.

Helping and guiding our members in relation to debt, including education on better financial management, makes up our day-to-day work. Where appropriate we will approach the County Court for a judgment to solve their dispute. We also help clients in preparing financial statements and find solutions such as Individual Voluntary Arrangement. We try to negotiate with creditors on behalf of the client in an attempt to reduce their debt burden. This system is frustrating for the victim as it can take a long time and a lot of work on our part to get a just solution for them.



Nationality

Most of our users obtain citizenship in the UK, by Naturalisation and Registration. As part of our community settlement programme, many of our members of the community have given up their country citizenship and become citizens of this country. Due to the years of unrest in Sri Lanka, many refugees wish to become citizen of this country when they are entitled to do so, or when they have completed the necessary period of stay in this country, because there has been no lasting improvement in the political and humanitarian situation in their country of origin.

Under the British Nationality Act 1981 there are four ways of becoming a British Citizen. These are as follows:

(i) By Birth

Under the Act, those persons born in the United Kingdom after the 1st of January 1983 are British citizens only if their mother, (or their father - providing he is married to their mother) is settled in the United Kingdom meaning that they have indefinite leave to remain in the United Kingdom.

(ii) By Birth by descent

Under the act those who are born outside the UK, to a mother (or father if married) who had his or her citizenship by birth adoption, registration or naturalisation. The Government intends to extend the right accorded to those born of British mothers overseas after the 7th February 1961 to register for British Nationality, to include those born after this date also. Those born of a British father (if married to the applicant's mother) overseas will have acquired citizenship at the time of their birth.

(iii) Acquisition by registration

Children born in the UK, but not born British, may make an application whilst they remain minors to be registered as British Citizens. They may make this application by right or discretion. In circumstances where the application is made by discretion, the Secretary of State would consider where the future of the children lies. He would take into consideration the length of stay in the UK and other connections of the child in the UK.

There are two routes for naturalisation, either by naturalisation based on five years residence in the UK or naturalisation based on marriage or civil partnership and residence in the UK. Some of the requirements for naturalisation, such as age, capacity and residence requirement need to be satisfied at the date of application. Other requirements such as good character, language skills and intentions need to be satisfied at the date of consideration.

The main way in which adults may become British citizens is through naturalisation. Those under 18 cannot naturalise to become British citizens. Naturalisation is formally at the discretion of the Secretary of State but, if the requirements set out in the legislation are met, it is generally granted. Refusals are normally based upon one or more of the requirements not being met. An application for naturalisation has to be supported by two referees who are British citizens.

The Proposals to create a new clear framework for the journey to the clarifying routes to citizenship will affect all those who would otherwise have sought settlement under the long residence rules or rules on those seeking to exercise rights of access to a child. There would be three stages along the path, beginning with temporary residence. Some temporaries will move up the ladder to probationary citizenship, a further temporary stage where they must demonstrate the right to progress. The rest will slide down a snake to expulsion. The climbers then go up the next ladder to citizenship or get indefinite leave to remain, called permanent residence. The remainder must leave the UK. The route from probationary citizenship to British Citizenship will be shorter than that from probationary to permanent residence, so as to discourage people from choosing permanent residence. Therefore migrants must along the road, work hard, pay taxes, obey the law, improve their English and demonstrate' active engagement in the wider community' if they want to be citizens.

Criticisms of the Immigration and Citizenship Bill

The overall impact of this bill on the framework governing the mobility of immigrants in the UK towards citizenship and permanent residence is

to extend the periods of time for which migrants must remain as migrants. As these measures are introduced, the number of people within the UK who have been classified as migrants at any given time will increase significantly. This is likely to adversely impact upon the relations between migrant and indigenous communities, and to result in the expansion of imbalanced two tier system of residence within the UK. In addition, it will exclude a minority of people from ever obtaining citizenship or permanent residence and thereby formalize an underclass of resident within the UK.

Taken as a whole the measures will increase the number of people who have foreign national status and who may be vulnerable to routine deportation procedures in the event of a criminal conviction.

Impact upon Refugees

Article 34 of the Refugee Convention requires Contracting States to facilitate the assimilation and naturalisation of refugees as far as possible, and, in particular, make every effort to expedite naturalisation process.

We have recently received a case whereby the Home Office has refused an application for citizenship, on the grounds that the Applicant, a Refugee and Sri Lankan Tamil, had allied himself with the LTTE. This engagement with the group was relied on by the Home Office to prevent the applicant meeting the 'Good Character', requirements of his citizenship application, despite the fact he had faced no criminal convictions within the UK and had not been excluded from refugee status by any of the relevant exclusion criteria. It is our concern that the approach of the bill, to allow even minor offences to hinder the acquisition of citizenship and permanent residence, will result, in greater, and manifestly unfair, reliance on acts committed by applicants prior to the arrival in the UK and within the turmoil of civil war, where human rights abuses are perpetrated by state and non state entities. Additionally, there are no Appeal rights for those who are refused citizenship which means that failed applicants have no means of opposing their decision, even where they have reasonable grounds for doing so. We believe the Home Office should introduce a framework of appeal, if it seeks to challenge in this way, the ability of those who have already obtained refugee status, to achieve Permanent Residence or Citizenship.

Voluntary Work

The new provision enabling migrants to reduce their qualifying periods for naturalisation in cases where they undertake voluntary work is likely to unfairly prejudice the length of applications of refugee and migrant communities. The possibility of payment for these activities is expressly precluded. Many of our clients are on low incomes and their employment frequently spans long and unsociable hours, it may simply not be feasible for them to additionally take part in unpaid work simultaneously. As noted below, they will not be able to access non contributory benefits during this time. The bill has not yet laid out the nature and length of work will be categorized as voluntary, it will be important that the government ensures that the terms of this work are not overly onerous or activities which ought properly to be conducted by the local authority or council for example. Therefore, whilst we as charity cautiously welcome any drive to encourage voluntary activity in the UK, it is important that a pragmatic and discerning approach to ensure that work designated as voluntary is tailored to the skills and resources of the volunteer, and equally well apportioned the needs of the organisation they are benefiting. This will ensure a high standard of work in the field and maintain the integrity within the meaning in what constitutes voluntary work.

Access to Benefits

Statistical data consistently demonstrates that disproportionately high numbers of refugees and migrants are living below the Poverty Line. Previously benefits have formed an important source of support, allowing for education, training and the establishment of adequate childcare arrangements in the transition to permanent employment and integration in the UK. It has greatly helped the effective settlement of migrant communities, their establishment and most importantly their contribution to the UK's economy. Under the new measures, the period of probationary citizenship will confine applicants to receipt of non contributory benefits,

therefore increasing the hardships already faced by refugees and migrants. This change is likely to exacerbate difficulties in maintaining family life, particularly for single parent families, and hinder the speed of integration of these communities into Britain

Case Study 1

Mr. S.V. arrived in the United Kingdom in 1999, and was granted Indefinite Leave to Remain in 2007. He made an application for British Citizenship in 2008. As of the 1st November 2005, all applications for naturalisation are required to demonstrate that they have sufficient knowledge of language or life in the United Kingdom.

Mr. S.V. submitted with his application ESOL skills for life speaking and listening certificate entry 1 from City and Guilds, New London College. However, the application was refused on the basis that the course he completed were not sufficient to meet the language and life in the UK requirement set out in Home Office Guidance.

We advise our community members to take care when enrolling on courses in order to meet this requirement. The students are required to check with the college that they are attending the appropriate course to support their applications and also that the institution is authorized to provide these courses for this purpose. Any applicant for citizenship must either have passed the Life in the UK test, or have completed an ESOL with Citizenship course at entry level 1, 2 or 3. This must not consist of only one unit or module, or comprise only reading and writing units.

Case Study 2

In another case, the Home Office has refused a user who applied for Citizenship and submitted an Entry 1 Speaking and Listening ESOL course certificate. However, the college has advised us that this ought to meet the requirement for citizenship, as it consists of two modules as is required, and these are speaking and listening. We have therefore resubmitted the application with a certificate and requested a review of the initial decision.

Case Study 3

Mrs. G.K. arrived in the United Kingdom with her husband in 1998, and both claimed Asylum and were refused. After exhausting their appeal rights they made a fresh Human Rights application and whilst awaiting a decision on this application, made an application under the Family Amnesty Exercise in 2004. Their status at this time was that of Temporary Admission. She and her husband were both granted Indefinite Leave to remain under the provisions of the Amnesty. In 2008, they entered an application for British Citizenship. At the time of Application they had been resident in the UK for approximately 10 years.

This application was refused on the basis that they had failed to meet the requirement set out at section 5 (2 a and d) of Schedule 1 of the British Nationality Act, that the applicant was in the country for five years and was not during this time, in breach of immigration rules. This was the period spanning 2003 –2008.

The Home Office argued that prior to the submission of the Family Amnesty Application the client was resident in the UK in breach of Immigration Laws as their status was classed as Temporary Admission. However, the Home Office has discretion to waive the requirement that time spent in this status will be treated as a breach of the immigration laws and previously the majority of our clients were able to use periods spent on temporary admission to contribute to their five year period of residence in order to meet the requirements of the relevant Act. The Home Office refused to exercise their discretion in the case of Mrs. G.K. and her husband and also not provide a proper reason for this.

We strongly believe those who have claimed asylum, and are subsequently granted status in the UK, should have periods spent on temporary admission in the five year qualifying period to be treated as lawful residence. We are currently investigating how this decision can be challenged.

Case Study 4

Mr. N.K came to the United Kingdom in November 1999, and claimed Asylum. The Home Office initially refused his claim, and later his Appeal against refusal was allowed and he was granted Refugee Status in May 2005. In June 2007, he made a naturalisation application with his family. Whilst his wife and three dependent children were duly granted citizenship in August 2008, Mr. N.K's application was refused on the basis that he had failed to satisfy the good character requirement set out in the British Nationality Act 1981. The Act has

provided no definition of what shall constitute good character; however the Home Office has set out their approach to the matter in Annex D of the Nationality Instructions. The Home Office relied on the following reasons for their decision. Firstly, that Mr. N.K had acknowledged that he was a full time supporter and employee for the LTTE. Secondly, that he had participated in military engagements on behalf of the organisation, and admitted assassination of member of a rival political party. The Home Office took the view that despite the fact that Applicant had been granted Refugee Status, and had not been prosecuted for any offence, his past activities with the LTTE "clearly cast doubt" on his good character. We have made representations to the Home Office that their decision is unjust, in view of the following. First, there is an absence of any criminal behaviour, committed by the applicant in the UK. Secondly, his activities within Sri Lanka were committed in the midst of the ongoing civil war, in which both the government and insurgency groups have been involved in a bitter-armed conflict. (The Home Office has also not done a proper and informed analysis of NK's past behaviour while he was in Sri Lanka) They have not properly, informed analysis of the applicant's past behaviour. Finally, the Home Office is not complying with the obligation in respect of the facilitation of the naturalisation of refugees in accordance with Article 34 of the Convention.

As there are no appeal rights offered against refusals of citizenship, we are now seeking advice as to the merits of this case for Judicial Review proceedings.

Case Study 5

Children cannot be naturalised. If they were not born to settled parents (either parent) then registration will be their route to British Citizenship. Under the British Nationality Act 1981 sec (4) Children who were born in the UK, have a right to register as British Citizens if one of their parents acquires Indefinite Leave to Remain, or if the child remains in the UK for 10 years of their life and is not outside the UK for more than 90 days during this period. In addition, a person who acquires British Citizenship is permitted to register their child as a British Citizen, provided that if the child is born before 2006, and it is the father who has acquired citizenship, he is married to the mother of the applicant.

Children, who were born outside the United Kingdom, may be registered as British Citizens as part of a family application for Citizenship when their parent(s) are eligible to do so.

Alternatively, an application to register a child can be made at the discretion of the Home Secretary under BNA 1981 sec 3, taking into consideration a range of factors such as the child's connections with the UK i.e. whether they have ILR, and their length of residence in the UK.

Mr. AT wished to apply for his dependent children, who were born in Sri Lanka, to become British Citizens. All three members of the family acquired Indefinite Leave to Remain in the United Kingdom in 2003, and Mr. AT acquired British Citizenship in April 2005 and entered an application to register his children in 2008. This Application was granted.

Case Study 6

Mr. P.M wished to apply for his dependents to be registered as British Citizens. He and his son were granted Indefinite Leave to Remain in 2005. His daughter was born in Sri Lanka but was not granted Indefinite Leave to Remain but has been living in this country for more than 5 years along with her brother and father.

An application was made for child registration; it was however refused under section 3(1) of the British Nationality Act 1981. The registration of minors under this provision is at the Secretary of State's discretion and it was stated in the decision letter that as neither Mr. PK nor his wife were British Citizens, minor born outside of the United Kingdom, will normally not be registered in these circumstances. It was further found that there were no grounds to treat the application as exceptional. They were advised that a fresh application could be made when one of the parent's becomes a British Citizen.

Case Study 7

Mr. R.K. was recognized as a Refugee in 2001, and granted Indefinite Leave to Remain in the United Kingdom. In April 2008, he entered an

application for Citizenship. He had no criminal records. This Application was refused 5 months later on the grounds that he had failed to meet the Good Character requirement referred to in British Nationality Act 1981. They relied on Mr. R.K.'s conviction in July 2008, and after his application had been entered, for a road traffic offence at West Kent Magistrates Court. As the court stated that the conviction would be considered spent after a fixed period, we advised our client at that point to ensure his details had been removed from the listings of records and then make a fresh application.

Asylum

The number of Asylum Claims made by Sri Lankan Tamils rose during 2008 significantly. This was a reflection of the escalation of the civil war in Sri Lanka and further human rights violations. The charge made by many critics of those seeking Asylum, is that they are in fact economic migrants. However, we consider the proportional increase in claims from Sri Lanka, in line with the military conflict unfolding there, to undermine that proposition. The Home Office statistic records show a high number of refusals of Asylum claims from Sri Lankan Tamils; however, higher courts subsequently allowed many of their appeals. Those people were given protection through the appeal system.

Sri Lanka was removed from the Secretary of State's "White List" countries at the end of the 2006. Before this occurred, many asylum Applicants had their claims certified and were removed without appeal rights. Those who wished to challenge their removal, were forced to resort to Judicial Review proceedings, however many applicants were unable to engage these process due to the restrictions placed on Legal representation providers available to those being detained within detention centres. The Immigration Advisory Service and the Refugee Legal Centre have limited resources to address judicial review proceedings, and would therefore, frequently forced to withdraw from claims after certification. At this point, the applicant's only option was to seek private legal representation from another source. This was not practicable for many of those due to the conditions of their detention and lack of adequate information as to appropriate available providers. Therefore many applicants were removed without the benefit of having Judicial Review pursued, where it merited being so. This situation was compounded by the Legal Services Commission introduction of restrictive measures on Legal Aid provisions for Asylum cases, which caused many firms previously representing in this field to close their publicly funded asylum work. This limited choice available to Asylum Applicants further and in particular to those in detention.

After 2006, the Home Office was forced to reconsider many of the claims which had previously been certified in the forms of fresh claims based upon Sri Lanka's removal from the White List. This has created a significant backlog of long standing cases and these are now referred to legacy casework section of the Home Office. The time frame set for resolution of many of these cases is now 2011. This leaves clients in a state of uncertainty, and burdening the Home Department and Practitioners alike, with unnecessarily prolonged cases. Outset of the country inclusion on the list TWAN made repeated representations as to the inappropriateness of this measure. We believe this decision was considered and too hastily taken and informed by a lack of forethought. A ceasefire agreement in a 25 year conflict will at best be the tentative beginning of a resolution to a conflict and not an indication of its end itself. Sadly, this has indeed proved to be right, looking at the course of events unfolding there.

Notwithstanding Prime Minister's statement on the 14th January 2009 acknowledging the "terrible violence" occurring in Sri Lanka and the need for a ceasefire – the resources relied upon by the Home Department in reaching their decisions are frequently poorly researched and out of date. For example, the 'Country of Origin Reports', cited by the Home Office often contains a distorted appraisal of objective evidence and is constantly challenged in Appeal hearing on this basis. In order to do this, we frequently instruct Country Experts to produce reports to counter findings made by the Home Office, as well as relying on our own sources of information and research. If these reports were more carefully put together in the first instance it would remove the need for this additional burden on the public purse to be made so often.

Protection

The right to seek and enjoy asylum from persecution is guaranteed in one of the earliest human rights instruments adopted by the United Kingdom: The Universal Declaration of Human Rights. It finds expression in the 1951 UN convention relating to the Status of Refugees.

This kind of protection is not in our view, being properly implemented by governments of the United Kingdom. Indeed, the trend towards criminalisation of those who arrive in the United Kingdom to claim asylum is a matter of serious concern. The source of these developments can be found in the offences established by the Asylum and Immigration (Treatment of Claimants, etc) Act 2004.

There is no legal way to enter the country in order to make a claim for asylum. Therefore, many asylum seekers are forced to enter the country illegally and on the basis of false documents. They are then labelled illegal entrants. Further, those seeking asylum are frequently forced to make an application for a visa under a false identity in order to secure their passage to the United Kingdom, their being no lawful way to enter the country to make an Asylum Application. Now many applicants claiming asylum at ports are forced to spend 3 months in prison as a consequence of their reliance on these documents. Only on release they could make an application for asylum. However, this measure fails to take into consideration the context of many applicants' flights from their country of origin, where concealment of their identity is crucial. Indeed, many applicants who apply for visas to the United Kingdom on their own names, and subsequently apply for Asylum, have the credibility of their accounts challenged on that basis.

Case Study 8

Mr. R.M. came to the United Kingdom in October 2008 and claimed asylum at Heathrow Airport without a passport. He was charged with illegal entry and was convicted at Uxbridge Magistrates Court the following day. He pleaded guilty and explained in mitigation, that his life had been in danger in Sri Lanka. He was sentenced to 3 months in prison. After his sentence he was released with temporary admission, and approached TWAN for representation. He is presently awaiting his full asylum interview. He now has a Criminal Conviction to his name which will remain on his record, even if he should be subsequently recognized as a Refugee.

Establishment of 'Real risk'

The fact that a country is engaged in a Civil War will not entitle residents of that country to claim Asylum. Refugees must demonstrate that by virtue of a convention reason they are at a real risk of serious harm if they return to their country of origin. Person must have well-founded fear of persecution by the agents of government and if there is no internal flight option, the person could flee from the country to seek protection for his life. Objective situation is not sufficient for a person to seek asylum; but his/ her subjective fear will have to be proved.

The Convention Reasons

The reasons engaged by the Convention include: actual and political opinion, racial or ethnic identification, religious belief, and particular social group.

Well Founded Fear

The claimant must demonstrate that there is an objective fear of serious harm on return of the claimant to his country of origin.

Serious Harm

This may consist of detention, torture, or long term discrimination and differential treatment which cumulatively amount to persecution.

Absence of Sufficient State Protection

It must be demonstrated that the State and its agents are not able or willing to provide effective protection to the claimant.

Internal Flight

It must be proven that the claimant could not avoid the risk they fear in their country of origin by relocating to a new area of the country. If

they are able to do so, then they will not be able to succeed in their claim unless they can demonstrate that it would be unreasonable for them to relocate.

Procedures in claiming Asylum

There are two ways to claim Asylum either as a Port applicant or an In-country applicant. A port applicant claims on entry to the UK, so for example on passing through border control. And in country applicant claims after having entered the UK successfully passing through or evading border controls. Those who claim asylum in country will have to do so at a screening unit based in Birmingham, Liverpool or Croydon.

The Asylum and Immigration (Treatment of Claimants, etc) Act 2004, provides that those seeking asylum must do so at the earliest opportunity. The Act requires that an 'adverse inference' is drawn in respect of the credibility of their claims of those who waited before claiming Asylum without reasonable cause for so doing. The advantage for the claimants at port is that they will not have their credibility damaged by the date of their claim. They will also be automatically entitled for NASS support. However, there is an ambiguity over the numbers of port applicants, which arrive in the UK, as the UK Borders Agency does not allow for independent verification of those people who arrive in the UK and make a claim for asylum.

There have been allegations that certain port applicants, have not had their request to claim asylum recorded and considered, and have simply been returned to a 'safe country' on the grounds that they have entered the UK without a visa. Port applicants are also more likely to be detained, as any credibility issues arising from their documents will mean they will be subjected to investigation. Those Port applicants from White List countries are more likely to be subject to deportation than, the In-country applicants. This is caused by a combination of issues, including the likelihood of fast tracking of port applicants and their lack of exposure to a range of legal representation and community assistance.

The absence of independent legal advice prior to screening interview, and the ability of representatives to scrutinize the immigration officers record in light of initial instructions leaves claimants vulnerable to inaccurate recordings of their claims. In contrast, In-country applicants are able to seek legal advice before attending their interview, and in complicated cases charitable organisations like TWAN may be able to provide representation at the interview itself, even though Legal Services Commission funding is not available for this. Port Applicant's who have passed through and resided in a safe third country, will be more likely to be deported to those same countries, not withstanding that their claims will not be substantively considered when there are merits for doing so. For example, the system of legal protection for human rights of claimants varies considerably among those countries who are signatories to the Refugee Convention. The United Kingdom offers stronger implementation of the ECHR through the Human Rights Act, and is at the forefront of the latest legal developments in the field.

In respect of in-country applicants, they will have the advantage of the security of having been able to establish themselves, to a limited extent, in a safe country, and will benefit from a broader range of legal and community representation to assist them in their claim. However, importantly, they will have their failure to claim asylum on arrival negatively impact upon their asylum claim, unless they can provide an explanation which reaches the high threshold of what is considered "reasonable" for not doing so under the 2004 Act. In-country applicants can limit the adverse inferences drawn on their credibility by ensuring that they claim asylum as early as possible after entering the country and obtaining legal representation.

However, they may be better equipped to overcome challenges to their credibility, and, importantly, to understand the meaning of their convention rights, and the procedures governing their screening and SEF interviews, with the benefit of legal advice at the outset of their claim. However, on the other hand in country applicants are putting their access to NASS benefits at risk, as there is a possibility they will be excluded from receiving them on the grounds that they did not claim asylum at the earliest opportunity.

Overall, it would appear that institutional failings, including the lack of timely access to independent legal advice, and the higher risk of detention and fast tracking, means that the present system discourages port applications from being made and favours instead in-country applicants, despite the negative impact drawn upon their claims as a consequence of their date of claim. TWAN would urge the Border Agency to review its procedures to allow for applicants at port to be released on temporary admission in order to secure legal representation, before undertaking their screening interview. The likelihood is that reforms to the processing of Port Applicant would increase their proportion amongst the total number of applicants.

Certification

Since Sri Lanka's removal from the White List of safe countries most asylum seekers claims are properly considered, with a right of appeal. However, a claim found to be lacking merits, can be certified without in-country appeal rights and dealt with, in a fast track procedure. It is important that our users are aware that this remains a possibility, despite Sri Lanka's removal from the list of designated countries.

New Asylum Model (NAM) and the new interviewing techniques

In April 2007, the New Asylum Model was implemented. This introduced a new system for the administering of Asylum claims.

Now, each claimant for Asylum whether at port or in country, will be assigned a Case-owner who will be responsible for the case from the Asylum interview stage until the applicant is either removed from the UK or granted leave to remain.

We are advising all applicants to either take a Legal Representative to their interview, or to ask their Legal Representative to request that their interview is tape recorded. The Applicant themselves can also request a tape recording but this must be done two days in advance of the interview, according to present guidance.

We have come across cases where NAM case owners have completed the Native Document Application interview, immediately prior to the Asylum interview. This interview is essentially a passport application for the applicant's country of origin. It is conducted in anticipation of an unsuccessful Asylum claim or Appeal, which will require the applicant to be removed from the United Kingdom. Signing this document will facilitate, especially for clients who are in detention when their court decision is served, the fast tracking of the applicant's removal and reduce the time limits available for statutory review. Applicants can refuse to sign this document and when they do so, the NAM case owner is required to accept this decision. However, the matter will be recorded as Section 35 of the 2004 Treatment of Claimants Act however, whilst prosecution will rarely take place under the section, the applicant could be subjected to detention or daily reporting requirements as a consequence.

Case Study 9

Mr. M.K. came to the United Kingdom, with a visit visa for 6 months, and claimed asylum a few days after his arrival at the Home Office in Croydon. He was asked to attend for an interview by the NAM case owner in the middle of August 2008, at the beginning of the interview, his bio data was taken and a Sri Lankan Travel document was processed. When he was asked to sign the travel document, the applicant refused, and explained that he had attended for an asylum interview, and was not willing to sign a passport application before his asylum claim had even been considered. The Case owner, threatened him that he would not be able to have the Asylum interview if he did not sign, and he would be punished or prosecuted under the Asylum and Immigration Treatment of Claimants Act 2004. Finally, the applicant was effectively forced to sign the document against his will. After this event he explained to us that he believed incidents like this happened in Sri Lanka only, but he discovered that it also occurs in the United Kingdom.

Case Study 10

Mrs. Y.B. arrived in the UK in September 2008 and claimed Asylum on arrival. She was granted Temporary Admission. Her substantive interview was scheduled two weeks later, and TWAN requested that it be tape recorded in accordance

with best practice. On reviewing the written record of her interview, the client informed us that there were several instances where the question recorded in the transcript as being asked by the Home Office Case owner was not the same as the one which the interpreter had asked the client. On listening to a sample of the interview on tape a series of discrepancies emerged between the client's responses and the interpretation of the same by the Home Office interpreter. We have now requested further time for representations on this matter to be made to the Home Office. We have also made an application for further funding to the Legal Services Commission to obtain a full independent translation of the complete interview record. This will enable us to make an informed challenge to the interview record and request that it should be disregarded and commenced afresh. These representations will be made in the first instance to the Home Office and if necessary to Court Review.

Case Study 11

M.K. was a 33 year old man who claimed Asylum in 2007. He was a port applicant. The basis of his claim was his target by the LTTE for not allowing the grocery shop he owned in the north of Jaffna, to be used as a cover for militants from the organisation in passing and exchanging intelligence. He subsequently relocated to Jaffna Town and was detained for three days and tortured by the Sri Lankan authorities there. He was released with the condition that he should report 5 days later. At this point M.K made arrangements to flee the county with his family members.

M.K was considered under the New Asylum Model. Under this scheme the substantive interview of claimant is frequently set too quickly to enable the representatives sufficient time to take a substantive statement before the interview is held. In this case, TWAN made representations that a referral to the Medical Foundation had been made. Under the Asylum Policy Instructions, once the foundation has agreed to provide a report for a claimant, the decision making time frame should be extended until such time as a report is received: it serves to "stop the clock".

This claim was refused prior to receipt of the report. Currently the decision to refuse the application has been withdrawn.

The reasons for Refusal Letter outlined the following issues for refusing M.K's claim

1. It relied on generic country of origin information to undermine M.K's claim to have been a victim of persecution by the army: he was considered to have been an innocent victim of the perpetrated attacks on Tamil civilians caught up in the increased fighting between the LTTE and Government forces in 2007. Further, his detention was found to be plausible only in so far as it took place as part of a mass "cordon stop and search" operation documented in country reports.

2. It was stated that it was implausible that the claimant could work as a spy for the LTTE and not have been identified as such by the army for a year.

3. Minor discrepancies as to dates were relied on as inconsistencies which undermined claim.

4. Consistencies between his witness statement and his interview were dismissed as holding "very little weight" as the witness statement was prepared after the interview took place

5. His claim to be a victim of torture was dismissed as incredible given that no Medical Foundation Report had been submitted.

Case Study 12

N.P. claimed asylum in 2008. The basis of his claim was that he was tricked and coerced into supplying iron, torch batteries and aluminium utensils to members of undercover LTTE operatives from Vauvuniya. He was threatened that if he failed to continue supply these items he would be killed. He was arrested at Chi law police station and later handed to the police in Colombo. He was released following 40 days of detention with a monthly reporting condition. He complied with these conditions, but on each occasion of reporting he was beaten. He

continued with his business and travelled to Colombo to make an application for a visa to the UK through an agent. The visa was issued in his own name. Subsequently, a vehicle owned by his company was unknown to the claimant found to be carrying bomb-making equipment and the vehicle was searched. At this point the claimant fled fearing he would be implicated in the incident using the visitor's visa he had applied for to enter the UK.

The Refusal Letter relied on the following issues:

1. Inconsistencies in the dates of his claimed problems in Sri Lanka.

2. It was found to be implausible that the claimant would comply with reporting conditions if he was being beaten when doing so.

3. It was to be unconvincing that the claimant would be able to travel to Colombo without encountering more than one checkpoint and without difficulty when doing so given that he was a suspected terrorist suspect on bail.

4. The claimant's travel to the UK on a visitor's visa was used to undermine his credibility.

5. The scarring, which the claimant submitted was incurred through mistreatment in detention, was found to have been attributed to other causes in light of the incredibility of the rest of his claim.

Other and General Reasons for Refusal frequently cited are:

(i) Failure to meet the risk factors set out in the country guidance case of LP (LTTE area – Tamils- Colombo-risk?) CG [2007] UKAIT 76, which finds that claimants of Tamil ethnicity who have claimed asylum may be at a real risk of serious harm if the certain factors are applicable to them including: having 'jumped bail", have an outstanding arrest warrant, having previously signed a confession, having family members in the LTTE, presence of scarring and a lack of an ID card and other documentation.

(ii) Ability to live safely if they were to relocate from their home area to Colombo on return to the country

(iii) Peace time campaigning activities for the LTTE will not create adverse suspicion from the authorities

(iv) Scarring found to be unreliable evidence of torture in light of adverse credibility findings

(v) Failure to claim on arrival in the UK found to undermine credibility.

(vi) General Implausibility of claims

Inconsistencies and Credibility

It is TWAN's view, Home Office places too much weight upon dates in a claimant's case. Claimants are usually unaware how consequential inaccuracies will be for findings of their decision. Claimant may refrain from stating that they cannot remember or do not know a date and will provide an estimate which is later challenged. The line of questioning adopted in SEF interviews are most of the time complex, confusing and given the lengthy duration of most interviews, many of the claimants have lost concentration.

In addition, cultural difference as to the importance placed upon dates, as opposed to events, between Sri Lanka and the United Kingdom is unacknowledged in the assessment process. A benefit of the tape recording interviews, we are able to trace questions asked, and the number of times the same question was asked to see the context and accuracy of responses provided and relied on in the Home Office Reasons for refusal letter. Whilst it would be reasonable to expect accurate recollection of very significant dates, more minor dates ought to be required only to be approximated to the best of the claimant's ability. Further, the internal movements of claimant's in their country of origin are often fast paced and performed under extreme pressures and fears, therefore identifying places previously stayed at, the dates of arrival and departure from the area, and duration, are often understandably vague. Interviews should not be a test of memory but an opportunity to provide a record of their claim.

Implausibility

Findings of Implausibility are often made without an informed understanding of the country

situation. For example, how a claimant can describe himself as a wanted person and yet managed to secure his release by bribing a police officer? How a claimant was able to escape from army custody? These incidents are often occurring in temporary camps in newly army occupied areas, which allow for evasion of the authorities because of shortcomings in resources and control by the army in these areas. Indeed there are examples of inmates escaping detention from even more secure prison facilities in other areas of the country. Another 'implausibility" regularly cited is how a person was able to pass through checkpoints without being identified by the authorities, or how they were able to leave the country on their own identity documents. If the case owners are not convinced by explanations provided, they ought properly to put this to the claimant at the interview, and ask for the claimant to assist them as to how or why a particular event occurred.

Peace time Activities with the LTTE

The prevalence of security checkpoints and arbitrary detentions means, frequently, that the army and the police identify people who have been previously open supporters of the LTTE but for whom there is no evidence or suspicion that they have actually committed a crime. These people will often be released on bail, only to later be reported missing. According to the Human Rights Watch report "Disappearances and Abductions" in Sri Lanka released in March 2008, the resumption of major military operations between the government of major military operations in mid 2006, has brought the return of the widespread abduction and disappearance of young men by the parties to the conflict. The involvement of the security forces in the disappearances is facilitated by Sri Lanka's emergency laws, which grants sweeping powers to the army along with broad immunity from prosecution.

Medical Evidence

The Country Guidance case of LP provides that the presence of scarring on a claimant should be viewed as a factor which will increase their likelihood of harm on return to Sri Lanka. This risk subsists even if the cause of the scarring did not arise from torture by the authorities. For example, many claimants have incurred scars due to being caught by overhead shelling or cross fire or even by accident. There is no requirement to provide a medical report documenting the scarring for it to be considered by the case owner – they are able to use their own sight of the scars if the claimant consents to them doing so. However, in incidents where the scars have been the result of torture, it is always advisable to have them documented by a reputable practitioner, such as one from the Medical Foundation for Victims of Torture.

These reports will also be able to assess any impact which the experience of torture may have had upon the claimant's mental well being. It is TWAN's view that decision makers whether at claim or appeal stage should provide claimant's with sufficient time to obtain a medical report if they wish to rely upon one. If decision maker fails to do this, this will leave them open to further appeal or to an additional cost to public expenditure if the claimant's submits a fresh claim on the basis of such a report.

The submission made above is compelling in light of the decision of the European court in NA vs. United Kingdom - paragraph 131, that the information before it pointed to "systematic torture and ill treatment by the Sri Lankan authorities of Tamils who will be of interest to them in their efforts to combat the LTTE".

Internal Relocation

The practicality of a Tamil travelling from the South of the country to the North has become near impossible following the closure of the A9 highway, the arterial route linking the regions. This is now closed to civilian traffic. The unavailability of a safe route of travel to these areas means that all refusal letters will rely on the viability and reasonableness of those who originate from the North or East of the country relocating in the south.

Presently, Sri Lanka is in a state of Emergency after the government declared the position invoking the dark emergency legislative provisions. On their return the majority of asylum seekers are returning with an emergency travel document enabling the authorities to identify them as failed asylum seekers. Persons travelling without valid identity documents or those who have left the country on a false passport under irregular or suspicious circumstances are likely

to be singled out for questioning. The state of Emergency powers permits arrests without warrants and the detention of people for up to 12 months without trial.

If a person is suspected of terrorist activity, they can be detained under the Prevention of Terrorism Act indefinitely. The Sri Lankan National Intelligence Bureau keeps records of people dating back more than ten years and since 2004, has been using a national computerized database.

In conversations with police and in the media the authorities have openly referred to physical examinations being used to identify whether suspects have undergone military style training.

The methods employed by the authorities in questioning detainees, frequently include torture and serious physical mistreatment. The country information points to a climate of impunity where such actions are endorsed by those in high ranking positions as necessary and legitimate to security considerations.

For those who are able to pass through the airport without detention, they will face serious difficulties if they attempt to establish themselves in the South of Sri Lanka. Tamils originating from the North and East of Sri Lanka, are not able to register themselves for residency in the South of Sri Lanka, and are forced to remain there without permission leaving them vulnerable to harassment at security checkpoints on the basis they are not in possession of a residency permit. They will then face a risk of detention and questioning, and if they are released it will be on the warning that they ought to leave the area and return to the North and East. There have been reported incidents of mass arrests of those who have been previously warned to leave, and their transportation back to the North and East of the country[1].

It is unreasonable to expect Tamils to relocate in an area where they are unable to understand the language and where they will face high levels of discrimination in the provision of employment and education. If they are not able to register for residence this will result in further inability to access basic services and facilities.

According to the UNHCR Report from 2006, which remains the most up to date statement of the organisation's guidance following the expulsion of many Non Governmental Organizations from the country, it states that no Tamil from the North and East should be forcibly returned until there is a significant improvement in the security situation in the country.

Asylum Hearings

There are two hearings for each Asylum Appeal, Case Management Review Hearing (CMRH) and Substantive Hearing.

CMRH

The purpose of this hearing is to identify the issues in the case and establish the readiness of both parties, the Home Office and the Appellant, to proceed to the main date set for the hearing. However, in practice, it is not helpful to any of the parties because the Immigration Judges are very reluctant to accept request for adjournment, or an extension of the time designated to the duration of the hearing in advance of it. There is also a lack of flexibility in Legal Services Commission funding to allow staff to attend the Case Management Review hearings. Under the Allocated funding for the Not for Profit Sector, there is insufficient funding available for Counsel to attend these hearings, and the vital time of caseworkers is lost attending CMR hearings, when this could be spent in frontline casework.

Case Study 13

The Appellant arrived in the United Kingdom on the 17th December 2007. She claimed she had been a victim of torture and rape by the Sri Lankan armed forces.

TWAN contacted the Medical Foundation requesting an appointment before a decision was made. The first appointment was cancelled and

[1] Tamil Net- Thursday 07/06/07, reports the forcible expulsion of 500 Tamils to Vauvuniya and Batticaloa. Other mainstream media from Sri Lanka have reported this event. This created a widespread international outcry, following which Sri Lankan government, temporarily halted this policy.

a second listed. However, the Home Office issued a decision to refuse the Appellant Asylum, before the appointment occurred. This was a breach of the Asylum Policy Instruction which states that once an appointment has been received from the Foundation, the clock should be stopped and no decision issued until its receipt. On lodging an Appeal, a request was made that the case should not be listed for a substantive hearing before the report was made available. However, this was not acceded and the case was instead listed for a date prior to the report being produced. We submitted a written adjournment request which was refused, and therefore instructed Counsel to attend the Case Management Review Hearing. The request for an adjournment was accepted on the basis of the oral representations at the CMRH.

At the full hearing, based upon the medical report, the Appellant's Appeal was allowed.

Case Study 14

Ms L. J. claimed Asylum and claimed that she had been a victim of gang rape by members of the Sri Lankan Army. Members of the Pro Government TMVP later killed her husband. Her account of torture went to the heart of her claim, and formed the basis of her grounds of Appeal. A written application to the court was made stating that a pre assessment interview had been allocated to her with the Medical Foundation and that the hearing date ought to be adjourned in view of this. This was refused. TWAN then made representations at the CMRH reiterating the request for an adjournment. This was again refused. The matter proceeded to a substantive hearing and an adjournment was requested at the outset of proceedings, on the basis it could not fairly proceed without an assessment of the Appellant by a specialist practitioner. This was refused. The reasons cited by the Immigration Judge for this decision included, the fact that the rape had occurred 14 years ago, and that the Appellant could have obtained her medical records from healthcare professionals. We have now lodged an Application for Reconsideration of the case, on the basis of that an adjournment of the case ought to have been granted to allow the outcome of the initial assessment of the Appellant by the Foundation.

Substantive hearing

The main hearing of the Asylum Appeal is divided into three main parts.

Stage 1

The first stage involves the evidence of the Appellant being heard by the court, including the adoption of any witness statements. Following this, a cross examination of the evidence will take place trough questioning by the Home Office Representative. Finally, there will be opportunity for the Appellant's Representative to ask questions, which arises form, the Cross Examination. Throughout the proceedings the Immigration Judge may ask questions to supplement those asked by the Representatives.

Stage 2

This will involve the evidence of any witnesses to the hearing in the same format as that described above

Stage 3

The final stage is Submissions when both the Appellant's representative and the Home Office Representing Officer will have the opportunity to put forward arguments based on the hearing and the evidence presented.

Case Study 15

Ms. M.K arrived in the United Kingdom in June 2008, the Appellant claimed Asylum in the same month and her son was a dependent upon her claim. Her claim was based on her fear that she would be arrested on return to Sri Lanka by government forces as a result of her husband's assistance to the LTTE. She had described previous harassment by the Government's forces and the subsequent murder of her husband. Her two sons were subsequently detained for a short period of time before being released before being released on bail.

She found the Appellant and her son to be consistent in their accounts and claimed family history. She also found that the Appellant had established to a lower standard of proof, that her husband was known by the authorities to be known to the LTTE. The Judge applied the

country guidance case of LP (LTTE area – Tamils – Colombo – risk Sri Lanka CG [2007] UKAIT 00076, and found that the following factors relating to the Appellant had been taken into consideration in reaching her decision:

(i) Her Tamil Ethnicity
(ii) Her husband being an actual and suspected LTTE supporter
(iii) Her sons jumping bail
(iv) Her illegal departure from Sri Lanka
(v) Her return to the country without an ID card
(vi) That her sons have been photographed and finger printed and there is likely to be a record of their arrest and detention

The Judge acknowledged the country information stating that the security situation in the country had deteriorated since the determination of LP.

The Judge decided to allow the appeal on the basis that there was a real risk of her and her son being investigated by the authorities and suffering serious harm on account of her actual or imputed political opinion during that investigation.

Case Study 16

Ms S.Y. fled from Sri Lanka to Spain in 2002. Whilst studying on a teacher training course at Jaffna College, she was pressured into helping the LTTE and gather information at various checkpoints on her way to college for the organisation.

Her asylum claim was refused and she was deported to Sri Lanka. On her return to the country in 2002, the airport police detained her for 10 – 12 days. On her return to the country, she relocated in Batticaloa and the LTTE came to know about this. The group attempted to coerce her parents into bringing her back to Killinochchi, however she refused.

Case Study 17

S.L was a young woman who fled from Sri Lanka in 2002 after being detained and assaulted by the Sri Lankan army for gathering and passing intelligence to the LTTE at army checkpoints. She arrived in Spain and claimed Asylum, however this was refused. She was removed to Sri Lanka in the same year and after being detained by the Sri Lankan authorities because they did not believe the reason provided for leaving the country. She relocated to Batticaloa where she formed a relationship with a lieutenant in the Karuna group, which was later discovered by the LTTE. She was pressured by the LTTE to return to Killonochi but refused to. She feared serious harm from both the LTTE and the Government.

S.L fled Sri Lanka for a second time in 2005. On claiming her previous claim in Spain came to the attention of the UK authorities and removal proceedings were initiated for her to be returned to Spain in line with the Dublin Convention. However, TWAN made representations to prevent this. These were based on two points. Firstly, those enquiries to the Spanish authorities confirmed that S.L was likely to be returned to the UK if she was removed to Spain. Second, that human rights, and in particular Article 3, would not be given substantive consideration as to whether it was engaged, nor prevent her removal in the event that it was. Thirdly, her second flight from Sri Lanka, added a new element to the risk she faced on return to Sri Lanka, and therefore also demanded substantive consideration under the Refugee Convention.

Therefore TWAN successfully argued that removal to Spain would leave S.L. at a real risk of a violation of Article 3 and the refugee Convention, and therefore she ought to be allowed to have her case considered in the UK. TWAN secured her release from removal centre and an Asylum claim was processed on her behalf.

The Home Office refused S.L's claim. TWAN appealed the decision and in May 2006 the appeal was allowed. The Immigration Judge found the core of S.L's claim credible, and found that the situation in Sri Lanka at the time of her removal from Spain in February 2003 had seriously deteriorated. In these circumstances her removal would place her at risk of her of further detention, greater scrutiny, and a real risk of her previous links and involvement with the LTTE coming to light. The Appeal was allowed.

The Home Office applied for reconsideration of the decision on the basis that, the Immigration Judge failed to give adequate reasons for her

findings as to why the Appellant would be at risk on return. In particular, her finding that violation of the ceasefire agreement would place the Appellant at greater risk were claimed to be not adequately reasoned nor consistent with the case of Jeyachandran (2002) UIAT 01689 approved in the country guidance case of SN [2003], which provided that only those in an exceptional category of returnees would be at real risk on return to the country. In addition, that the Judge had failed to take into consideration the Appellant's ability to remain safely in the country up until 2005, and that her previous involvement with the LTTE had been only low level.

An order for reconsideration was granted on the basis that, there had been a failure to follow an applicable country guidance case, namely SN, and there had been no reason provided as to why this case should not apply to S.L's case. Further, there was no evidence to support the finding that violations of the ceasefire would lead to S.L being subjected to more serious investigation on return to the airport.

The case was remitted for a full re hearing. The Second Immigration Judge, allowed her case on the basis that, in her view, after being returned to Sri Lanka from Spain, S.L was detained primarily due to her use of a forged travel document, and that on her return to Sri Lanka at the time of decision, she would be at the same or greater risk of being detained again. This combined with the culture of torture with impunity described in L.P. put her at real risk of serious harm for the Refugee Convention reasons of imputed political opinion and ethnicity. She was also found to be at real risk of a breach of her Article 3 rights.

The Appellant was granted five years limited leave to remain, however, is still awaiting her status documents. She remains four months after her second allowed Appeal, on NASS support and unable to take up employment.

Asylum and Dublin Convention

This case indicates that those whose claim is considered by another country, which is a signatory to the Dublin Convention, and have been refused will not always be safe on their return to Sri Lanka at a later date. The Asylum seekers who have sufficient reason to claim asylum again in the same country or another country, usually have their second claim undermined by the media and the authorities as cynically using Asylum for economic betterment. The UK Border Agency initially refused to allow S.L a substantive Asylum interview threatening to remove her to Spain under the Dublin Convention. We strongly believe, once a failed Asylum Seeker has been returned to their native country, and then taken second flight to another country to make an Asylum claim, the Dublin Convention should not be relied on and their substantive claim should be considered by the member state. Also interpretation of the ECHR, differs significantly under member states and care should be taken by the UK authorities that no risk of breach of the ECHR will be incurred on Removal to another member state, through for example the denial of full and substantive consideration of the issue with ancillary appeal rights.

Country Guidance Case

The Immigration Judge initially accepted the Asylum claim and allowed the case under Article 3 and the Refugee Convention, but the Home Office Appealed against this decision purely based on the old country guidance case of SN. The country guidance case is no longer reliable because of the significant change in circumstances in the country, and the Home Office has acknowledged this change by their removal of Sri Lanka from the White List of safe countries in early 2007. We believe that the Senior Immigration Judge, who made the finding that the failure to follow the SN country guidance case was an error of law, was mistaken in further finding that this would have made a difference to the final outcome of the case. This is particularly, in light of the more recent country guidance case of LP combined with the changes in country conditions undisputed by all parties.

Delay in releasing documents

The Applicant claimed Asylum in March 2005, her case took four years to conclude, and was finally determined in November 2008. For the last three months, she and her two children have been forced to remain on NASS support. The Home Office should improve their system by issuing

their Status documents promptly, if an Appellant's appeal is allowed. This was one of the improvements which the government claimed would result from the introduction of the New Asylum Model.

Case Study 18

T.T was a 15 year old unaccompanied minor who claimed Asylum in November 2008. During a search of his home the, literature and artefacts relating to the celebration of "Heroes Day" were discovered in the Appellant room, which previously belonged to his uncle. The Appellant, the only male in the household, was beaten and detained at Navindil camp where he was kept for 2 days. He was then taken to Nelliyadi police station where his release on bail was secured by the principal of his school. The Appellant was required to report each week, and on each occasion he was subjected to further beatings. Several of the Appellant's family members had been subjected to signing requirements previously and had been killed after a few months of doing so. TWAN made representations on the basis that the Appellant's claim was largely corroborative and credible, and relied on the country guidance case of LP (LTTE area – Tamils – Colombo – risk?) Sri Lanka [2007] UKAIT 000762. Representations were made that the Appellant should be viewed as meeting 9 of the 12 risk factors identified in LP, including Bail jumping and having relative believed to be collaborators of LTTE. The Home Office granted the Appellant full refugee status.

When unaccompanied minors claim asylum, it is hard to convince the decision maker that the young person will be at risk on his return to Colombo. This is because there is little objective evidence documenting the formal arrest and prosecution of minors by the Sri Lankan authorities. For those who have been arrested, there are no clear records of numbers who are under the age of 18. A combination of extrajudicial killings, disappearances, and the absence of independent access and monitoring, mean that these figures are not available. Further, the level of involvement of minors in political activities is more likely to be low level than those of adults. It is therefore harder to prove that they will be wanted by officials on return to Colombo, and that their details have been retained.

Case Study 19

S.S was a young woman originating from Batticaloa, Sri Lanka. After completing her schooling she undertook a further course in computer studies and gained a position as a management assistant in government offices. She continued to live in her family home alongside her parents during the course of her studies. Her father was a mill owner, and was subject to repeated attempts to extract money from him by the LTTE despite not being sympathetic with the movement. In 2005, her brother became a member of the LTTE, and soon after disappeared. She has not heard from him since. Her older sister married and left home in 2006. After her brother's disappearance soldiers came to the house and accused the family of supporting the LTTE. S.S.'s father was negotiating the sale of a property he had inherited when members of Karuna's paramilitary group contacted him. They demanded use of the house, however he hurriedly sold it and then completed sale at a low price to avoid this. Two months later, S.S's father was dragged into a van and since not been seen. S.S. and her mother went to the paramilitary camp to complain of their father's disappearance, but the members denied any knowledge of his whereabouts. Two days later they went to the local police station to report the abduction. A few days after this, three men drove up to the family home in a jeep. One was wearing a police uniform, and the other two were in civilian clothing. S.S was arrested on the basis of information they alleged they possessed that she had been assisting the LTTE. She denied this but was dragged into a jeep and driven to a near by army camp. She was taken to a cell and the following day was subjected to a serious physical and sexual assault. Three men in civilian clothing systematically raped her. This was repeated over the course of the next ten days. She was subsequently released subject to a weekly reporting condition.

TWAN obtained a report from the Medical Foundation for Victims of Torture; this made detailed findings as to the Appellant's extensive scarring and post traumatic stress disorder consistent with her account of physical and sexual assault. TWAN submitted the report along, with representations citing the case LP. The Home Office at first instance granted the claim.

The Appellant learnt after her arrival in the United Kingdom, that her sister, an assistant engineer at the North East Irrigation and Agriculture project (NEIAP) had been killed by members of the Sri Lankan Army. She now made contact with her mother and traced her father; she wishes to bring them to the UK. We have now made an application under the Refugee Reunion policy, which allows for the admittance of parents of Refugees in exceptional circumstances. We have made this on the basis that the success of her own claim substantiates the risk, which her parents face in the country, as does the recent killing of her sister.

Deportation and Removal Proceedings

Deportation and Administrative Removal, or Removal as an Illegal Entrant

A person who is not a British Citizen is liable for deportation from the United Kingdom if "the secretary of state deems his deportation to be conducive to the public good" (Section 3 (5) (a) Immigration Act 1971 refers). The Immigration Rules state that an order will not normally be revoked until a person has been outside of the UK for at least three years unless there are exceptional circumstances. He can then make an application to revoke the order.

In contrast a person remaining in the United Kingdom without leave to do, or whose leave has been curtailed or revoked, may be subjected to removal proceedings on this basis alone if they are ineligible for deportation. They can reapply for entry to the United Kingdom in line with the Immigration Rules without having to go through additional procedural applications.

Comment

We would recommend our users take care to ensure that the proceedings issued against them are appropriate to their particular situation. For example, we have had instances where deportation orders have been served on clients on no other basis than that their leave has been curtailed, when in fact this ought properly to be dealt with as administrative removal process.

Administrative Removal: Statutory Framework

This is applicable only to those persons who have leave to remain or who have previously been granted leave to remain.

A decision to remove a person from the United Kingdom is an Immigration Decision which will generate a right of Appeal under sub section (g) of Section 82 of the Nationality and Immigration Act 2002. However, this right will only be exercisable Outside of the United Kingdom, except in cases where the Grounds of Appeal include reliance upon Human rights or Asylum.

Section 10 of the Immigration and Asylum Act 1999 defines the categories of people who will be subjected to administrative removal as follows:

(i) a person having only limited leave to enter or remain, s/he does not observe a condition attached to the leave or remains beyond the time limited by the leave;
(ii) s/he uses deception in seeking (whether successfully or not) leave to remain
(iii) his/her indefinite leave to remain has been revoked under section 76(3) of
(iv) The Nationality, Immigration and Asylum Act 2002 (person ceasing to be a refugee); and
(v) family members of the above

The Home Office will Review all relevant factors before making such a decision, see rule 395: 395C before a decision to remove under section 10 is given; regard will be had to all the relevant factors known to the Secretary of State including:

(i) age
(ii) length of residence in the United Kingdom
(iii) strength of connections with the United Kingdom
(iv) personal history including character, conduct and employment record
(v) domestic circumstances
(vi) previous criminal record and the nature of nay offence of which the person has been convicted
(vii) compassionate circumstances
(viii) any representations received on the person's behalf

In the case of family members the factors listed in paragraphs 365-368 of the Immigration rules HC 395 must also be taken into account.

There may be an argument in some cases that it would be a disproportionate interference with family life to employ deportation proceedings where administrative removal is available.

Rights of Appeal

Out of Country Right of Appeal

Where the decision to give removal directions under section 10 of the Immigration act 1971 does not clearly demonstrate a proper consideration of the matters set out in paragraph 395C and the exercise of a discretion to make the decision, the decision will be one which is challengeable on the ground that it is not in accordance with the law, and the result should normally be that an appellant's appeal is allowed on that basis only, leaving the Secretary of State to make a new and lawful decision in accordance with the Immigration Rules.

However, and more radically, if the decision was procedurally proper and was one which was open to the Secretary of State to make, the appellant can nevertheless succeed in an appeal by showing that the Secretary of State's discretion should have been exercised differently.

In-Country Right of Appeal

There is an in-country right of appeal under section 92 (4) if the Appellant has made an asylum claim, or a human rights claim, while in the United Kingdom, thus an overstayer who claims asylum and is refused will have a right of Appeal inside the United Kingdom against his/her removal.

Returning to the UK after Removal

Home Office Policy as of 2008 states as follows:

Any migrant who has used deception in an entry clearance application will have future Entry Clearance /Leave to Enter Applications refused for ten years.

Any migrant who otherwise breaches our immigration laws (seeks Leave to Enter /Remain by deception, enters illegally overstays for more than 28 days or breaches his or her conditions of stay) will have their applications automatically refused for the following periods:

- 1 year if s/he left the UK voluntarily (not at public expense) after the breach;
- 5 years if s/he left voluntarily at public expense after the breach; and
- 10 years, if s/he was removed or deported.

This will not, however, apply to anyone who was in the UK on the 17th March 2008 and who leaves voluntarily before the 1st October 2008.

Removal as an Illegal Entrant

Under Section 82, sub section (h) of Section 82 of the Nationality, Immigration and Asylum Act 2002, a decision to remove a person who has not previously had leave to enter or remain in the United Kingdom will generate a right of Appeal. This Appeal will be heard outside of the United Kingdom, except where a Human Rights or Asylum claim has been made. This provision is more commonly relied upon by Asylum Seekers who have entered the country illegally and wish to appeal against refusal of their asylum claim in the United Kingdom.

Deportation

Under Section 82 (j) a decision to deport someone by the Home Office carries a right of appeal which is exercisable inside the United Kingdom in accordance with 92(2) of the Nationality Immigration and Asylum Act 2002.

A recommendation for deportation can be appealed to the relevant criminal court as an appeal against sentence.

A deportation order cannot be made while an appeal could be brought or is pending. However, right of appeal have been exercised and exhausted or not exercised and the time limit has expired, the Home Office may move to signing the deportation order. Orders are generally signed by a Home Office immigration Minister, though contentious cases can be referred to the Home Secretary. The remedy once the order is signed is revocation. See Below.

Revocation of a Deportation Order

After a Deportation Order has been issued and Appeal rights exhausted or not exercised against it, the only option available is to apply for the Deportation Order to be revoked. Refusal to revoke a deportation order will be an Immigration Decision for the purposes of Section 82(j) of the Nationality Immigration and Asylum Act 2002, but only out of country in accordance with Section 92 of the same Act.

However, where a person has made a previous claim for Asylum or Human Rights in the United Kingdom, and then subsequently lodges representations which is related to but distinct from the original claim for protection, then provided it is not certified as manifestly unfounded, this will generate an in country right of Appeal. This will apply even if the new representations are not found to be a fresh claim. R (BA (Nigeria)) v Secretary of State for the Home Department; R (PE (Cameroon)) v Secretary of State for the Home Department [2009] EWCA Civ 119; [2009] WLR (D) 77. This position is likely to change when the Government implements new legislation explicitly requiring that acknowledgment of a fresh claim will be a pre requisite to an appeal in this situation against a Refusal to Revoke a Deportation Order.

Appeals against deportation decisions

A decision to deport someone by the Home Office carries a right of appeal to the Asylum and Immigration Tribunal and the appellant may remain in the UK while the appeal is being heard. A recommendation for deportation can be appealed to the relevant criminal court as an appeal against sentence.

A deportation order cannot be made while an appeal could be brought or is pending but where rights of appeal have been exercised and exhausted or not exercised and the time limit has expired, the Home Office may move to signing the deportation order. A Home Office immigration minister generally signs orders, though contentious cases can be referred to the Home Secretary. The remedy once the order is signed is revocation.

These factors appear at paragraph 364 of the Immigration Rules and are expanded upon in the Immigration Directorate Instructions and the Operational Enforcement Manual. At present the rules make clear that each case is considered on a discretionary basis, on its individual merits. Therefore information regarding personal circumstances is likely to be crucial to the case as the Home Office will balance such factors against public interest considerations. There may be a change to this discretionary decision-making process in the future.

What is a deportation order?

A deportation order is issued when a finding is made that a person's presence in the United Kingdom is not "conducive to the public good". It will:

- require a person to leave the UK
- authorises their immigration detention until removal
- prohibits re-entry to the UK while the order remains in force and
- invalidates any existing leave to enter or remain given before the Order is made or while it is in force

How is the order created?

Deportation is a two-stage process that consists either of a decision to deport by the Home Office, or, a recommendation for deportation by the criminal court, which can be followed by the signing of a deportation order. Where a person has been convicted of a criminal offence the Home Office can take deportation proceedings even if the criminal court has not recommended deportation. The service of a decision to deport or a recommendation for deportation by a criminal court and the deportation order itself each trigger liability to immigration detention.

Who cannot be deported?

(i) British citizens and persons with a right of abode (the latter group is mainly British citizens)

(ii) Commonwealth and Irish citizens in the UK on or before 1.1.73 where they have been ordinarily resident in the UK for 5 years prior to any decision to deport or the conviction

(iii) Those with diplomatic or consular status may be exempt from deportation.

Who can be deported?

All foreign nationals whether in the UK lawfully or unlawfully can be deported.
Persons with indefinite leave to remain can be deported as can European Economic Area nationals but special considerations apply to the latter (see below).
What are the grounds for deportation?

The circumstances in which deportation action can be taken are:

- where the Secretary of State deems the person's deportation to be conducive to the public good (most frequently, though not always criminal conviction/s); or
- where a court has made recommendation for deportation of a person over the age of 17 who has been convicted of an offence punishable with imprisonment;
- where the person is the spouse or dependant child under 18 of the person ordered to be deported

Factors the Home Office will consider in deportation cases

- human rights and asylum grounds
- age
- length of residence in the UK
- strength of connections with the UK
  - personal history
  - domestic circumstances
  - previous criminal record and the nature of any offence of which the person has been convicted
  - compassionate circumstances;
  - any representations made on the person's behalf.

These factors appear at paragraph 364 of the Immigration Rules and are expanded upon in the Immigration Directorate Instructions and the Operational Enforcement Manual. At present the rules make clear that each case is considered on a discretionary basis, on its individual merits. Therefore information regarding personal circumstances is likely to be crucial to the case as the Home Office will balance such factors against public interest considerations.

Special Groups

EEA nationals

EEA Nationals may be expelled on grounds of public policy, public security or public health only. See Directive 2004/38/EC (in particular Articles 27/28) and Immigration (European Economic Area) Regulations 2006 (SI 2006/1003). Note: The personal conduct of the individual concerned must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society" (Article 27(2)Directive 2004/38/EC). Article 28 requires the Member State to consider factors such as length of residence, age, state of health, family and economic situation, social and cultural integration and extent of links with the country. It also provides that an expulsion decision may not be taken against persons who have resided in the host Member State for the previous 10 years or against minors except on "imperative grounds of public security".

Refugees

A person who has been granted refugee status may not be immune from deportation if they lose protection. Protection can be lost if a person has committed what is considered to be a "particularly serious crime" (currently defined as crimes where sentence is 2 years or more) and they "constitute a danger to the community" (see s72 Nationality, Immigration and Asylum Act 2002 and Article 33(2) 1951 Refugee Convention).

Police/prosecution procedure in deportation cases

The department that deals with most cases at the Immigration and Nationality Directorate (IND) is the Criminal Casework Team_(Home Office, 14th Floor, Lunar House, and 40 Wellesley Road, Croydon CR9 2BY. Tel: 020 8196 0930. Fax: 020 8196 3046, 020 8760 3911, 020 8604 0994) - they deal with cases of persons being considered for deportation where the prison sentence is over 12 months (or 24 months in the case of EEA nationals). In the event that the CCT is not dealing, the Immigration Service at the local

enforcement office or port is likely to be involved.

How are family members affected?

Section 5 of the Immigration Act 1971 gives the Secretary of State gives the Secretary of State power in certain circumstances to make a deportation order against the spouse, civil partner or child of a person against whom a deportation order has been made. The Secretary of State will not normally decide to deport spouse or civil partner of a deportee where:

(i) he has qualified for settlement in his own right; or
(ii) he has been living apart from the deportee

The Secretary of State will not normally decide to deport the child of a deportee where:

(i) he and his mother or father are living apart from the deportee; or
(ii) he has left home and established himself on an independent basis; or
(iii) he married or formed a civil partnership before deportation came into prospect.

In considering whether to require a spouse or a child to leave with the deportee the Secretary of State will take account of all the relevant factors. These include:

(i) the ability of the spouse or civil partner to maintain himself and any children in the United Kingdom, or to be maintained by relatives or friends without charge to public funds, not merely for a short period but for the foreseeable future; and
(ii) in the case of a child of school age, the effect of removal on his education
(iii) the practicality of any plans for a child's care and maintenance in this country if one or both parents were deported and
(iv) any representations made on behalf of the spouse or child.

Where the Secretary of State decides that it would be appropriate to deport a member of family as such the decision, and the right of appeal will be notified and it will be at the same time explained that it is open to the member of the family to leave the country voluntarily if he does not wish to appeal, or if he appeals and his appeal is dismissed.

Return of Family Members to the United Kingdom

Persons deported in the circumstances set out in paragraph 365 –368 of the HC 395 of the Immigration rules above may be able to seek readmission to the United Kingdom under the Immigration Rules where:

(i) a child reaches 18 (when he ceases to be subject to the deportation order);or
(ii) in the case of spouse or civil partner, the marriage or civil partnership comes to an end.

Notification of Decision and Procedure

When a decision to make a deportation order has been taken (otherwise than on the recommendation of a court) a notice will be given to the person concerned informing him of the decision and of his right of appeal. Following the issue of such a notice the Secretary of State may authorize detention or make an order restricting a person as to residence, employment, or occupation and requiring him to report to the police, pending the making of a deportation order. If a notice of appeal is given within the period allowed, a summary of the facts of the case on the basis of which the decision was taken will be sent to the appropriate appellate authorities, who will notify the appellant of the arrangements for the appeal to be heard.

Case study 20

This case concerned an elderly couple. S arrived in the UK in 1997 on a visitor's visa and then claimed Asylum. He was refused Asylum in 1998. In 2002 his wife joined him in the United Kingdom and entered herself as a dependent on his claim. 2005 their claim was considered afresh and both clients were re interviewed. They were issued with a fresh refusal notice and the Appeal was determined and dismissed on both Article 3 and 8. In 2006, their previous solicitors lodged a Fresh application, and this was refused in September 2007. In the same month, the Appellants were visited by Immigration Officers at their home and checks on welfare of subjects were conducted to gather up to date information on their medical conditions. Two months later, a

second visit was conducted to their home address and on this occasion S and S were taken to be detained at Yarlswood Immigration Centre.

At this point S's daughter contacted TWAN which took the following action. Firstly, we submitted fresh representations based upon the deterioration of the country situation and the failure of the Home Office to comply with their own policy in respect of abstaining from forced removal of persons over the age of 65. We then lodged notification to the European Court of Human Rights of (S and S)'s removal from the United Kingdom on the basis that the Appellant's right to life would be infringed on return to Sri Lanka as this would occur in the absence of any identification documents and would be noted by the Sri Lankan Military authorities. In November 2007, the European Court of Human Rights issued a notice under Rule 39 of the Rules of the court that the clients should not be deported to Sri Lanka until further notice.

The clients were released from detention subject to reporting conditions. In October 2008, the Home Office submitted a request to the ECHR to reconsider the matter a fresh. New representations were entered on behalf of the clients and we are still awaiting a response to these.

Comment

This case indicates how enforcement units adopt aggressive actions to pursue removals to meet the Government targets, despite the deteriorating country situation in Sri Lanka, and the human rights violations occurring there. The Authorities are only keen to meet targeted numbers for removal. In this case, the Home Office chose to ignore its own policy against the forceful removal of elderly people.

The refusal of the fresh and human rights claim was not given to the client's legal representatives. This allowed them to scrutinize the Home Office refusal letter and other avenues of legal challenges. Moreover, the couples were unnecessarily kept in detention for more than a week. Due to this practice, we are not able to seek Judicial Review proceedings to stop removal, because we are not given sufficient time to make a funding application to the Legal Services Commission, which while pending, will not bar removal. And the process of applying for Judicial Review is time consuming and involves extensive paperwork to be completed. Fortunately, we are able to seek intervention from European Court of Human Rights in the form of an application under Rule 39.

Case Study 21

This case concerns a client S who arrived in the United Kingdom in 2007. He remained for 16 months until he was convicted to 6 months imprisonment on the basis of working in the United Kingdom under a false ID. The client made a claim for Asylum whilst in prison and this was refused whilst he was still in detention. The case was passed to TWAN at this point from the client's previous representatives. A deportation order was issued against the client. The AIT scheduled a hearing in respect of the deportation decision; however no notice of hearing in respect of the Asylum Appeal was yet forthcoming. TWAN made representations highlighting the lack of reasonability in placing the Appellant's Deportation Hearing in advance of his Asylum Hearing, as the outcome of the former would have limited effect given that the latter appeal remained pending. The AIT acknowledged the force of this argument and re-scheduled a joint hearing allowing representations on all issues including Asylum, Article 2 and 3 as well as the Immigration Rule 364.

Case Study 22

The client J.S, arrived in the United Kingdom in 2006 with her child after being granted leave to remain as a visitor. Subsequently she claimed Asylum on the basis of her husband's killing by armed forces on suspicion that he was a member of the LTTE. Her parents, sisters and brothers were all settled in the United Kingdom. In May 2007, Asylum was refused and the Appellant's appeal dismissed. A statutory review was lodged in September 2007 to the High Court requesting that removal directions should be stayed. The court refused this and the decision was served by hand on the client rather than to her representatives who the court had been notified were acting on her behalf. The Immigration Authorities presented at the Appellant's NASS accommodation to serve her with this decision and to take her into detention. TWAN then

lodged an application to the European Court of Human Rights on the basis that the she had not been given the opportunity to lodge a fresh claim based upon her original asylum claim and the deteriorating political situation. A rule 39 notification was subsequently served on the client and she was released from detention.

Comment

This case raises three important issues.

1. the risk faced by those who are in NASS accommodation being forcibly detained

2. the Court's practice of releasing the decision of refusal directly to the Appellant through the UK Immigration Service and not being properly served to the Appellant's representatives. This facilitates forcible removal of an Appellant without the knowledge of the representatives.

3. though J.S's provided ample evidence of her account of her husband's killing, disregarding this account, her arrival in the UK on a visitor's visa was relied on to damage her credibility. The Home Office deliberately withheld release decision to refuse the Appellant's fresh claim until the day of her removal in an attempt to prevent an application for Judicial Review. The European Court of Human Rights and by the application of Rule 39, her removal was deferred. The European Court will now hear her case. We believe this is an example of the UK legal system failing meritorious client's who are then forced to seek remedy with the European court.

Case Study 23

T.K. originated from the village of Avarangal in Sri Lanka. In 1995 he was forced to assist the LTTE in digging bunkers and was injured by a shell. He was later forced to flee as the Sri Lankan army advanced. Some months later, T.K and his family moved back on encouragement by the authorities that it would be safe to do so. T.K was detained along with five other people when a soldier from the Sri Lankan army was shot in his locality. The TK was tortured with electric shots to his back and burns. TK disclosed to the army the location of an LTTE hideout and promised the army he would act as an informer. T.K. went into hiding after his family was harassed as to his whereabouts by the LTTE and T.K. was sent by his father to Colombo to stay with his aunt. T.K. was visited by special branch police officers who detained, interrogated and tortured him. TK signed a confession that he had willingly helped the LTTE. The International Committee of the Red Cross visited TK in detention, and they provided a letter confirming his detention and release. Members of the EPDP later attacked TK after he was accused of participating in an assault of a member of the party in the police station. T.K.'s aunt received further visits from Special branch requiring TK to present himself. TK then made arrangements to flee the country. TK claimed Asylum on entry, and was detained and his case allocated to the fast track scheme. TWAN made representations to remove TK from fast track by reason of the complexity of his case and his claim to have been tortured. His claim was refused. At his appeal before an adjudicator, he submitted evidence in support of his claim to have been detained which included a copy of the letter from the International Committee of the Red Cross. The Immigration Judge refused to take the case of fast track, despite representations made by TWAN to allow for a report form the Medical Foundation for Victims of Torture.

She found that the report would not be able to address T.K's credibility and would take him no further. She dismissed his appeal and found T.K to be incredible as a result of inconsistencies in his evidence and the documents supplied to be unreliable. TWAN lodged grounds for reconsideration against the decision on the basis of the failure to give appropriate weight to the documents provided, and the decision to refuse to allow for a report from the Medical Foundation. TWAN subsequently lodged a fresh claim for asylum based upon a deterioration of his mental illness, a change in the country situation and a certified copy of T.K's letter from the International Committee of the Red Cross. This was rejected and directions for removal were made. Further representations were made on the basis of T.K's health. Refusals for both of TK's claims were served on him, and not to his representatives, whilst he was in detention. On receiving these notices TWAN requested removal

to be deferred for two working days to allow for Judicial Review proceedings to be initiated.

Comment

TWAN believes that the initial claim of the Applicant should never have been placed on the fast track scheme given that he claimed to be a victim of torture and he had scarring on his body he also ought to have been given the benefit of a Medical Foundation Report to document his ill treatment. We believe the Home Office failed to give sufficient weight to the new evidence presented, including previous arrest records, scarring, psychiatric reports, and in particular, a letter confirming that the Applicant's letter from the Red Cross submitted at his hearing, had been genuine. The decision maker also failed to properly consider proper consideration to established case law in respect of suicide risk to the Applicant on return in line with Soumahoro and IK (social/mental stability legal requirements) Turkey (2005). Crucially, the breakdown in the ceasefire of the country, and Sri Lanka's removal from the designated list of safe countries, was not given appropriate weight, despite the fact that it constituted fresh and compelling evidence going to the heart of the Appellant's claim. Taken together, the above is indicative of the flawed nature of scrutiny which fresh claims are given, frequently failing to engage closely with the adjudicator's determination and the fresh evidence presented. The case of R on the application of Suvarajah Sivanesan v SSHD [2008] EWHC 1146 (Admin) saw a claim for Judicial Review based upon the Secretary of state's failure to grapple with the immigration adjudicator's decision and make a "relevant" decision on the risk factors advanced by the claimant. Judicial review was granted on the basis that the Claimant was entitled to an appeal before the Asylum and Immigration Tribunal.

In TWAN's view, whilst each case must be approached on a case by case basis, there should be a strong impetus to allow those whose initial claim was heard at the time when Sri Lanka was designated a safe country, and who present new evidence in support of their claim, to be allowed a fresh claim to be established, and fresh rights of Appeal granted to them, in the event that it is refused.

Application under Rule 39

The European Court of Human Rights, has no power to grant an injunction against a member state, but if an applicant is about to be expelled or deported, the application may contain a request for an interim measure under Rule 39 of the court's procedure rules, which provides that the Chamber or, where appropriate, its President may "indicate to the parties any interim measure which it considers should be adopted in the interests of the parties or the proper conduct of the proceeding before it". This would include a request not to proceed with a removal. The power to adopt a Rule 39 indication is used very sparingly. Until recently the Rule 39 was not considered binding on member states. However, the court has toughened its stance and has considered that the failure to comply with Rule 39 indication may constitute an interference with the right of the individual petition protected by Article 34 of the ECHR. An application under Rule 39, like any other application to the court, can only be made after all domestic remedies are exhausted. In addition, the risk of removal must be imminent and therefore must be a deportation, expulsion, or extradition order pending against the applicant. A rule 39 indication will only be adopted where there is substantial evidence that there will be "irreversible harm" to the applicant if expelled and there is good reason to believe that removal will breach Article 3 of the ECHR.

The Case of NA- landmark decision

NA entered the United Kingdom clandestinely on 17 August 1999 and claimed asylum the next day. He stated that he feared ill treatment in Sri Lanka by the Sri Lankan army and the Liberation Tigers of Tamil Eelam (LTTE). He explained that he had been arrested and detained by the army on six occasions between 1990 and 1997 on suspicion of involvement with the LTTE. During one or possibly more of these periods of detention he was ill treated and his legs had scars from being beaten with batons. Following his last detention, NA was photographed and his fingerprints were taken, before his father signed certain papers in order to secure his release. NA went into hiding in a temple and wanted to leave Sri Lanka at that stage but it took time for his

mother to obtain money from his brother to pay the agent for his departure. NA also feared the LTTE on account of their adverse interest in his father who had done some work for the army. They had also tried to recruit the applicant on two occasions in 1997 and 1998.

The Secretary of State refused NA's claim on 30 October 2002. The Secretary of State accepted the credibility of NA's account but did not believe he would face a risk of future ill treatment on return to Sri Lanka. The Adjudicator, who found that following the ceasefire agreement he would be of no interest to the Sri Lankan authorities because he had been held for short periods and released without charge on each occasion dismissed NA's appeal. NA lodged a fresh application for Asylum based on deterioration in the country situation, which had occurred. When this was refused he began Judicial Review proceedings on the basis of fresh claim refusal.

The Secretary of State issued the applicant with removal directions to Sri Lanka for 25 June 2007. On that date the President of the Chamber decided to apply Rule 39 of the Rules of Court and indicated to the Government of the United Kingdom that the applicant should not be expelled until further notice.

By October 2007, Rule 39 had been applied in twenty-two separate cases. A representative of the chamber wrote to the UK authorities expressing the opinion that until a lead judgement had been adopted Rule 39 should not be applied in any case brought by a Tamil seeking to prevent his removal. In their reply, the Home Office relying on the guidance in LP stated that it did not consider that the current situation in Sri Lanka required the suspension of removals for all Tamils who claimed that their return would expose them to a risk of ill treatment. Each case had to be assessed on its own merits, and against the available country information.

Since then the court applied Rule 39 in respect of three hundred and forty-two Tamil applicants who claim that their return to Sri Lanka from the United Kingdom would expose them to ill-treatment in violation of Article 3 of the Convention.

The Court's Decision on the risk to Tamils in Sri Lanka; Return to Colombo

The Court made the following findings:

1. There had been deterioration in the country situation particularly since the formal end of the ceasefire in January 2008 and deterioration in the security situation has been accompanied by increase human rights abuses by the LTTE and the Sri Lankan government, and killings abductions and disappearances have increased.

2. The court emphasized that assessment of risk must be conducted in an individual basis, and that Tamils would have to demonstrate distinguishing features of their particular case, which would place them at real risk of ill treatment.

3. The court endorsed the relevant risk factors set out in the Country Guidance case of LP and noted that the case made clear that these were not an "exhaustive" list of factors in any event. The Court found that an assessment of the risk of a particular applicant must be made on the basis of all relevant factors, which might increase the risk of ill treatment. In its view, it was possible that a number of individual factors when considered collectively and in light of a situation of general violence and heightened security might give rise to a real risk.

4. The court found that return through Colombo Airport created a greater risk of detention and interrogation than in Colombo city, since the authorities will have a greater control over the passage of persons within it than they have over the population at large. In addition, the majority of risk factors identified by the AIT in LP would be more likely to bring a returnee to the attention of the authorities at the Airport.

5. In addition, the majority of the risk factors identified by the AIT in LP will be more likely to bring a returnee to the attention of the authorities at the airport than in Colombo city. It is also at the airport that the cumulative risk to an applicant arising from two or more factors will crystallize. Hence the Court's assessment of whether a returnee is at real risk of ill-treatment may turn on whether that person would be likely to be detained and interrogated at Colombo airport as someone of interest to the authorities. While this

assessment is an individual one, it too must be carried out with appropriate regard to all relevant factors taken cumulatively including any heightened security measures that may be in place as a result of an increase in the general situation of violence in Sri Lanka.

6. The court noted that the decision of LP and its finding that "failed asylum seekers are processed relatively quickly and with no difficulty beyond some possible harassment". The AIT's finding was based on the British High Commission's letter of 24 August 2006. Importantly the court in NA found that the scale of checks carried out at an airport is capable of varying from time to time, depending upon security concerns of the authorities and that this should be considered in any assessment of the risk to the applicant.

The Court's decision on the Risk to NA

The Court found that the Adjudicator's decision of 27 July 2003 was the last full factual assessment of NA's case and the reason for his fresh claim and later applications for Judicial Review was the deterioration of the security situation in Sri Lanka.

The Court recognised that it had been over ten years since the Sri Lankan army last detained the applicant. The Court finds the passage of time cannot be determinative of the risk to the present applicant without a corresponding assessment of the current general policies of the Sri Lankan authorities. Their interest in particular categories of returnees is likely to change over time in response to domestic developments and may increase as well as decrease. In the Court's view, it cannot be excluded that on any given date if there is an increase in the general situation of violence then the security situation in Sri Lanka will be such as to require additional security at the airport. It is undisputed that the applicant was arrested six times between 1990 and 1997, that he was ill-treated in detention and that it appears a record was made of his detention on at least one occasion, the Court considers that there is a real risk that the applicant's record will be available to the authorities at the airport. Furthermore, it cannot be excluded that on any given date the security situation in Sri Lanka would be such as to require additional security at the airport and that, due to his risk profile, the applicant would be at even greater risk of detention and interrogation.
Insofar as they have been relied on in this case, the Court has also examined the additional factors in LP: the age, gender and origin of a returnee, a previous record as a suspected or actual LTTE member, return from London, having made an asylum claim abroad and having relatives in the LTTE. In respect of having relatives in the LTTE, the Court accepts the Government's submission that this is of little weight in this case; few details of the involvement of the applicant's brother in the LTTE or his present whereabouts have been provided. However, the Court accepts that the remaining factors are all capable of being relied upon by the applicant and, on the facts of his case, their cumulative effect is to increase further the risk to him, which is already present due to the probable existence of a record of his last arrest and detention. He is a male Tamil who is thirty-two years of age and the AIT found there was a higher propensity on the part of the Sri Lanka authorities to target young men and women from the north and east in a period of "virtual civil war". The Court has taken note of the current climate of general violence in Sri Lanka and has considered cumulatively the factors present in the applicant's case. There is a real risk that the authorities at Colombo airport would be able to access the records relating to the applicant's detention and if they did so, when taken cumulatively with the other risk factors he has relied upon, it is likely the applicant would be detained and strip-searched. This in turn would lead to the discovery of his scars. On this basis, the Court finds that these are substantial grounds for finding that the applicant would be of interest to the Sri Lankan authorities in their efforts to combat the LTTE. In those circumstances, the Court finds that at the present time there would be a violation of Article 3 if the applicant were to be returned.

Moreover, the Court finds that the information before it points to the systematic torture and ill treatment by the Sri Lankan authorities of Tamils who will be of interest to them in their efforts to combat the LTTE. On the basis of this evidence, the Court therefore finds that, in the context of Tamils being returned to Sri Lanka, the protection of Article 3 of the Convention enters into play when an applicant can establish that there are serious reasons to believe that he or she would be of sufficient interest to

the authorities in their efforts to combat the LTTE as to warrant his or her detention.

Finally, in the Court's view, it cannot be said that there is a generalised risk to Tamils from the LTTE in a government controlled area such as Colombo. The Court accepts the findings of the domestic authorities that individual Tamils may be able to demonstrate a real and personal risk to them from the LTTE in Colombo. However, it also accepts their assessment that this will only be to Tamils with a high profile as opposition activists, or as those seen by the LTTE as renegades or traitors. The Court therefore considers that it must also examine any complaint as to the risk from the LTTE in the context of the individual

However, the Court also notes that the domestic authorities, while recognising this deterioration and the corresponding increase in human rights violations, did not conclude that this created a general risk to all Tamils returning to Sri Lanka nor has the applicant in the present case sought to challenge that conclusion in his submissions. The Court has examined closely the developments in Sri Lanka since the AIT's determination in LP, particularly the information that has become available since that determination. It considers that there is nothing in that objective information which would require the Court to reach a different conclusion of its own motion.

Applications under Rule 39 based on NA – A Practical Guide

Applicants are required to exhaust all domestic remedies and completed the following:

1. Made a claim for asylum to the Secretary of State in the United Kingdom

2. Lodged an appeal at the Asylum and Immigration Tribunal of the Secretary of State's decision to remove them from the UK

3. Made an application for permission to apply for Judicial Review at the High Court.

4. Made a reference in any of the above to the 12 risk factors identified in the LP Country Guidance and to have applied to the UK authorities setting out your claim to asylum with references to these factors.

5. If appeal rights have been exhausted the court will expect the Applicant to have made a representations to be considered as a fresh claim referring to the risk factors in LP

What Documents does the European Court of Human rights require?

(i) Refusal of Asylum letter form the Home Office
(ii) Any decision of an Adjudicator
(iii) Any determination of the AIT or former IAT
(iv) Any representations made to the Home Office and any reply refusing to consider those representations as a fresh claim including any representations made after the 6th August 2007.
(v) Any applications for permission to apply for judicial review and any grounds submitted in support of this application
(vi) Any applications for permission to apply for judicial review and any grounds submitted in support of this application.
(vii) Any decisions of the High Court and any grounds submitted in support of this application.
(viii) Any decisions of the High Court in any judicial review proceedings; and
(ix) A copy of immigration factual summary.

From the foregoing survey of its case law, it follows that the Court has never excluded the possibility that a general situation of violence in a country of destination will be of a sufficient level of intensity as to entail that any removal to it would necessarily breach Article 3 of the Convention. Nevertheless, the Court would adopt such an approach only in the most extreme cases of general violence, where there was a real risk of ill-treatment simply by virtue of an individual being exposed to such violence on return.

Exceptionally, however, in cases where an applicant alleges that he or she is a member of a group systematically exposed to a practice of ill-treatment, the Court has considered that the protection of Article 3 of the Convention enters into play when the applicant establishes that there

are serious reasons to believe in the existence of the practice in question and his or her membership of the group concerned.
The Court also recognises that consideration must be given to the presence and reporting capacities of the author of the material in the country in question. In this respect, the Court observes that States through their diplomatic missions and their ability to gather information will often be able to provide material which may be highly relevant to the Court's assessment of the case before it.

Thus in respect of the UNHCR, due weight has been given by the Court to the UNHCR's own assessment of an applicant's claims when the Court determined the merits of her complaint under Article 3.

Human Rights and Fresh Claims

Introduction

The need to make fresh claims is driven in part by institutional failings within the Immigration Service. For example, decisions in respect of a Sri Lankan Asylum Seeker to refuse his claim for asylum which occurred during the ceasefire, will not have considered the relevant country situation if Removal Directions are not set until several years after the decision was taken: The escalation of the conflict in Sri Lanka since the time of the ceasefire between 2002 and 2006, is undisputed and it is manifestly unjust to allow removal without adequate consideration of country conditions which have deteriorated so severely. Failure to consider Article 3 afresh in line with the new country circumstances is to risk breach of this non-derogable Human Right.

The delay that often falls between the time of a decision and the issuing of removal directions can be explained partly by widespread inefficiency of the enforcement unit. In addition, the Immigration Authorities experience practical difficulty in implementing the internal flight alternative which many Sri Lankan Refusal of Asylum decisions are premised on: that is internal relocation to Colombo for those who originate form the North and East. The non-cooperation of the Sri Lankan government is increasingly obstructing facilitation of removal of failed Asylum Seekers to the capital and this is a reflection of the hostile reception faced by them on return to their country of origin. Having not lived in the city of relocation, they find it difficult to obtain legal residency and permission to work. The feel and face dis-enfranchisement of their rights from the state.
Another reason for the increasing number of fresh claims being made is a consequence of fast track procedures and even those under NAM. The short time limits, assigned to these cases means that representatives are unable to obtain necessary evidence – for example Medical Reports from the Foundation for Victims of Torture in support of Asylum Applicant's cases.

This means that as the evidence may only be received after a case is heard and a request to grant an adjournment has been refused, Representatives are in the position of having to lodge fresh claims on the basis of the new evidence gathered. Changes in case law, in particular country guidance cases, changes in the Home Office policies will also give rise to fresh claims, as will the Applicant's obtaining new evidence to consolidate his/her individual Account.

The Legal Framework

Paragraph 353 of the Immigration Rules states as follows:

"When a human rights or asylum claim has been refused in any appeal relating to that claim is and any appeal relating to that claim is no longer pending the decision maker will consider the further submissions, and if rejected will determine whether they amount to a fresh claim."

The Criteria set out for determining a fresh claim is as follows:

Whether the content of the new submissions have not already been considered and if it is not simply a repetition of a previous claim but, contains new material.

And if the new material is taken together with the previously considered material, will it create a realistic prospect of success of the claim, despite its former rejection.

Procedure

On receipt of a Fresh Claim for Asylum, the Secretary of State has two courses of response. Either to find whether the new submission constitutes a Fresh Claim for Asylum and if this is the case, then he must provide written reasons for this decision. Alternatively if the Secretary of State accepts that a fresh claim has been made, a new immigration decision will be made (which can be a *refusal* notwithstanding the acceptance recognition that a fresh claim has been made) and their will be a fresh right of Appeal attached to that decision.

The Secretary of State's decision to refuse to accept that new submissions meet the criteria of a Fresh Claim, are only challengeable by way of Judicial Review and the consideration of the reasonableness of the decision. On an application for Judicial Review, the court will first consider whether the Secretary of State has asked himself the correct question, in finding that the new representations do not amount to a fresh claim. This question is *not* whether he believes the claim should succeed but whether there is realistic prospect that the court giving anxious consideration to the claim, might find in the applicant's favour.

Case Study 24

R.J arrived in the UK in 2002. He feared persecution from the Sri Lankan army because he was suspected of being a member of the LTTE and he had been detained and tortured in the past on two occasions during which time he had been tortured. R.J's claim was refused, and his appeal to the adjudicator was dismissed. The Adjudicator found that although RJ was detained in the past, there is no evidence that he faces any outstanding charges, and he did not accept that he would have been able to pass through checkpoints with the ease it appeared he had done following his release from custody if he was of real interest to the authorities now. He also found the scarring that RJ bore following his mistreatment in custody was not in a prominent position. R.J was subsequently detained with a view to removal, when he submitted further representations in support of his asylum claim based on the recent killing of a person who had been in detention at the same time as him, and that he was suffering from Post Traumatic Stress Disorder and was currently on medication for this.

The Secretary of State refused these new representations on the basis that R.J would be able to access medical services and found that the other aspects of the claim had been dealt with by the Adjudicator at his previous Appeal in the finding that he would not be at risk on return to Sri Lanka. It was found that LP would not aid him further.

TWAN lodged an Application for Judicial Review on the basis of the following:

(i) The Claimant was found credible with regard to his history of arrest and detention this included his second detention by the authorities occurred when he was individually targeted. Therefore the previous record as a suspected or actual LTTE member or supporter was a risk factor in LP, which was engaged.

(ii) R.J had deliberately not considered the risk of a "previous criminal record" set out in LP despite knowing that the claimant had previously been detained for 1 and half years.

(iii) R.J's initial claim accepted that whilst he had fled for convention reason, he would not be at risk on return, partly due to the existence of a ceasefire. The case of LG (Sri Lanka) has confirmed the consequences of the ceasefire would activate risk on return for certain persons.

The Application for the applicant's removal directions to be stayed and the Secretary of State to withdraw their decision to refuse the Applicant's claim under Rule 353 and to reconsider the claim once again. We are still waiting a decision on this claim.

Case study 25

S.S originated from Ilavalai, in Sri Lanka. The Sri Lankan army recaptured her village in 1999, and a masked informer identified S.S. as a member of the LTTE whilst she was sheltering in a local Church. However, S.S had never been involved with the LTTE and when she was

detained at a Sri Lankan Army base she denied the accusations made against her. The army beat her with rifles and sticks and several soldiers raped her. After 5 days of this mistreatment she disclosed that her brother was a member of the LTTE and three other people she was aware were members. She was then transferred to a camp patrolled by female officers where she was made to undertake menial tasks for the camp. The camp was later attacked by the LTTE and the group succeeded in ousting the army. The LTTE reunited S.S with her father the following day, and S.S. made arrangements to leave the country fearing LTTE reprisals for disclosure of names to the army and the authorities for absconding from army custody.

At her appeal hearing the adjudicator disbelieved her account of rape due to the discrepancies in the account provided to the Medical Foundation and that in her statement and SEF form. However, it was noted that she had been prescribed medication and had physical and mental symptoms. The adjudicator found her claim to have been detained credible and found that there was a reasonable likelihood that something "unpleasant" had happened to her during this period. The Adjudicator also conceded that she might have given information about the activities of the LTTE to the officers who interviewed her. However, the adjudicator considered that the time that had elapsed meant that would no longer be of interest to the LTTE. In respect of the authorities, she did not believe the authorities would be interested in her today in light of the cease fire and that she would be safe in Colombo and her home area. In respect of Article 8 and S.S. right to a family and private life, the adjudicator found that whilst there would be interference with this on return, as a consequence of the rupture of treatment she was receiving for her mental illness, that this would nevertheless be proportionate to the aim of maintaining Immigration Control. After the Appeal's dismissal, SS's condition deteriorated markedly, and she became suicidal. TWAN obtained a report, which stated that the suicide risk would be very likely to increase if she was removed from the UK. The report was submitted with an application for a fresh claim. The Home Office refused the application stating that the new representations did not create a reasonable prospect of success, and therefore could not constitute a fresh claim for the purposes of paragraph 353 of the Immigration Rules (HC 395). TWAN entered a second fresh claim for asylum on the basis of medical reports documenting the follow up appointments, which she had had with the Medical Foundation for Victims of Torture and other supplementary reports. This second application was also refused. TWAN took steps to lodge Judicial Review of this decision on the following grounds: First, that the fact that the adjudicator had found S.S. to be largely credible and second, that the Home Office had failed to apply the Country Guidance case of LP to S.S. and acknowledge the risk factors that applied to her for the purposes of the case.

On the basis of this application, the Home Office withdrew their decision to refuse S.S.s application for a fresh claim and are presently reconsidering the application on the basis of the evidence presented.

Relevant Case Law – Suicide Risk

The case of Soumarhoro [2003] EWCA Civ 840, paragraph 85, confirmed that an increased risk in suicide could give rise to a breach of Article 3. The case of Bensaid [2001] INLR 325 confirmed that deterioration in Mental Health was also capable of engaging Article 3.

The Guidance given in IK (Suicide/mental stability: legal requirement) Turkey [2005] UKIAT 00049 states at paragraphs 11-12 the questions that the tribunal should ask itself. These are as follows:

(i) Is there a risk of the appellant trying to kill himself on return, over and above, the risk if he is allowed to remain, and
(ii) Would he be effectively protected against his own actions in that way?
(iii) If the answer to the first question is yes and the second is no, then the minimum level of severity to engage article 3 is likely to be met.

Case Study 26

K.S was refused Asylum in 1999. K.S transported arms, ammunition and groceries for the LTTE using his Lorries against his will. He was later arrested by the Sri Lankan Army and detained for 6 days before being released with the

assistance of a catholic priest. The Army came in search of KS whilst he was out of the house, set fire to KS's lorry and killed his uncle. The Appellant took his family and relocated them to Pallai. In Pallai the army accompanied by PLOTE and EPRLF came looking the Appellant accompanied by his cousin. K.S managed to runaway before their approach and went to Mullaitivu. Here K.S was forced by the LTTE to join the group, and fled to Vavuniya along with other displaced refugees. When he was at a checkpoint he was once again arrested by the army and detained. He was assaulted before his uncle was able to bribe the EPRLF and get him released after which he fled the country. The adjudicator dismissed the Appeal on the basis of his disbelief that K.S had been detained on two occasions due to discrepancies in his accounts relating to the injuries he had sustained.

After the Human Rights Act came to be implemented by the Home Office in October 2000, the case of Pardeepan (00/TH/2414), and the undertaking given by the Secretary of State permitted those who claimed asylum before that date to raise human rights applications, even if they had not been successful in their asylum applications prior to that date.

K.S lodged a human rights claim based on Article 3 and Article 8 which in 2002 and his case is to be resolved in the legacy Case Resolution Directorate. He is due to be granted Indefinite Leave to Remain in line with criteria set out by the Secretary of State for the resolution of legacy cases.

European Community Law

The impact of the European Community law on the Tamil community throughout Europe is monumental. Tamils in Europe can benefit from the freedom of movement treaty rights under the Directive 2004/38 and Immigration (EEA) Regulation 2006. The EEA came into force on 30 April 2006. It marks a significant step by European Union Member States to recognize and implement plans to integrate fully into their community those who seek to gain full citizenship rights within their borders. The aim of the Citizens' Directive is to consolidate Community law regarding free movement of persons. Moreover, in addition to encouraging free mobility within the borders of the EU, the Directive also increases opportunities for more economic competition and opportunity, holding potential for positive returns in the future wealth of the Union as a whole. However, the interpretation of the Directive under the United Kingdom Home Office conflicts with supra-European law, acting as a major impediment for those Tamil families who would like to reunite within the UK's borders. Specifically, the Directive separates rights of residence into brackets of three months. The initial right of residence must be less than three months, whilst an extended right of residence is greater than three months.

A significant aspect of the Directive is that for the first time, EEA nationals and their family members are now allowed to obtain permanent residence under EC law without need to provide further documentation in terms of residency proof. Instead, the Directive now makes it possible for Union citizens to take up residence in the Member State with just a registration certificate which is to be unlimited in duration and effective upon immediate issuance (Art. 8 (2) and Para.14). This means that Member States are now required to allow for the easy entry and residence of partners of European Union citizens given they have a durable relationship. Rights concerning the treatment of family members of Union citizens are now better defined under the new Directive, granted public policy, public security or public health concerns, as well as the individual conduct and circumstance of the Union citizen in question.

Freedom of movement and the right of residence are important goals for any new member of a community. This is especially true in the case of those Tamil persons who seek to reside and make a positive contribution to the life and communities of member states like the United Kingdom. It is for this reason that the Citizens' Directive is a welcome addition to the existing legal stipulations within the European Community Treaty

According to the 1999 Tampere Council, a long-term goal of long-term residents is the opportunity to give them the nationality of the Member States in which they reside. This means that they also automatically gain citizenship rights of the Union. This is one of the goals of the Communication on immigration, employment

and integration of 2003, which ensures that acquiring nationality, is one of the means of facilitating integration of immigrants and is a step towards naturalisation.

Extending Rights to Family Members

The 2006 Directive also provides more details on the type of family member extensions allowed. Specifically, the Directive includes 'civil partnerships' as family members to be extended citizenship rights as well. The UK uses the definition given in paragraph 59 of Schedule 27 to the Civil Partnership Act 2004. Civil partners are covered under regulation 2 of the 2006 Regulations. The Home Office's position on this is that civil partners should also be given EEA family permits, and allowed the same rights as spouses. In contrast, direct family members not applying from an EEA State can be considered under regulation 12 (1) (b) (ii) where they must meet the requirements in the immigration rules to leave and enter the UK as a family member of either an EEA national or "in the case of direct ascendants or dependant direct relatives in the ascending line of his spouse or civil partner."

As pursuant to Article 17 of the European Community Treaty, there are 4 genuine rights that every Union citizen holds under Community law.

- the right to freedom of movement and residence (Article 18);
- electoral rights of Union citizens in European parliamentary and municipal elections in the member state of residence even if they are not nationals of that state (Article 19);
- protection by diplomatic and consular authorities of any Member State in a third country where the citizen's own Member State is not represented (Article 20); and
- access to non-judicial means of redress through an Ombudsman (Article 21).

The most important right is protection against all forms of discrimination on the grounds of nationality granted under Article 12. Equally as important, every citizen must be informed of his or her rights.

Specifically, the Directive is meant to enable the free movement of citizens within EU member states, as the interpretation of the Directive by the European Court of Justice showed in the case of Jia.

Jia- case study

Mrs. Jia is a dependent Chinese mother-in-law of a German citizen exercising European Union member citizen rights in Sweden. Mrs. Jia had gained lawful entry to Sweden as a visitor and sought to remain as a family member of a Union citizen. The European Court of Justice found that Community law does not require prior residence within the EU in order to benefit from the right of residence as a third country national family member of a Union citizen in cases where the application has been made from within the Member State.

MRAX v. Belgian State-2002

Another landmark case for the ECJ and one that should be used as a precedent for Tamil residence claimants is the MRAX v. Belgian State - Case C-459/99, 25 July 2002. In this case the ECJ ruled that a third country national family member (a spouse in this case) qualifies for residency even when the person has unlawfully entered a member state. MRAX is an antiracist campaign group that had complained to the ECJ about Belgian regulations requiring the family members of EU nationals to be in possession of the Belgian equivalent of an EEA family permit when they apply for residence documents from within the country. The Court agreed with MRAX regarding this claim.

"A Member State may neither refuse to issue a residence permit to a third country national who is married to a national of a Member State and entered the territory of that Member State lawfully, nor issue an order expelling him from the territory, on the sole ground that his visa expired before he applied for a residence permit."

The Metock case:

Case background-

Metock concerns four nationals of non-EEA states ("third country nationals") each of whom unsuccessfully applied for asylum in Ireland, and subsequently married a citizen of another EEA state who was exercising free movement rights in Ireland (the host Member State). Under Irish

regulations, which implement the Free Movement Directive, each applicant filed for a residence card. The Directive allows EEA nationals who exercise free movement rights in another EEA state to be accompanied by their family members of whatever nationality.

The first case concerns Mr. Metock, a Cameroonian national married to a British national working in Ireland, who had requested and been refused asylum in Ireland.

Mr. Ikogho, Mr. Chinedu and Mr. Igboanusi, All of the men were third country nationals (non-EEA) who had sought asylum in Ireland and were rejected asylum. Later all the four men had married other EEA nationals working in Ireland exercising the free movement Directive.

When they applied for residence card they the Irish government refused each application because its regulations state that rights under the Directive don't apply to a family member unless that family member was already lawfully resident in another Member State and was either

- seeking to enter Ireland with an EEA citizen of whose family he/she was a member, and
- seeking to join such an EEA citizen who was lawfully present in Ireland.

These national rulings were dismissed by the ECJ as incompatible with a correct interpretation of Directive 2004/38.

ECJ clarifies this position with 2 legal opinions in the case of Metock.

1. The Metock case concerns how the European Free Movement Directive applies to third country national spouses of EEA citizens. In the July 2008 judgment, the ECJ decided that national rules making those spouses' rights of residence under the Directive conditional on prior lawful residence in another Member State unlawful.

2. It also ruled against national restrictions on when and where their marriage took place and how the third country nationals entered host Member State.

Interestingly, the ECJ in effect overruled its own judgment in Akrich in the Metock ruling. By doing so, the ECJ declared that a third country family member no longer needs to show prior "lawful residence" within the EU in order to garner Community protection.

TWAN holds great hope that this is a positive future direction for greater freedom of movement for the Tamil community within the EU. Interestingly, the ECJ in effect overruled its own judgment in Akrich in the Metock ruling. By doing so, the ECJ declared that a third country family member no longer needs to show prior "lawful residence" within the EU in order to garner Community protection

Legal scholar Elspeth Guild argues that the ECJ ruling in Metock C-127/08 (25 July 2008) has a negative impact on the UKBA's position on the restriction of migrants within EU borders in two ways:

1. EEA family permits must be issued to third country national family members of EU citizens for the purpose of accompanying or joining the EU citizen to the host state (UK) regardless of whether the family member has been lawfully resident in another Member State before arriving.

2. It secondly says that the right to family reunification in the host state does not depend on where or when the family life was established.

Metock concerns four nationals of non-EEA states ("third country nationals") each of whom unsuccessfully applied for asylum in Ireland, and subsequently married a citizen of another EEA state who was exercising free movement rights in Ireland (the host Member State). Under Irish regulations, which implement the Free Movement Directive, each applicant filed for a residence card. The Directive allows EEA nationals who exercise free movement rights in another EEA state to be accompanied by their family members of whatever nationality.

ECJ ruling stated several important claims that give TWAN reason to remain hopeful regarding the extension of citizen rights to Tamils in Europe.

First, the EU directive does not allow any condition to be placed on family reunification for third country nationals with their EU national principal regarding where they were previously resident.

Second, because there is no visa requirement in the Directive, it should apply to third country national family members who are not residing in a Member State; the Directive correctly interpreted also does not allow a diminution of rights of citizens of the Union when they move to a host Member State; Member States do not have the competence to determine the conditions under which third country national family members can be issued visas abroad – this would defeat the purpose of EU law because the basis for admission vary depending on which Member State was considering the application.

Lastly, third country nationals have the right to join their EU national principal regardless of whether family life was established before or after the EU national moved.

There are only two grounds on which ECJ allows Member States to control or exclude third country family members of EU nationals:

- Article 27 of the Directive which allows one to exclude third country family members of EU nationals on grounds of public policy, public security or public health; and

- Article35 regarding measures to combat abuse of rights or fraud such as marriages of convenience.

UK Law and Policy in Conflict with Supranational Law

The UK implemented the Free Movement Directive through the Immigration (European Economic Area) Regulations 2006. Although these regulations do not limit the definition of family members in the same way as the Irish legislation in Metock, they hold certain provisions which conflict with the Metock decision in 3 important ways.

The first concerns the Surendher Singh case, regulation 9 of 2006 regulations extends the provisions of the Free Movement Directive to cover family members of British citizens who have exercised their free movement rights in another Member State but then move back to the UK. Regulation 9 does not require third country national family members to have prior lawful residence in another Member State; but if the third country family member is the spouse or civil partner of the UK national, it does require that "the parties are living together in the EEA state or had entered into the marriage or civil partnership and were living together in the State prior to the UK national re-entering the UK.

Second, regarding admission into the UK, under regulation 11, third country family members of EEA nationals will be admitted to the UK only if they have a passport and "an EEA family permit, a residence card or a permanent residence card." Regulation 12 (1)(b) provides that to obtain a family permit the person must either a) be lawfully residence in an EEA state, and b) meet the requirements of the UK's Immigration Rules for entry as a family member.

Third, regarding rights of residence, a family member of an EEA national will have an initial three month right of residence in the UK as long as he/she has a valid passport and will have first an extended and then a permanent right of residence in certain cases. There is no mention within these provisions form a need for prior lawful residence in the UK or other EEA states.[2]

Specifically, the Court's ruling in the Metock case on 25 July 2008 is crucial in that it interprets Directive 2004/38 in a way that allows Tamils to use this as a precedent for extending freedom of movement rights. As legal scholar Elspeth Guild commented on a note on the Metock case:

"Any application which is pending at the moment and to which UKBA seeks to apply national immigration rules should now be

[2] See Thorp, Arabella, Home Affairs Section of House of Commons Library, parliament briefings, http://www.parliament.uk/commons/lib/research/briefings/snha-04900.pdf

decided on the basis of the Metock decision. Any attempt by UKBA to apply national immigration rules to EU national's third country national family members should be continued with a threat of or claim for damages. Any practice by UKBA which appears to make the exercise of residence, work or benefits rights/entitlements more difficult after 1 May 2006 than it was before is suspicious under the Metock principle of the increasing of rights."

TWAN commends the efforts of the EU to continue to shape policy in this direction, providing hope to Tamil members within the EU's borders that they too can be guaranteed the same rights and measures of freedom as other EU born citizens. Although rulings such as the one on MRAX are encouraging, it is not enough that such Directives remain on paper full of potential. They must be enforced and respected equally by individual nation states within the Union. This report underscores the importance of rulings such as MRAX because the freedom of movement within the EU's borders is a fundamental principle and fundamental human right. The ability to move within the EU must not be denied nor hindered on the basis of asylum or immigration status with unduly harsh border controls and immigration policies. Consequently, the "securitization of borders" pursued by the UK Home Office in certain instances does more harm than good in terms of monitoring those who are able to move freely within the borders of the EU – a right that is recognized by the above cases and that must be respected by the Home Office.

Case Study 27

S.K is a male Sri Lanka citizen born on 23 January 1976. On 16th March 2006, the Applicant applied for a residency Card to confirm his right of residence in the UK through the Tamil Welfare Association UK. His application for residence card was refused by the SSHD.

This case concerns two main issues, a human rights appeal for extended stay in the UK and an appeal under the Immigration (European Economic Area) Regulations 2006. The summary findings of Immigration Judge Elson for this case, decided on 25 August 2006 that the Immigration appeal had more weight in this circumstances.

The Appellant appealed the decision of the Secretary of State to refuse confirmation of the Appellant's right of residence in the UK, notified to the Appellant in the 'reasons for refusal' letter. The Secretary of State argued that the Appellant had not shown credible proof that he was living in the same EEA state and household as his brother in law before coming to the UK, and that he had failed to demonstrate that he was dependent upon his brother in law. The second grounds upon which Appellant filed the appeal was due to the Convention for the Protection of Human Rights and Fundamental Freedoms agreed by the Council of Europe 1950 (1950 Convention), Article 8 (right to respect for private and family life). This is called as stage 2 hearing.

The European Economic Area Regulation 2006 states that "extended family member" is a person who is not a family member of an EEA national under regulation 7(1)(a), (b), or (c) and who satisfies the conditions that: (a) the person is residing in an EEA State in which the EEA national also resides and is dependent upon the EEA national or is a member of his household; (b) the person satisfied the condition in paragraph (a) and is accompanying the EEA national to the UK or wishes to join him there; or (c) the person satisfied the condition in paragraph (a), has joined the EEA national in the UK and continues to be dependent upon him or to be a member of his household.

Case Study 28

EU Sponsor of the Appellant is Mr. A.K. who is also his first cousin. The EU Sponsor and his wife have been living in Germany for 15 years since 1988. In 2001, Mr. A.K. received German Citizenship; From Germany, Mr. A.K. sent money to his family in Sri Lanka every year from 1994-1999, which partly helped sustain the Appellant and his father on their farm in Sri Lanka. The appellant then left Sri Lanka for the UK in 1999 where he subsequently sought asylum. His first appeal as a refugee seeking residence in the UK was deemed unsatisfactory by the Secretary of State based on the developing political situation in Sri Lanka at the time, where a ceasefire was enforced from 2002-2005. In view of these political developments, Appellant's claim for refugee assistance was not viewed as strong enough, although the Appellant's credibility was

not an issue. On September 5, 2001, Appellant received 2,000 pounds on a visit by Mr. A.K. hence underscoring the dependency of the Appellant on Mr. A.K. At the time this second appeal was filed, Mr. A.K. was living together with the Appellant in a one-room rental from the occupier of the property. Mr. A.K. was working at a garage in London with a net monthly salary of *824* pounds, 80 pounds of which went to the Appellant.

The basis for the success of the second claim to citizenship for the Appellant was very much reliant on the Immigration (European Economic Area) Regulations 2006 of which the only concern is whether the Appellant is dependent upon an EU sponsor. The significance of Article 8 of the 1950 Convention also testifies to the familial link that must be established. The Appellant and Mr. A. K. are cousins who consider themselves brothers, and living together in UK further establishes evidence of this family life. In terms of establishing a strong link between the two men, it was also claimed that Appellant and Mr. S.K had strong emotional links, due to the disintegrating political, social, and cultural life in Sri Lanka and the financial assistance Appellant received from his cousin. Counsel for the Appellant successfully established that because of the provided documents testifying EU dependency and family life between Appellant and Mr. A.K., the Appellant's removal from the UK would place the Secretary of State and the UK in breach of Article 8 of the 1950 Convention. Judge Elson's ruling which affirmed Appellant's successful asylum claim in the UK as an EU dependent of Mr. Kirushnathasan illustrates that whilst the human rights claim was valid, it was not strong enough to merit residency claims. Instead, it was Regulation 8 of the Immigration (EEA) Regulations 2006 that was the justifying grounds upon which Appellant's asylum claim was deemed successful.

2nd Appeal from Home Office: Case No. IA/08465/2006, in a reconsideration of the hearing on Appellant Mr. S. K., convened on April 16 and June 28, 2007, the respondents applied for review of the decision passed by Immigration Judge Elson on the grounds that paragraphs 8(2) (b) and 8(2) (c) of the regulations incorporate 8(2) (a), emphasizing that the words "either or" should be read onto the end of paragraph 8(2) (a). This argument was found to be wrong in RG (EEA Regulations – extended family members) Sri Lanka. The respondent is now arguing that in order for the Appellant to establish a legitimate claim for asylum within the UK, the burden of proof is then on Mr. A.K. to establish that he has in fact familial links (beyond financial assistance) to the Appellant in an EEA state other than the UK itself. The central issue in this second appeal now underscores the conflicting nature of supranational European Union law, with national UK law. The directive has clearly been implemented and interpreted in precedent cases in a positive manner towards the situation of immigrants and refugees, such as the Tamils. However, the UK home office's interpretation of the EU Directive highlights either/or a) the lack of clarity and direct specificity of the Directive in order that it can be implemented in a consistent manner with all 26 other EU member states, and b) the lack of a general understanding of how this type of regulation regarding movement of peoples should be implemented for the general benefit of not only EU members, but their family members as well – those peoples who may or may not come from within the EU. It is TWAN's firm belief that the EU directive must be interpreted in a manner that is not only beneficial to the member states' citizens themselves, but must also extend this hospitality to the member states' citizens [extended] family members, who may and often do come from nations outside the EU's borders. The entire purpose of the EU Directive is to stipulate, encourage, and promote the empowerment of peoples within the borders of the European Union. When the UK rearranges the letter of the law in such a fashion as to restrict the movement of people's who have legitimate claims and ties to EU member citizens' (such as that established by the Appellant and his first cousin Mr. A.K. in the first appeal), then it is violating the very essential fundamentals of the EU spirit of the law. This is a real problem that must be dealt with not only in UK's national courts, but also at a higher supranational level. The conflict of interests here is on two key levels; first, there is an obvious clash between supranational EU Directive law and UK national law; second, there is a clash between the idea and conceptual basis for the EU's 'freedom of movements' for persons principle (one of the four cornerstones of the EU's existence, the other three being freedom of goods, services, and capital) and

the interpretation and implementation of the EU's ideals. If the EU wishes to promote 'freedom of movement' for peoples as part of its characteristic as a post-modern entity, then it must ensure that its members, such as the UK, abides by the rules set out on a supranational level. For these reasons, TWAN is proud and justified to push the Home Office's claims for review to the highest, supranational level.

Regarding AP & FP (Citizens Directive Article 3(2); discretion dependence):

Counsel for the Appellant argued in his skeleton argument that pursuant to Home Office's grounds of appeal that paragraph 8(2) of the Directive required the appellant to have been residing with, and dependent on, the sponsor in an EEA state "other than the UK," in fact paragraph 8 does not consistently correspond to nor implement the Directive in the manner that it was designed for by the EU. The criterion for extended family members in the Regulations is narrower than that intended, or set out, in the Directive. Furthermore, although paragraph 8(2) provides for the extended family member to be, or have been, residing in an EEA state other than the UK, Article 3(2) of the Directive requires the host member state to facilitate residence for other family members who were/are dependent "in the country from which they come." Due to the wording of the Directive, it is clear that the phrase "the country from which they come," does not explicitly identify and thus mean a 'member state,' hence the phrase should not be limited to just meaning a member state. Essentially, Counsel for Mr. S.K. argued that paragraph 8 does not reflect the intentions of Article 3(2) of the Directive.

Concessions and Policy

Legacy Casework

In response to the backlog of asylum cases yet to be cleared, the Home Office has established the "legacy directorate" with the aim of processing these cases by 2011. A legacy case is any case where all of the following apply:

- There has been a claim for asylum, humanitarian protection or discretionary leave
- The Home Office records indicate that the case has not been concluded
- The Case is not being dealt with by the New Asylum Model (NAM)

While specific information regarding legacy cases remains unclear, it appears that legacy cases will include:

- Case where the asylum claim remains outstanding
- Cases where there is an outstanding appeal
- Cases where asylum has been refused and any appeal dismissed, but the individual remains in the UK
- Cases where a fresh claim for asylum has been made
- Case where the individual has been granted some form of leave to enter or remain, but this is limited and my need to be renewed (e.g. Unaccompanied child granted discretionary leave; a person granted discretionary leave for medical reasons)
- Case where the individual has been granted 5 years refugee leave or humanitarian protection and may apply for indefinite leave to remain at the end of that period
- Cases where the individual has left the UK but the Home Office records have not been updated

In response to applications for further leave to remain from individuals who fall within the legacy casework category, the Home Office has been sending standard letters, which simply state that the individual's case will be concluded by July 2011. When the Legacy Directorate selects a legacy case, they send a questionnaire to the individual. This means the case is being actively dealt with by a caseworker, and will be processed through to a conclusion. It should be noted that the legacy questionnaire is not an "amnesty" exercise for granting indefinite leave to remain to people in order to clear their backlog.

The Home Office have identified for criteria of cases, which they will prioritize:

- Cases of individuals who may pose a risk to the public
- Cases of individuals who may easily be removed

- Cases of individuals receiving support
- Cases of individuals who may be granted leave to remain

It may be possible to ask the Home Office to treat a case as a priority, but legal advice should be sought before making such a request as there is a risk that the person could be removed from the UK.

Seven Year Concession – Policy named as 'DP5/96'

Families with children who have lived in the United Kingdom continuously for 7 years or more may be exempt from deportation or removal. The application of the policy is limited to families where the child or children is under the age of 18 at the time the case is considered. It should be noted that there might be exceptional cases where this policy would not be applied, for example, if one parent has been convicted of a serious criminal offence,

Ten year Rule

An individual can apply for indefinite leave to remain in the UK on the ground of long residency. In order to succeed in a claim for long residency or to fall under the 10-year concession rule, which is provided by Section 276 B (i) (a) of the Immigration Rule, the claimant must show that his or her residency is lawful and continuous. There are certain factors that will be taken in account as well as the length of residency and these are:

- The age of the individual
- His/her strength/connection to the UK
- His/her personal history such as character, conduct, associations and employment record,
- His/her domestic circumstances
- Whether s/he has previous criminal record, and there is one, what nature of record (for instance, whether the individual has been convicted)
- His/her compassionate grounds, and
- Any representations received on his/her behalf

Thus, all the factors listed above are generally taken in consideration when making a decision to grant the indefinite leave to remain on the basis of long residency but each case are decided and based upon its own individual merits.

Fourteen year rule

According to 276B (ii) the requirements to be met by the applicants for indefinite leave to remain on the ground of long residence in the United Kingdom are that the applicant has had at least 14 years continuous residence in the United Kingdom, excluding any period spent in the United Kingdom following service of liability to removal or notice of a decision to remove by way of a court recommendation. Following issues will be considered when granting indefinite leave to remain in the United Kingdom on the basis of long residence

- age
- strength of connections in the United Kingdom
- Personal history including character, conduct, associations and employment record
- domestic circumstances
- previous criminal records and nature of any offence of which the person has been convicted
- compassionate circumstances and
- any representation received on the applicant's behalf

Case study 29

Mr J lived in the United Kingdom since 1992. He was initially represented by other solicitors. Mr came to seek advice from TWAN in 2005. Mr J was contributing national insurance and Payee Tax for more than 10 years. He was also maintaining regular records of his residence of 14 years in the United Kingdom. Mr J had no criminal records in the past. After checking the evidence TWAN made the application on the basis of Mr J's long residence, his private life establishment and included his compelling compassionate circumstances. Application was made in April 2006 accompanying various evidence to confirm his long residence. Mr J was granted indefinite leave to remain in the United Kingdom by the Home Office in July 2007 as it is a straight forward application. Mr J then sponsored his family under the family reunion rule which has been succeeded.

Case study 30

Applicants Mr & Mrs SM came to the United Kingdom as asylum seekers in 1993 and was given temporary admission by the Immigration services. Mr SM was a regular worker and Paying tax and contributing National insurance. TWAN made the application in July 2006 on the basis of long residence and right to have family life in the United Kingdom. Due to Mr SM's private life establishment and qualifying under Immigration rule 276 B Mr & Mrs SM were granted with indefinite leave to remain in the United Kingdom in February 2009.

Variation of Leave

Persons in the UK who have been previously granted a visa with limited leave and wish to remain in the UK for a further period of time are required to extend their visa using the appropriate application form with the specified fees. Applicants are required to do this before their leave to remain is due to expire otherwise they are committing a criminal offence which could have implications for their future immigration status and may also lead to deportation as they amounts to overstayer. There are various categories of leave to remain; in some cases applicants with limited leave to remain can switch from one category of visa to another. However if this is not permitted the applicant may have to return to their country of origin where they can then make an application for an entry clearance so as they can return to reside in the UK.

Many people residing in the UK possessing a visa with limited leave, approach our organisation seeking advice and making representations to the Home Office in regards to extending their visa or to change their category of variation to leave. An application for variation to leave must be submitted on one of the prescribed application forms, which are available on the Home Office website. There are different forms depending on the type of variation to leave the applicant is seeking. Forms with the prefix FLR are for applicants seeking an extension of their current leave to remain and forms beginning with prefix SET are for applicants seeking settlement leave to remain including long residence. For most FLR forms the standard fee is £395 for a postal application and a fee of £595 for applications made in person at the Home Office. There is no additional fee for children below the age of 18 if they are dependants. For most SET forms the standard fee is £750 for postal applications and £950 for applications made in person at the Home Office. Application fees may be changed time to time by the Home Office. Applicants must check the updated forms and fees in the Home Office website. There is no mandatory form where the applicant is seeking asylum or applying under Article 3 of the ECHR or applying for an EEA family permit- entry clearance.
The primary forms are:

(1) SET (M) – This form is for a spouse, civil partner, unmarried or same-sex partner of a person present and settled in the United Kingdom seeking indefinite leave to remain in the UK. The fee for a postal application (2008) was £750 and the fee for an application made in person at the Public Enquiry Office was £950.

Case Study 31

Mrs. SK a Sri Lankan national who had completed her probationary 2 years since her arrival to UK instructed us to apply for a settlement application. She entered as a spouse of a person present and settled in UK. Her husband is a naturalized British national. TWAN prepared the application for them based on the couple live permanently as man and wife. They have a subsisting marriage and were also blessed with a baby. Her application was successful and she was granted indefinite leave to remain (ILR).

(2) SET (O) – This form is for Work permit holders, employment not requiring a work permit, business person, innovator, investor, Highly skilled migrant, an artist, bereaved partner, tier 1 migrants, tier 2 migrants, UK ancestry, ex-HM forces, long residence in the UK or any other purposes not covered by other application forms. This is if applicant is seeking indefinite leave to remain in the UK. The fee for a postal application is (2008 fees) £750 and the fee for an application made in person at the Public Enquiry Office is £950.

Case Study 32

Ms K is a Mauritian national arrived in the UK in January 2003 as a student studying computer science, which she completed in July 2006. In December 2006 Ms K applied for a further leave to remain as she wished to undertake post-graduate studies, which was granted. However when Ms. K decided to change her course of study in September 2007 and applied for a further leave to remain as a Tier 1 (post-study work) migrant under application FLR (O), so as she could complete this course, her application was initially refused. This was when Ms. K approached TWAN for representation and advice with regards to lodging an appeal. TWAN assisted Ms. K in submitting the relevant documents and represented her at the appeal hearing at which she was granted the leave to remain.

Case Study 33

Mr. RS is a Sri Lankan National and approached TWAN, as he required advice and representation, as he wanted to make an application for highly skilled migrant status under the Highly Skilled Migrant Programme (HSMP) in November 2007. His first application was refused on the grounds that RS did not submit adequate evidence that he met the criteria needed to obtain the status of a highly skilled migrant. TWAN assisted Mr. RS in lodging an appeal and submitting further evidence as to why he believed he should qualify for the status of a highly skilled migrant; however in November 2008 this application was also refused on the same grounds with no appeal rights.

(**3) SET (DV)** – This form is for settlement applications as the victim of domestic violence. If using this form applicants need to be currently living in the UK with temporary permission to stay as the husband, wife, civil partner, unmarried or same-sex partner of a permanent resident and the relationship has broken down as the applicant has suffered domestic violence. The fee for a postal application is £750 (2008) and it is not possible to make an application in person at the public Enquiry Office. The applicant must have a limited leave (probationary leave) while in the United Kingdom and must not be overstayed when making application to the Home Office.

Case Study 34

SA is a Sri Lankan National sponsored by her husband and came to the United Kingdom with three dependant children on a two-year probationary visa. However Mrs. SA became a victim of domestic violence within the leave (valid visa) and was separated from her husband and thereafter sought to extend her visa to indefinite leave to remain under the SET (DV) application. TWAN assisted Mrs. SA in preparing her application and submitting the relevant evidence such as police reports, medical reports and other supportive witness statements. In April 2008 Mrs. SA and her three dependant children were granted indefinite leave to remain in the UK on the basis of submitted evidence.

(4) SET (F) – This form is for settlement applications by family members of persons who are currently living in the UK and are a permanent resident and one of the following categories applies to you:

a. A child or relative (under 18) of persons permanently residing in the UK
b. Adopted child (under18) of persons residing permanently in the UK
c. Parent, grandparent or other dependant relative aged 18 or over of persons who are residing permanently in the UK.

The fee for a postal application is £750 and the fee for an application made in person at the Public Enquiry Office is £950.

Case Study 35

Mrs. TT a Sri Lankan national residing in Switzerland came to visit her son in UK and later decided to stay in UK due to her worsening health condition. She was suffering from severe asthma since her arrival in Switzerland, but her asthmatic condition had got better during her stay in UK. She decided to stay with her only son and made a SET (F) application due to her health condition and also the inability of her husband to support her financially in Switzerland as he was working part time only. Her son was reasonably well off, to look after her. Mrs. TT's home in Sri Lanka had been destroyed by military operation of the Sri Lankan forces and she could not return there. The Secretary of State refused her initial application, but an appeal was made by TWAN on her behalf.

Case Study 36

Mr. KT a Sri Lankan national arrived with his mother to the UK in 2006, as his father, a naturalized British citizen, had sponsored them. His mother had been granted indefinite leave to remain after the two years probationary period, but his application for SET (F) was rejected as he was above 18 when the application was made. TWAN made an appeal on his behalf providing evidence of his father's financial support to him, as he was still a student in continuous education. He was granted indefinite leave to remain by the Immigration Judge.

(5) ELR – This form should be used if the applicant was given exceptional leave to enter or remain. This was given for a period of four years or more before the 1st April 2003 and the applicant's continuing fear of return to your country of origin. This form does not require a fee.

(6) FLR (M) - This form is for applicants seeking further leave to remain by married and unmarried partners. Complete this form if you are a husband, wife, civil partner, unmarried or same-sex partner. Postal application fees are £395; an application made in person at the Public Enquiry Office is £595. [2008 fees]

Case Study 37

Mrs. MF is a Sri Lankan national entered the UK in May 2006 as the spouse of a settled person in the UK. Mrs. MF completed 20 months in the UK as a wife; however her visa was due to expire so she came to TWAN in January 2008 seeking assistance in making an application to extend her stay in the UK through the FLR (M) application. Our client could not make an application for settlement, as she did not have the necessary evidence to prove her English language skills. TWAN assisted Mrs.

MF in completing the relevant application and submitting the appropriate evidence to show that she is the wife of person settled and present in the UK and also that her husband had sufficient earnings so as he could accommodate his wife without recourse to any public funds. Our client's application was successful and she was granted a further two years extension of her visa.

Case Study 38

Mrs. PJ a Sri Lankan national approached our services to get visa extension through FLR (M) application. Mrs. PJ had come to UK in December 2006 and her entry clearance visa was due to end. TWAN made an application on her behalf as she had difficulty in completing the form. She was given an extension and also received the new Identity card for Foreign Nationals (ICFN). This is the new biometric card introduced by the Home office replacing the vignette (sticker) on the passport. Her two daughters were also given the extension and ICFN

ICFN

This is the new identity card with a biometric chip containing personal information and immigration conditions. The card is the size of a credit card; it contains the photograph and two of the fingerprints of the cardholder. It does not replace the passport and one has to carry the card along with the passport if travelling abroad or returning to UK. This normally is being issued to FLR (M) and FLR (S) applications.

(7) FLR (O) – This form is for a variety of applicants seeking further leave to remain including postgraduate doctors or dentists, those seeking private medical treatment or overseas qualified midwives or nurses. The postal application fee is £395 and the fee for applications made in person at the Public Enquiry Office is £595 (2008 fees)

Case Study 39

Mr. PK came to the UK in September 2005 with the relevant visa to practice as a Hindu priest and in August 2006 he approached TWAN as he required representation and advice in regards to extending his visa under the application form FLR (O) so as he could continue his services as a minister of religion. TWAN assisted Mr. PK with regards to completing and submitting the relevant application form and also submitting the specified evidence to show that he was practicing as a minister of religion in the UK. Our client's application form was successful and he was granted one years extension of his visa.

(8) FLR (S) – This form is for students or prospective students. The applicant is required to

specify the type of studies he or she is undertaking for example a postgraduate writing a thesis, a student nurse or a sabbatical officer. The fee for a postal application is £295 the fee for an application made in person at the Public Enquiry Office is £500.

Case Study40

Mr. KK is a Sri Lankan national and was in the UK on a student visa and he required an extension of leave so as he could complete his studies in Computer Science. Mr. KK approached TWAN in November 2008 requiring representation with regards to his FLR (S) application. TWAN assisted him with regards to submitting the relevant documents and completing the correct form. Our client's application was successful and he was granted a year extension of his visa.

Case study 41

Mr. VR an Indian National, enrolled at Leeds University studying MSc. Medical Physics in September 2007. He wanted to extend his stay to continue his Research Project for which he had made a graduation fee of £11,700. Further more his father, who works as a priest in a Hindu temple, was willing to support him during his stay in UK. The client approached us to make an application for his extension under FLR (S). We approached UK Border Agency on his behalf and he was given an extension to stay.

Case study 42

Ms. OK a Mauritius national who was a student in the UK had applied for an extension of stay, but was refused by the Secretary of State. She approached TWAN for making an appeal. She had fulfilled all the requirements except finance satisfaction. She had not been able to demonstrate documents that she had been in possession of £800 as specified in the guide.

During the hearing she had provided the Bank statements in her name and the Home Office Presenting Officer confirmed that the evidence met the outstanding requirement of the rules. The Judge determined in her favour.

(9) FLR (IGS) – This form is for applicants seeking further leave to remain or extension of stay under the International Graduates Scheme.

(10) HPDL – This form is for an extension of stay or settlement in accordance with the Home Office Policies on Humanitarian Protection or Discretionary Leave by a person who, following refusal of asylum was granted one of the following; less than four years exceptional leave, humanitarian protection or discretionary leave. This application does not require a fee.

(11) BUS – This form is for business person, sole representative, retired person of independent means, and investor on innovator. The fee for a postal application is £750; it is not possible to make an application in person at the Public Enquiry Office.

(12) COA – Certificate of approval for marriage or civil partnerships in the UK. Those who are under immigration control and who wish to marry while in the UK, and who did not obtain an entry visa for this purpose must present a certificate of approval to the marriage registrar. Those with leave to remain with any duration may apply on the form. The fee for an application made on this form is £295.

(13) NTLOC – Application for a no time limit (NTL) or transfer of conditions (TOC) stamp by someone who already has indefinite or limited leave to remain in the UK. This form is to be used if the applicant already has a stamp of indefinite or limited leave to enter or remain in the UK either on their passport or other document issued to them and they now want that stamp on a different or renewed document. The fee for a postal application is £150 and the fee for an application made in person is £500.

UK Entry Visa

Many of our community members settled in the UK approach us to help their friends and families to visit them for general visit, settlement, studies or employment. The settled community members feel this, as an obligation to their relatives and friends living in Sri Lanka. They seek our service on behalf of the applicant. We take up such cases and guide them in filling such applications. We also take up appeals and representation, when such applications have failed to get entry clearance.

In 2008, 57 Entry clearance visa applications were filed through TWAN and 7 Cases were appealed and represented by TWAN in the same period. We successfully won the entire appeal cases. Some cases that were not cleared and lacked merit were advised by us to re-apply for Entry clearance.

Mostly entry visa applications are for visit visa (VAF1) or settlement visa application (VAF4), which is the most popular assistance provided by TWAN.

Visitors Visa

Since November 2008 the VAF1 visa application form has been categorized under specific nature of visit of the applicant. The various applications forms are explained below. The stay should not exceed more than 6 months except in case of an Academic visitor or their dependent, where he/she is allowed to stay not exceeding 12 months.

VAF1A - General visitor: this is applicable to general tourists visiting UK for holiday, sightseeing or pleasure. The conditions attached to this visa include: leaving the UK at the end of visit, not taking up employment in UK, not studying and having access to accommodation and funds.

VAF1B - Family visitor: this is applicable to applicant visiting family members not exceeding six months and should not indulge in employment, business or studying in UK during that period. Also the visitor should not have recourse to public funds. This is the more frequent type of assistance TWAN is involved in.

Case Study 43

Mr. SR wanted to sponsor his mother-in-law on a visit visa as the applicant's daughter was about to deliver her baby. Applicant's daughter had been diagnosed with Gestational Diabetes and the couple also had a 10-month-old baby. Mr. SR owned a three-bedroom house and was in full time employment. An application was lodged after checking and collecting the necessary documents. His financial stability and the facility to accommodate his mother in law were useful in getting her a six months visa. Her presence in UK helped the family tide over an emotional period.

VAF1C- Business visitor: the Business visitor must satisfy the Entry clearance officer that the applicant is a genuine visitor and has an intention of returning to country of origin before expiration. The applicant should also demonstrate that place of work is normally outside UK and not have any plans to produce goods, work or provide any kind of services in the United Kingdom.
VAF1D- Student visitor: this application is for students who would like to come to UK for a short course not exceeding six months. Students who intend to study in UK and want to visit the educational institutions can also use this application. The applicant should show that he/she has been accepted in a course of study. The applicant cannot be below 18 years of age and evidence must be shown that the cost costs of the journey can be met.

VAF1E- Academic visitor: to qualify, in addition to showing the general condition of a visitor, the applicant must demonstrate that he/she is an expert in his/her field of expertise and must provide evidence that immediately before he/she travelled he/she was involved in some area of work related the field of expertise.

VAF1F- Marriage visitor: the visitor must meet the general conditions of entry to the United Kingdom as a visitor. In addition the applicant has to show evidence he/she is able to give notice of hi/her marriage in UK within the time for which entry is sought.

The applicant will also have to produce satisfactory evidence of the arrangement for giving notice of that marriage during the period of time for which entry is requested. The same rules apply for the purpose of civil partnership.

VAF1G-Medical treatment visitor: this application has to satisfy the conditions of a visitor and in addition to that the applicant is required to produce evidence of arrangements for consultation or treatment and that treatment is for a finite period. The medical treatment must be privately funded.

VAF1H-Visitor in transit, VAF1J-Sports visitor and VAF1K- Entertainer visitor are the other application forms that are used by visitors. Since we are a charity organisation we have not been

approached for these visas, which are of a commercial nature.

VAF 2- Employment Visa: this application is used for applying for Work Permit Holders, Working Holiday makers and Highly Skilled Migrants. We are approached by very few clients to assist them in these kind of applications.

Settlement Visa

VAF4 – This application form is used by; Fiancé (e) s, proposed civil partners, spouses, civil partners, unmarried and same-sex partners and dependants of refugees under family re-union.

Case study 44

Settlement visa for dependent Parents:

Mr. NV a British citizen's parents had applied for a settlement visa to join him in the UK. The application was rejected by the ECO on the grounds that the applicants did not meet the requirements of paragraph 317(iii) ("is financially wholly or mainly dependent on the relative present and settled in the United Kingdom").

TWAN lodged an appeal on behalf of the parents after Mr. NV approached us for help.

The grounds provided by the Presenting Officer at the AIT was, the existence of another son in Switzerland and a gap in the money transactions for two years was not credible. Mr. NV presented the tribunal with the receipts for the time he had sent money through banks and that his brother in Swiss has only started working recently.

The judge allowed the parents to enter UK and noted that the appellants met the requirements of paragraph 317(iii) and should be allowed visas to enter UK to join the sponsor.

Case study 45

Settlement visa for partners

Mr. KP was working as a Hindu community priest and wanted to get an entry clearance for his wife to live with him in UK. TWAN made an application on his behalf but the Entry clearance officer refused her entry. An appeal was lodged by TWAN on behalf of Mrs. KP. She was advised to make a fresh application while the appeal result was still pending. In this instance the Entry clearance officer cleared her leave to enter on the fresh application

Case study 46

Settlement visa for family re-union

Mr. SJ had arrived in this country as an asylum seeker from Sri Lanka. He was granted ILR (Indefinite Leave to Remain) under the Legacy case, having lived for more than10 years in UK. He approached us to sponsor his wife and children from Sri Lanka for family reunion.

The application was made as one family unit for his wife and two daughters. The Entry Clearance Officer (ECO) allowed the wife and one daughter aged below 18, but refused to grant entry to the eldest daughter who was 23 years old. An appeal was lodged and the Judge initially announced she would allow the appeal and later provide written reasons for her decision at a later date. But, in the written decision she regretted having overlooked the age of the appellant who was above 18.

TWAN has appealed against this decision invoking Article 8 of the ECHR and paragraph 317 of the Immigration rules HC 395. The grounds of appeal are that the girl aged 23 is not leading an independent life, is unmarried and is not in a civil partnership, and has not formed an independent family.

Case study 47

Mr. SM a Sri Lankan national entered UK under two different names on two different occasions. The first time he had entered under a false passport and was deported. He came back to UK after a few weeks and registered himself as an asylum seeker under his original name. He later on met his wife and got married in 2001. In October 2007 his wife and sponsor were granted British citizenship. He decided to go back to Sri Lanka and enter the UK with a settlement visa sponsored by his wife.

He was refused entry by the ECO on the grounds of the client's inability to establish his identity and nationality by producing a valid national passport or other documents. The client made an appeal, and the Judge had allowed his appeal on grounds of human rights. But the Senior Immigration Judge quashed the appeal and held the judge had erred in allowing Article 8, as it

was extremely difficult to see how the findings could properly be made of family life with a person who is unknown. The Judge also had suggested that with a fresh application and enough documentation the client may be able to persuade the Entry clearance officer.

TWAN has been approached to deal with this case and it is being processed.

Case study 48

Mr. TS who was working as a Manager. His asylum application was considered but the application on the basis of marriage was pending; but he decided to withdraw the application and went to Sri Lanka with the intention to obtain valid entry visa and to rejoin his wife who had been recognized refugee status and settled in United Kingdom.

When the applicant made an application to enter the UK, the ECO refused his entry that his sponsor/wife did not have sufficient funds and he would have to be supported without recourse to public funds on his arrival in UK. The sponsor also had two lodgers paying rents totalling £750 pm and her own income from employment was £950. The appeal was made on two grounds that the failure of the ECO to note the bank statements properly and that the appellant was in genuine employment and the offer of employment on his arrival was also genuine.

The sponsor had a three years old son with a medical history of fits. The appeal was further made on compassionate grounds that the appellant be allowed to enter the UK to support his child physically and emotionally. The refusal of the ECO refusal breached his right to family life under Article 8.

Case study 49

Mrs. SG sponsored her parents to join her as they were old and had no one to care for them. When her parents made the application, the ECO refused them entry to UK, as the father had not provided the birth year of the sponsor. The ECO had raised the issue of whether the applicant and sponsor were related.

The sponsor, providing the documentary evidences of birth certificates of the sponsor and her siblings, lodged an appeal. AIT allowed the parents to join her.

Exemption from Visa fees for 'destitute persons'

Miss SS who had been granted Refugee status wanted to sponsor her parents to join her. Her parents were asked to pay the visa fees for VAF4 application. She approached our office to seek exemption from the fee as her parents were had been displaced due to the war and were taking refugee in a church. A letter was sent to the UK Visa Application Centre in Colombo to waiver the fee for 'destitute persons' in accordance with the Immigration rules (Para's 352A-352F HC 395)

VAF5 - EEA family permit: this application is needed in cases where an EEA or Swiss national is exercising a treaty right is working or otherwise residing in UK, non-EEA applicants are permitted to join them provided they satisfy as a family member of a person who is exercising such treaty rights.

Case study 50

Mrs. AB an EEA national wanted her mother-in-law to attend the First Holy Communion of her son. She rented a four-bedroom house and was in part-time employment. TWAN made the application on her behalf and the client was advised on the necessary documents and evidence to be submitted along with the application. She was successfully granted a visa to visit her grandson's First Communion.

Case study 51

Mrs. NP a Sri Lankan national living in India, applied for entry visa to the British High Commission (BHC). Her husband, who had entered UK as a dependent of an EEA national, sponsored her application. Her application was refused and her husband approached TWAN to make an appeal against the refusal. The ECO had not rejected her claim of marriage with her sponsor/husband but is challenging the criteria she meets as family member of EEA national.

An appeal has been lodged with the AIT on grounds of the appellant's sponsor, who has the right to abode in UK, as an extended family member of an EEA national is covered under Regulation 8 of the Immigration (EEA Regulations) and this meets the requirement of the appellant as well. It also breaches her right under Article 8 of the European Convention on Human Rights. The

Tribunal has directed the Entry Clearance Officer to respond before 1 June 2009 with a decision.

Points – Based System

From April 2009 the new visa regime, called the Points –Based System will come into effect.

This new system is aimed to be more transparent, objective and a simplification of the immigration system. However there appears an inherent unfairness in this and could be potentially challenged in the higher courts Some organisations which lobbied the government during the consultation for the system argue that a block on low-skilled workers from outside the EU will lead to exploitation and worsen illegal migration

The new system is divided into five 'tiers' or categories:

Tier1- General highly skilled migrants: the purpose of Tier1 is to create avenue for highly skilled migrants who wish to work or become self-employed in the United Kingdom. English Language fluency is a requirement for this application and the applicants under this category include; Student nurse, Post-graduate Doctor or Dentist, Investor, Entrepreneur, Student re-sitting exams and Student writing up thesis.

Tier 2- Skilled workers with a job offer: to qualify under Tier2, the applicant must have a firm job in a listed shortage occupation. The Employer must be an approved sponsor and the employer must show that he/she attempted to recruit from within the UK or EEA before looking for overseas staff.

Tier 3- Low skilled migrants: nationals falling into this category will generally be expected to return to their country of origin. Employers will be expected to look to the United Kingdom labour market to fill any posts they have and then EU and only then will they be expected to look overseas.

Tier 4- Students: those coming under this will be expected to return to their country of origin. They will not normally be allowed to settle in the United Kingdom. This includes; Students in general, Students under the age of 18 and Study through work placements.

Tier 5- Youth mobility schemes and temporary workers:

The applicant in this kind of visa will be expected to return to their country of origin after expiry of visa. They will also not be allowed to switch over to other tiers. Tier5 is a non-economic and temporary category for entry and emphasis is on cultural exchange, holidaymakers and also covers temporary work. This suits Gap year students, Voluntary workers, people on cultural exchange etc.

To qualify under the point-based system, the applicant must score minimum points for that tier. If one cannot meet the basic point then he/she will not qualify.

Sponsor Applications

Principle of sponsorship
Sponsorship is based on two fundamental principles:

1. Those who benefit from the migration i.e., employers or educational institutions, should play their part in ensuring that the system is not abused; and
2. Those applying to come to UK to do a job or study are eligible to do so and that a reputable employer or educational institution genuinely wishes to take them on.

Who needs sponsoring?
Those who want to come to UK for work either as a skilled/unskilled worker or as a temporary worker or for the purpose of studying has to get a sponsor from UK. Those coming under Tier2, Tier3, Tier4 and Tier5 will need a certificate of sponsorship.

Who can sponsor?
When an application for a sponsor license is successful, sponsors will receive a sponsor license number. The approval of license is decided after appropriate checks. License may be refused if there is anything in the sponsoring body's history or Key personnel's history that suggests it could be a threat to immigration control. Once licensed under Tier2 and/or Tier5 the sponsor will be able to assign certificates of sponsorship to migrants who wish to come to work or study in UK. This certificate itself will be graded with points. The

scoring will be a reflection of the sponsor's own record when sponsoring applicants in the past/ future.

Certificate of sponsorship

The Certificate of sponsorship is not a certificate but a unique number provided by the UKBA. The certificates are rated according to their merits and the ratings will affect the scoring system in the Point based system. Certificates can be revoked or suspended by UKBA for abuse or not having correct systems in place to adequately meet the duties of the sponsor.

A Rated: If the certificate holder has been accorded an A-rated sponsor, then there have been no evidence of abuse, and have all the necessary systems in place to meet their duties.

B Rated: If the certificate holder has been accorded a B-rated sponsor, there may be previous evidence of abuse, or a visiting officer has found evidence that the correct systems are not in place or not adequate to meet their duties.

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Tier2 skilled workers: The applicant must have both a sponsor and a valid certificate of sponsorship before applying.

General: this is applicable to people coming to UK for filling shortage occupations such as nurses or chefs and also for those coming to UK to fill a gap in the job market that cannot be filled, by a settled worker.

Intra Company Transfers: for employees of MNCs being transferred for a skilled job to a UK based branch of the organisation.

Sportsperson: for elite sportspeople and coaches whose employment will make a significant contribution to the development of sport at the highest level.

Ministers of Religion: for those people coming to fill a vacancy as a Minister of Religion, Missionary or Members of a Religious order.

As the minister has to communicate with worshippers and must have a higher level of English language than other categories in Tier 2, there is a requirement of a sound knowledge of English by the applicant.

Tier 5 temporary workers: The sponsor within Tier5 will not always be the employer – in certain circumstances, migrants may meet all of the Tier5 criteria where there is no direct employer/ employee relationship. Even in the absence of such a relationship, there must be a sponsor who is willing to take on all of the sponsorship duties

Creative and sporting: This category is for those who come to the United Kingdom to work or perform as sports people, entertainers or creative artists. The maximum period for sports people is 12 months and creative artists get an initial stay of 12 months with the option to extend up to 24 months in total, where the original sponsor assigns a new certificate of sponsorship for a further period.

Their dependants will be allowed to work if they are accompanying or joining them in the United Kingdom.

Charity workers: Migrants coming to work temporarily on the United Kingdom as charity workers should only be undertaking voluntary activity and not paid employment. The migrant should intend to carry out fieldwork directly related to the purpose of the sponsoring organisation.

Religious workers: This category is for migrants coming to work temporarily in UK as

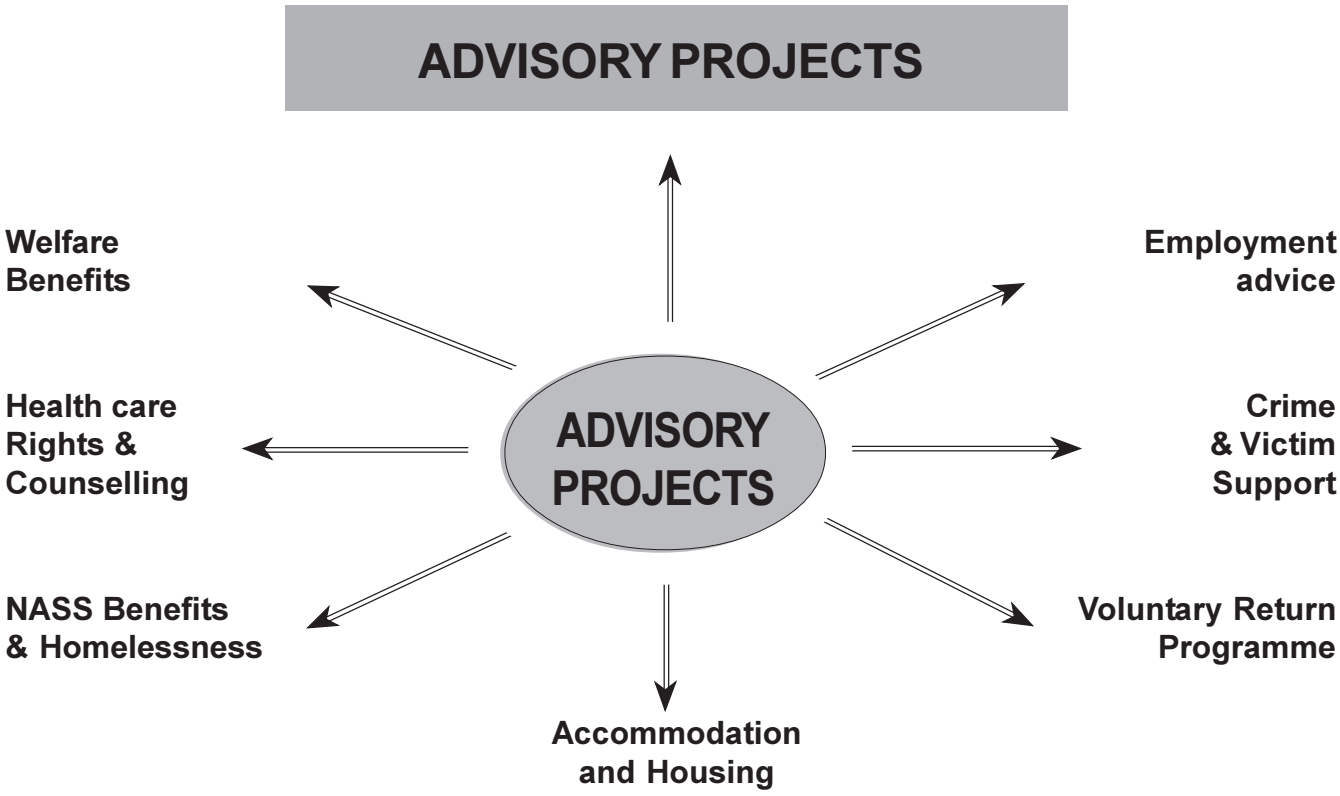
(i) a religious worker where duties may include preaching, pastoral or non- pastoral work; or

(ii) a visiting religious worker who is employed overseas in the same capacity as they are seeking to come to the UK to work. Their employment must be ongoing and the time spent in UK should be consistent with a break from their employment ; or

(iii) a member of a religious order such as a monastic community of nuns/monks or a similar religious community involving a permanent commitment.

Advisory Project

When the organisation was formed in 1985 it started as a self help group by the Tamil refugees. The members shared the expenses and provided informal information amongst them. The advisory project became the key project of the organisation. In 1989 the organisation started information and advisory project in a structured manner and has been providing this service continuously for over 20years. Still this is the lead project of our organisation providing advice in various activities benefiting over 20 persons every day. Currently this project is mainly founded by the London council and also supplemented by Lloyds TSB Foundation funding. The main areas of our advisory projects are detailed below.



There are also categories for temporary workers under International arrangement and Government authorized exchange.

Changes in the Welfare Benefits

Apart from immigration and asylum related advice and casework the second area of service we provide is advice and casework relating to welfare benefits of our stakeholders. Our clients approach us when they are refused to take welfare benefit by the benefit agencies, which usually get triggered by their immigration status, i.e. being asylum seekers. Moreover lack of knowledge of the benefit system amongst our community is the other reason why they approach us, to obtain or get advice on their benefit related issues.

According to our records European nationals of Tamil origin who have come to reside in UK exercising their treaty rights are approaching us in very high numbers. They approach us to find out about the welfare benefits entitlements, as most of the applications are made over the phone by the benefit agencies, which contributes to considerable difficulties to them to explain clearly, in order to claim their benefits

Furthermore, we noticed benefit agencies are not giving enough reasons for their decisions, when they are refusing the claims for benefits. And they are not sending the appeal forms with their negative decision, so as to enable our clients to exercise their *rights to appeal.*

The new Employment and Support Allowance (ESA)

With effect from 27th October 2008 Employment Support Allowance (ESA) replaced Incapacity Benefit and Income Support based on the grounds of incapacity. It retains the features of both the benefits having two elements to it, the contributory ESA and income-related ESA.

It is a single benefit and it is not paid due to a person being incapable of work. ESA claimants have been divided into two groups, the 'support group' and the 'work-related activity group'.

Contributory ESA: this is linked to the national insurance contribution record. It replaces incapacity benefit, which was also based on national insurance contribution. To be eligible for this the

Income-related ESA: this is the means tested element of ESA. It replaces income support paid on grounds of incapacity. It provides for the basic living expenses and like the previous Income Support benefit it can help with mortgage interest payment and certain other housing costs. This benefit can be paid on its own or a top-up to contributory ESA.

Disqualification

A claimant can be disqualified from receiving ESA

- if he/she has a limited capacity to work through misconduct, i.e. knowingly and recklessly breaking accepted safety rules,
- refuses medical or other treatment without a good cause for such refusal,
- behave in a calculated way to slow down one's recovery without a good cause; or
- absent from home without leaving a word where the claimant can be found.

However a disqualification will not apply if the claimant is considered to be a 'person in hardship'

Work capability assessment:

This is a key component of ESA. There are three parts to assessment:

- The first part determines whether the claimant is entitled to ESA
- The second part determines whether he/she should join the support group or work-related activity group
- The third part provides a report for the claimant and his/her personal advicer that can be used in any work-focused interview.

Application of Work capability assessment

The decision maker at the Jobcentre Plus will look at the information provided by the claimant in the ESA to see if there is evidence that he/she has a limited capability for work or work related activity without having to make further enquiries. If the decision maker considers the claimant does not satisfy such evidence, they will send the claimant the ESA50 questionnaire to be completed.
This form is an assessment of how the illness or disability affects the ability to work

Support group

If it is decided that the claimant has a limited capability to work-related activity, then he/she will be placed in the support group. This means the claimant need not attend the work-focused interviews or undertake work-related activities. The work-related conditions and sanctions do not apply to such claimants. Additionally he/she will receive a higher level of ESA than the work-related activity group.

Work related activity group

If it is decided the claimant does not have a limited capability for work-related activity, he/she will be placed in the work related activity group. To continue receiving ESA in full, the claimant must fulfil certain conditions includes attending, a six series work-focused interviews. If the claimant fails to meet these conditions the ESA payment may be sanctioned.

The medical assessment:

The medical assessment is carried out by a health care professional working on behalf of DWP to see if their findings are similar to the claims of the applicant. When the healthcare professional opinion differs from that of the claimant, they should provide a full explanation. Failure to

attend the medical assessment will be treated as not having a limited capability to work unless the claimant can show a good cause. The health-care professional does not make the decision. The decision maker at the Jobcentre Plus will make it based on the healthcare professional medical report.

Work Focused Health Related Assessment (WFRHA)

The WFRHA takes place in a medical centre following the medical assessment relating to the first two part of Work Capacity Assessment. In certain circumstances it may be possible for it to take place in the home of the claimant. A seven days notice will be given in writing by the healthcare professional containing date, time and place of the assessment. A shorter time can be done if agreed upon by the claimant.

Failure to attend: if the claimant fails to attend he/she must show a good cause within five working days. Failing to do so will result in sanction being applied on the ESA allowance. The decision maker will take into account the claimant's disability and state of health at the time of the assessment or whether the claimant was outside UK.

Reduction

A reduction is only applied after the assessment phase of ESA is over. This is usually after the claimant has been on ESA for 13 weeks. For the first four weeks, an amount equal to 50% of the work-related activity component is taken away from the claimants ESA.
After four weeks the reduction is 100% of the work-related activity component.

Appeals over the limited capability of work:

An appeal can be lodged if it was decided that the claimant does not have a limited capability to work. He/she can appeal against this decision while continuing to claim the basic allowance of ESA.

If successful in the appeal, they will receive full arrears for any additional component that has not been paid

Contributory ESA

Those who paid sufficient national insurance contributions will be entitled for this benefit also in certain circumstances persons become incapable of work before the age of 20 (or 25 in some cases).
There are six different classes of national insurance but only Class1 and Class2 count towards *Contributory ESA.*

Employees and employers on any amount above the threshold of £105 a week come under Class1 contributors and self-employed people making a flat contribution of £2.30 a week under Class 2 contributors.

Income related ESA

It provides for basic living expenses for you and your partner, if you have one. It is similar to income support benefit it replaces. Like income support, income-related ESA does not depend on your national insurance contributions. It can be paid on its own if you have no other income, or it can top up contributory ESA.

Full time education

The claimant cannot undertake full time education and still claim income related ESA unless entitled to disability living allowance.

Immigration

A claimant can be excluded from income related ESA if he/she is defined as a person subject to immigration control; unless s/he comes under one of the exemptions below. A person is defined subject to immigration control if he/she is not a European Economic Area National; or

- Those who require leave to enter/remain in the UK subject to a condition they are not allowed recourse to public funds
- Those require leave to enter/remain in the UK but do not have it; or
- Are a sponsored immigrant, the right to enter/remain given as a result of maintenance undertaking by a sponsor

There are exemptions and one has can claim income related ESA under those clauses.

How are ESA entitlement calculated?

The entitlement of ESA is calculated depending on the income and capital, whether the claimant has a partner, whether the partner has a disability, or is a carer. What stage of the assessment phase they are in, whether they belong to the support group or work-related activity group. If the claimant is single only the needs of the single person are taken into account. If the claimant has a partner then needs of both have to be calculated.

The claimant will not be entitled to Income-related ESA if the claimant or their partner's capital exceeds £16,000.

The severe disability premium (SDP)

The severe disability premium can be awarded on top of the enhanced disability premium or the pensioner premium.
Housing Costs

Income-related ESA can help with mortgage interest payments and certain other housing costs. If the claimant is paying rent, he/she may be able to get housing benefit instead.

ESA covers the interest on loans taken out and used within six months to pay for repairs and improvements to the claimant's home. Loans to pay service charges for any of these works are covered, as are loans used to pay off an existing loan for repairs, but only to the extent that the existing loan would have qualified.

Amounts intended for day-to-day living expenses, including the cost of water and fuel cannot be included as housing costs.

Income

Income received by the claimant is treated when his/her entitlement to income-related employment and support allowance is calculated. All income is considered, including earnings, benefits and pensions. If he/she is a couple, their partner's income is added to the claimant. Otherwise, only the claimant's own income is taken into account; income belonging to dependent children is disregarded. If his/her income varies from week to week, there is discretion to taken a more representative period and work out the average earnings over that period. If he/she has a regular pattern of working some weeks on, some weeks off, the average weekly earnings may be worked out over their working cycle: that average is then also taken into account in their off weeks.

Income generated from capital

Income derived from capital is generally not treated as income but is added to the claimant's capital from the date it is normally due to be credited to the claimant.

Capital

Any capital that a claimant possesses can affect the entitlement to income-related ESA if it is above the set limits. Capital includes savings, investments, some lump-sum payments and the value of property and land. If the claimant owns the home then the value of the home, garden, garage or any outbuilding is not taken into account.

If the claimant is a couple his/her partner's capital is added to the claimant's. Otherwise, only the claimant's is taken into account. Any capital belonging to children is disregarded.

If the capital exceeds £16,000 one cannot make a claim for income-related ESA.

Work Focused Interviews

ESA claimants are expected to take part in an initial work-focused interview during or shortly after the 8th week of their claim. A series of five further interviews will be streamlined, the second after 14 weeks and then usually monthly. At each interview, the claimant will meet an adviser who helps to explore barriers and identify support to assist the claimant to move towards work. The first adviser will be from Jobcentre plus and the follow up interviews will be from private or voluntary sector.

The following category of people will not be required to take part in these interviews if;

- they have been placed in a support group; or
- are aged under 18; or
- are aged 60 or over; or
- he/she is entitled to credits- only contributory ESA

Case Study 52

Mr AG did not attend the Work-Focused Interview after the introduction of the new ESA. He had been unable to attend the interview due to sickness. He had called the Job Centre Plus about his inability to attend the interview the day after his interview.

The benefit of Mr. AG was reduced and he came to TWAN for advice. Under the new ESA if a claimant does not attend the Work –Focused Interview a sanction will apply. Usually the first interview is held after the 8th week of claim.

TWAN helped him draft an appeal against the sanction and help restore his original claim amount. There is a 5 days time after the interview, for the claimant to explain why he had been unable to attend the interview. Since Mr AG had made a call he and given the reason of his sickness for not attending the interview, he had done the right thing.

Decisions, revisions and appeals

ESA decisions are made; by officers called decision makers, on behalf of Secretary of State, for Works and Pensions. A tribunal, or the decision maker can change a decision, at any time, if it contains an accidental error. Otherwise, a decision can be changed only in very special circumstances.

A decision can be changed by either revision or supersessions. It can also be changed by an appeal to a tribunal. A revision or supersession can be requested over phone but an appeal has to be made in writing.

Dispute period

All ESA decision made is followed by a dispute period of one calendar month. During that period the claimant can ask for revision for any reason or make an appeal against it.

How will ESA affect existing Incapacity benefit and Income support claimants?

The introduction of ESA will not immediately affect those who are receiving Incapacity benefit (IB) or Income Support (IS) due to incapacity. The claimants of such benefits can continue to claim as normal provided they satisfy the appropriate rules of entitlement.

The Government has announced that from 2009 until 2013, all existing IB and IS claimants will be reassessed under the work capability assessment and those who establish an ongoing entitlement to benefit will be transferred to ESA.

Welfare benefits for Persons Subject to Immigration Control (PSIC)

All asylum seekers and most others without leave to remain, unless they are EEA nationals are included under PSIC for benefit purposes. The basic rule is that a person subject to immigration control has no right to the main social benefits until he/she is granted leave to remain in UK. But, they are some exceptions to these exclusions.

There are two kinds of benefits: Means-tested benefits and Non means-tested benefits.

Means tested benefits include:
Income-based Job seekers allowance (IBJSA)
Income support (IS) or Employment Support allowance (ESA)
Incapacity benefit (IB)
State pension credit (SPC)
Housing Benefit (HB)
Council Tax (CTB)
Working Tax Credit (WTC)
Social Fund Payment (SF), and

Non means-tested benefits
Attendance allowance (AA)
Sever disablement allowance (SDA)
Disability living allowance (DLA)
Carer's allowance (CA)
Child benefit (CB)

Who is not a PSIC?
The following categories of people are not considered PSIC:
EEA nationals
British citizens
Commonwealth citizens with a right of abode
Irish citizens
It also does not include the following category of people:
Leave to enter or remain as refugees
Humanitarian protection

Discretionary leave
Indefinite leave to remain

PSIC who can still qualify for certain benefits
There are certain exceptions to those who are actually PSIC, but still qualify to get benefits under Part 1 of the Schedule of the Social Security (Immigration and Asylum) Consequential Amendment Regulation 2000, if they are:

- with limited leave, who has been self-supporting but is temporarily without funds
- with leave to remain due to an undert-aking whose sponsor is dead
- with leave to remain due to an under taking who have been living in UK for 5 years
- who is a national of a state which has ratified the ECSEMA or CESC and who is lawfully present in the UK

The benefits they are entitled to are Means-tested such as; IBJSA, IS, SFP, HB or CTB.

Under Part 2 of the Schedule of the same Act they qualify for AA, SDA, DLA, SFP, CA or CB benefits if they are:

- EEA nationals or family member
- A person who has been granted leave to enter or remain based on an undertaking

Habitual Residence Test (HRT)

Claimants of means tested benefits must show they are habitually resident and have a right to reside in the common travel area of UK. As with PSICs, there are exemptions and unlike the approach to PSICs the claimant can claim for a partner who is not habitually resident. The Department for Work and Pensions usually treat those who have lived in UK for a period of 3-6 months as habitually resident.

Who are exempt from HRT test?

- EEA nationals who have right to reside as a worker, a former worker, or based on permanent residence other than by the 5 year route, and their families
- People with Discretionary leave, Humanitarian Protection or leave to remain as Refugee

There is no right to reside test to qualify for AA, DLA, CA and Incapacity benefit for incapacity in youth but a person must be present in UK, ordinarily resident in UK and have been in UK for 26 weeks in the last 12 months.

Asylum Seekers

An asylum seeker who has been granted humanitarian protection, discretionary leave or indefinite leave to remain can claim income support or income-based Job seekers allowance, child benefit, tax credits and housing benefit. This claim can be done only if the claimant has received their status document from the Home Office.

The right to backdated income support for refugees has been abolished. Any person who has been granted leave to enter or remain as a refugee or been granted humanitarian protection after 11June 2007 is entitled to apply for an integration loan

Public Funds

A leave to enter or remain may be granted to a Person Subject to Immigration Control (PSIC) to the United Kingdom, it may include the condition that the person may 'have no recourse to public funds'. It means that person will not be able to claim most benefits, tax credits or housing assistance that are paid by the state.

However, there are exceptions for some benefits

Public funds include a range of benefits that are given to people on a low income, as well as housing support. These are:

- income-based jobseeker's allowance;
- income support;
- child tax credit;
- working tax credit;
- a social fund payment;
- child benefit;
- housing benefit;
- council tax benefit;
- state pension credit;
- attendance allowance;
- severe disablement allowance;
- carer's allowance;
- disability living allowance;
- an allocation of local authority housing; and
- local authority homelessness assistance.

Certain benefits are not considered to be 'public funds' and are not regulated, which are based on National Insurance contributions. National Insurance is paid in the same way as income tax and is based on earnings. Benefits to which a person is entitled as a result of National Insurance contributions include:

- contribution-based jobseeker's allowance;
- incapacity benefit;
- retirement pension;
- widow's benefit and bereavement benefit;
- guardian's allowance; and
- statutory maternity pay.

Sponsor

A Sponsor means the person in relation to whom an applicant is seeking leave to enter or remain as their spouse, fiancé, civil partner, proposed civil partner, unmarried partner, same-sex partner, or dependant relative, as the case may be.

Occasionally an applicant may claim to have more than one sponsor, but this is not an acceptable arrangement for the purpose of the Immigration Rules.

Third party support for the purpose of adequate maintenance without recourse to public funds is also not allowed for the spouse of a student.

Maintenance Undertakings

A sponsor of a person seeking leave to enter, remain or for variation of leave to enter or remain in the UK may be asked to give an undertaking in writing to be responsible for that person's maintenance and accommodation for the period of any leave granted, including any further variation.

The Department of Social Security or any relevant authority may seek to recover from that person (sponsor) giving such an undertaking any income support paid to meet the needs of the person in respect of whom the undertaking has been given.

Failure by the sponsor to maintain that person in accordance with the undertaking may also be an offence, if as a consequence, income support or asylum support is provided to that person.
An undertaking given for the purpose of an immigration application within the immigration rules will not necessarily bind a sponsor where leave is subsequently granted outside the rules unless such leave was granted taking into consideration the undertaking, outside the immigration rules.

Once a person acquires British citizenship he/she cannot be refused benefits on the basis of an earlier sponsorship agreement or undertaking, made prior to the grant of citizenship.

When is recourse to Public Funds allowed?

There are circumstances where recourse to public fund is allowed, when:

- child benefit or working tax credits made jointly by a couple, where one of them is not subject to immigration control, the PSIC is also treated as if he/she can take recourse to public fund for that purpose.

- An individual who was given leave to enter or remain in the UK subject to an undertaking by a sponsor to be responsible for his/her maintenance and accommodation is eligible for child bene fit, a social fund payment, attendance allowance, severe disablement allowa nce, carer's allowance and disability living allowance

- An individual who has been resident for less than five years and whose sponsor has died is eligible for child tax credits, working tax credits, income based jobseekers allowance, income support, housing benefit, council tax benefit, a social fund payment and employment and support allowance

- An individual who has been resident for more than five years, starting from the date of entry or date of undertaking, whichever is the later, is also eligible for child tax credits, working tax credits, income based job-seekers allowance, income support, housing benefit, council tax benefit, a social fund payment and employment and support allowance

- A person not subject to immigration control is receiving housing benefit from the local authority, theirs partner name

may be included in the tenancy agreement and even if they are PSIC, receipt of housing benefit will not be treated as recourse to public fund under these circumstances.

- A person subject to 'no recourse to public fund' condition who is temporarily without funds, due to disruption of remittances from abroad is temporarily eligible for child tax credits, working tax credits, income based job-seekers allowance, income support, housing benefit, council tax benefit, a social fund payment and employment and support allowance. A claim can only be made once during any period of leave and will be paid for up to 42 days only.

Social security benefits affecting EEA nationals and their dependants

European Union (EU) nationals and European Economic Area (EEA) nationals and their family members are allowed to move and reside freely within the territory of the Member states. There are three types of right to reside for EEA nationals in the UK depending on the period of stay in UK.

- Up to three months- unless the person is exercising EU treaty rights as a worker, they are not entitled for social benefits except Child Benefit and non-contributory disability Extended right of residence for more than three months- when the claimant is a 'qualified person' and their family members for as long as they remain qualified persons without the need for leave to remain in the UK are entitled for social security benefits

- Permanent right of residence- after five years of being a qualified person or family member of a qualified person, or in certain circumstances a former worker, or relative of a former or deceased, qualified person one is entitled to all social security benefits

Qualified Person

EEA nationals who satisfy the definition of jobseeker, worker, self employed, self-sufficient person or a student, are to be treated as 'qualified persons'.

Jobseeker- is a person who has a genuine chance of getting work and has entered the UK looking for work and can also provide evidence for that.

Worker- a person in this category is still classed as a worker if:

- He/she is temporarily unable to work due to illness or an accident; or
- He/she was employed for a year and has now registered as a job seeker (at the local Job Centre Plus office); or
- He/she was a former worker or self-employed person who embarked on vocational training. And if the job was given up voluntarily, the training must be related to the last job

Self-employed person- EC treaty allows freedom of establishment, which includes the right to take up and pursue activities as self-employed persons and to set up and manage undertakings. Under this definition a person who is self-employed and temporarily unable to work due to illness or accident will still be qualified person.

Self-sufficient person- is a person who has sufficient resources not to become a burden on UK social benefit system during their period of residence and also is covered by a comprehensive sickness insurance cover in the UK.
Student- will be a qualified person if they can meet all of the following conditions:

- They will not be a burden on the UK social support system
- Be enrolled on a course registered with the Department for education and skills
- Have a comprehensive sickness insurance

Family members for those qualifying as a student are only considered to be spouse /civil partner and dependant children only.

Family members of EEA nationals and their rights to reside

As seen from above the definition of family members for a Student is very restrictive. Workers and Self-employed; have a complete and unlimited right to have their family members with them, when they move around the EU.

Family member can be a non-EEA national of the qualified person provided:

- They are spouse/civil partner
- Direct descendants of him/her or of spouse/civil partner
- Dependants of him/her or of spouse/ civil partner
- Dependent direct relatives in his/her ascending lines, or that of his/her spouse /civil partner

Financial dependence- does not mean total dependence and includes physical dependence. Therefore it is not necessary to show that the family member is fully supported.

Retaining right to reside as a family member

Under circumstance such as death, divorce or departure of the qualified person, a family member retains the right to reside.

- If the family member was living with the EEA national in the UK for a year before their death
- If the family member was a child of the EEA national who died or left the UK while attending an education course. The parent with custody qualifies to reside.
- If the family member needs to stay in the UK due to difficult circumstances such as domestic violence, but she/he must now be a worker, a self-employed, self-sufficient person or a family member of one
- If the family member is now a former family member after divorce/termination of a civil partnership which had lasted at least 3 years and of which the last year was spent in UK; or
- If the former spouse/civil partner has access or rights to custody to a child in the UK

Extended family member- is defined as a person who does not fall under the ordinary "family member" definition and is in a durable relation with the EEA national or is a dependant relative of the EEA national or their spouse/ registered civil partner. That person should have been part of their household before coming to UK or a family member with serious health problems, which need taking care from the EEA national or their spouse/civil partner.

Benefits and Tax credits

Job seekers allowance (JSA): can be claimed by people who are unemployed or work less than 16 hours a week. JSA has two parts; the contribution based and income based. The claimant can claim both, but must have paid enough National Insurance contributions to qualify for contribution based part. The weekly rates for 16-24 are £47.95 and 25 or over are £60.50. The claimant has to sign on as available for work. Couples without dependant children are both required to sign on.

To be eligible for contribution based JSA the claimant must have paid NI contributions at least 25 times the lower earnings limit in the relevant years and paid or been credited with contributions at least 50 times the lower earnings limit during both the relevant years.

Relevant years

Relevant years are the last 2 complete tax year before the current benefit year. E.g. if a claim is made on 10th January 2008, the claimant has to satisfy the conditions in tax years April 2005/ 2006 and 2006/2007

Income based Job seekers allowance

The claimant has to be normally 18 years or old and below pension age (65 for a man and 60 for woman) 16 & 17 year olds can qualify for benefit in special cases such as estranged from parents or if parents cannot afford to support. The claimant has to sign on as available for work. Couples without dependant children are both required to sign on.

The claimant must have savings or capital 16,000 or less and not be working 16 hours or more a week and if he/she has a partner, that person should not be working 24 hours or more a week. The claimant should not be in full time education and must be actively seeking work.

Income Support

Income support provides basic living costs for people aged below 60, who are not expected to sign on for work. This benefit may be paid to top up other income.

To qualify for Income support the following conditions have to be met:

- The claimant must be aged at least 16 years old and below 60
- The claimant must not have savings above £16,000
- The claimant must not be working 16 hours or more a week; if the claimant has a partner then that person should not be working for more than24 hours or more in a week. There are exceptions to this rule.
- Claimant in full time education will normally not get income support but there are exceptions to this rule.

In addition to meeting the above conditions the claimant must belong to one of the groups below:

Responsible for a child- this includes looking after a child or foster child under the age of 12, pregnant or due to have a baby, have had a baby within the last 15 weeks, on unpaid parental leave from work or are responsible for a child and his/her partner is temporarily abroad.

Sickness or disability- this includes claimants who are incapable of work due to sickness or disability, are appealing against the decision of being found capable for work, are registered blind, are disabled and the claimants earnings or hours of work are 75% or less of those without that disability who do the same work or work while living in a care home.

Carer- if the claimant has been caring for someone and receive Carer's Allowance or the person he/she cares for is entitled to Attendance Allowance or Disability living Allowance care component at the middle or higher rate or awaiting decision for a claim. Or the claimant has ceased to be a Carer in the last 8 weeks, looking after a member of family who is temporarily ill, or looking after a child while the person usually responsible is temporarily ill or away.

Others- if the claimant has been accepted as a refugee and have started an English course in your first year in GB, has been involved in a trade dispute or have recently returned to work or a person from abroad with limited leave to be in UK and funds from abroad are temporarily disrupted.

Case Study 53

Mr KT was on Income Support and his benefit was stopped as he had failed to report to a Medical Officer. But he had not received any letter to attend the medical check. An appeal made by KT had been later than the 14 days limit. His appeal was cancelled and he came to TWAN for help.

We made an appeal against the decision as KT was suffering from medical illness and he needed Key worker help. He was living in supported housing and he was suffering from Schizophrenia, which was supported with a letter from his GP and his Psychiatrist.

The Appeals Section considered the case and the Decision maker agreed there had been a mistake as the earlier decision was given in ignorance of material facts.

Pension Credit

Pension credit is for people aged 60 and over. It consists of two parts Guarantee credit and Savings credit. The claimant can claim to either parts, or both.

Guarantee credit- ensures that no one aged 60 or over should live on less than a set amount. This amount is £124.05 per week for a single person and £189.35 for a couple.

Savings credit- is payable to those aged 65 or above who have modest savings and additional income above the savings credit threshold of £6000. The maximum amount is £19.71 per week for single person and £26.13 for a couple.

Case Study 54

Mr. KS who was on Pension credit and Housing benefit was shocked to see his housing benefit being reduced £150 per week to £100 per week. He was living in a 2-bedroom house and the actual rent was £170 per week and without any change to his circumstance the Benefit office has reduced his Housing benefit.

He was also asked to pay back over paid Housing benefit to the tune of £250. He approached TWAN for help and we helped him in making

an appeal explaining that he was living in a 2-bedroom house and was entitled to higher housing benefit as he was also on Pension Credit.

Tax credits

Child Tax credits

Child Tax Credit (CTC) is for families who are responsible for at least one child or qualifying young person, the claimant must have a child or qualifying young person who usually lives with them. The claimant need not be working to claim this CTC.

CTC is made up of the following:

- Family element - the basic element for a family responsible for one or more children. A higher rate of family element, often known as the baby element, is paid to families with one or more children under one year old. There is only one family element for each family, regardless of how many children usually live with the claimant
- Child element- one for each child the claimant is responsible for
- Disability element- one for each child the claimant is responsible for: the claimant is receiving Disability Living Allowance for the child, or the child is registered blind or has been taken off the blind register in the 28 weeks before completing the form.

Working Tax credits

Working Tax Credit (WTC) is for people who are employed or self employed (either on their own or in a business partnership), who

- get paid for their work
- expect to go on working for at least 4 weeks
- and who are either aged 16 or over and responsible for at least one child, and usually working at least 16 hours a week, or
- aged 16 or over and disabled, and usually working at least 16 hours a week, or
- aged 50 or over and are starting work after receiving certain benefits for at least 6 months and usually working at least 16 hours a week, or
- aged 25 or over and usually working at least 30 hours a week.

WTC is made up of the following

- basic element, paid to any working person who meets the conditions
- lone parent element, for single parents
- couples element, for couples
- 30 hour element, for people who work at least 30 hours a week.
- Couples with at least one child can claim the 30 hour element if they work at least 30 hours a week between them providing at least one of them works 16 hours or more a week
- disability element, for people with a disability
- severe disability element, for people with a severe disability
- 50 plus element, for people aged 50 or over who are starting work after a period on benefits
- child care element, for people who spend money on registered or approved child care.

Disability living allowance

Disability living allowance has two components to it. One is the care component, which is paid at three levels and the mobility component paid at two levels. This allowance is paid to people with a physical or mental illness or disability. This is a non-contributory benefit and is paid on top of other benefits. It entitles the claimant to extra amounts on means tested benefits and tax credits and is ignored as income.

Care component: if the claimant needs a lot of attention or supervision due to physical or mental disability. There are three levels of lower, middle and higher depending on the level of support needed by the claimant.
For the higher level where the claimant needs care both day and night or is terminally ill the weekly rates are £67.00
For the middle level where care is needed either day or night the weekly pay is £44.85; and at the lower level where the claimant may need help during part of the day or needs help with

preparing a cooked meal the weekly rate will be £17.75.

The other component called Mobility component has two levels, higher and lower. The mobility component is for people who have difficulty getting around. To qualify for the higher rate the claimant must have required help for three months and be likely to need it for at least the next six months. If the claimant is terminally ill then they can qualify as soon as they have mobility problems.

Attendance Allowance

Attendance Allowance is paid to those who need help with personal care or watching over to avoid danger to themselves or others, and claim after the age of 65. This is a non-contributory benefit and is paid on top of other benefits. It entitles the claimant to extra amounts on means tested benefits and tax credits and is ignored as income. To be entitled to this claim, the claimant must meet at least one of the disability tests:

By day the claimant must:

- Need frequent help throughout the day with bodily functions such as washing, dressing, eating or using toilet, or
- Need continual supervision to avoid danger to the claimant or others

By night the claimant must:

- Need prolonged or repeated attention in connection with bodily functions or
- Need watching over in order to avoid substantial danger to the claimant or others

If the claimant needs care both day and night or is terminally ill the weekly rate is £67. If the claimant needs help either by day or night it is £44.85 per week.

Case study 55

Mr AJ had made a claim for Attendance Allowance as he had difficulty with his eyes and ears, making him dependent on others for his personal care. The DWP refused to accept his claim and rejected it.

When he approached TWAN for help we made an appeal against the decision by providing evidence of his hearing and vision difficulties and after reconsideration by DWP he was awarded Attendance Allowance for an indefinite period at the lower rate.

Housing benefit

What is housing benefit?

Housing benefit, or rent allowance as it is sometimes called, is paid by the council to help people pay their rent. To be eligible for this one has to be:

- a tenant of the council, or
- a tenant of a housing association, or
- a tenant of a private landlord, or
- a shared owner (can only claim for the rent or occupancy payments).
- Housing benefit cannot be used to pay a mortgage.

The claimant must not be subject to immigration control to receive this. And if anyone is sharing or living in that particular house then there will be a deduction in the housing benefit in relation to the part used by the sharer/s. There are also certain circumstances where a person cannot claim housing benefit:

- if s/he is in full time studies
- if those with a lease of more than 21 years; or
- if paying rent to someone s/he lives with when the arrangement is not commercial or the landlord/lady is related to the claimant
- if s/he has capital or savings of more than £16,000
- if s/he is 16 or 17 and have been cared by a local authority in England or Wales

Many of the clients are entitled to receive housing benefits because they are on low income and also they have to avail the services of private landlords paying high rent. They face difficulties with the local authorities who erroneously calculate and reduce the entitlement. They are also put through more pain when the local authorities try to reclaim the amount back from them. There is a steady flow of such issues relating to our clients. This office deals with such cases by appealing against such decisions.

Case study 56

Mr. KS was entitled to housing benefit (HB). He was also in receipt of pension credit and lived in a two bedroom house. He was paying £170 per week and entitled to the higher amount of HB. He was getting £150 per week HB and also received a confirmation to that.

A week later to his shock and horror, he received a correspondence from the local authority not only changing his HB from £150 to £100 per week, but also a recovery for overpaid HB.

The pensioner came to TWAN and we made an appeal against this decision as not only was the claimant living in a 2-bedroom house but he was also a pensioner.

Case study 57

Mrs KR and her husband owned a house and were re-possessed by the Bank. They were sheltered by the homeless unit in a B& B and later on moved to a house. During the period of sale a sum of money was paid in excess of the loan amount to the couple. That money was paid off to other creditors that the couple owed money to and the husband went on to get a part time job. The family was paid HB and CTB as well as other normal benefits life child benefit, working tax credit etc.

The council claimed back the HB and CTB as they thought the couple had capital from sale of the property and hence were not entitled to any of the HB and CTB.

TWAN assisted the couple in gathering supporting documents to show how the capital had been paid of and that the only income the couple were in receipt during that period was from the part time wages of her husband and the tax credits she received from the DWP

Case Study 58

Mrs SD came to our office and asked us help her with an overpayment for Housing benefit which the council was trying to retrieve from her. Her expenses overweighed her income and she was finding it difficult to pay back the overpaid Housing Benefit. We prepared a financial statement for her and sent a letter to the Council detailing her expenses and what she could afford to pay every month to pay off the overpaid Housing Benefit

Council Tax benefit

If the claimant or his/her partner is liable for Council Tax and they are on low income then, they can claim Council Tax Benefit. Council Tax Benefit is based on the money the claimant or his/her partner have incoming in their savings, the number and ages of people in their household and how much Council Tax they pay. Deductions are made from the income for income tax, National Insurance and half of any pension paid into by the claimant or his/her partner.

If the claimant pays for childcare (from a registered childcare provider), this can be disregarded up to a maximum amount, depending on the number of children being cared for. Some state benefits are disregarded in full.

If the claimant or his /her partner has more than £16,000 in savings, he/she will not qualify for benefit unless he/she is over 60 and receive Guarantee Pension Credit. The property he/she lives in does not count as savings.

Students including student nurse do not usually qualify for council tax benefit but there are exceptions. Most asylum seekers and people who are sponsored to be in the UK cannot claim this benefit.

Case study 59

Mr TS and his wife had made a claim for Housing Benefit and Council Tax Benefit. They received a letter from the Council that their claim for Housing Benefit was £97 per week but they were not entitled to Council Tax benefit.

As they were paying £1000 per month on rent and £133 for council tax they approached TWAN to help in making an appeal.

We made a Financial Statement and asked the Council to review the situation and increase the Housing Benefit and entitle our client to Council tax benefit as well.

Child Benefit and Guardian Allowance

Child Benefit is a tax-free payment that you can claim for your child. It is usually paid every four weeks but in some cases can be paid weekly, and there are separate rates for each child. The payment can be claimed by anyone who qualifies, whatever their income or savings.

To qualify for this benefit the child must be:

- aged under 16
- aged between 16 and 19 (up to 20 in some cases) and is in relevant education or training
- 16 or 17 years old and has recently left relevant education or training - however, they must have registered for work or training with the Careers or Connexions Service, Ministry of Defence, Department for Employment and Learning (in Northern Ireland) or an Education and Library Board (in Northern Ireland)

Normally, the child has to live with the claimant if claiming Child Benefit. However, the claimant may still qualify if the child lives with someone else, is in care or in hospital including getting medical treatment abroad.
If the claimant lives or works abroad, s/he may still qualify for UK Child Benefit, or might get the child allowance of the country where s/he lives or works.

The claimant may be entitled to Child Benefit if s/he has just come to the UK, but if they are subject to 'immigration control' they may not qualify.

If the claimant is responsible for a child who has lost one or both of their parents, s/he may be able to claim Guardian's Allowance as well as Child Benefit. Guardian's Allowance is a tax-free payment for people who are bringing up children whose parents have died. In certain circumstances the claimant may qualify for Guardian's Allowance where only one parent has died.

Guardian's Allowance doesn't count as income if you're claiming tax credits, Income Support, Income-based Jobseeker's Allowance or income-related Employment and Support Allowance. It is paid on top of these benefits.
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Consumer and Debt Advice

Nature of our work involves working with migrant communities in UK, which necessitates working with our community's need for advice and guidance on money management and dealing with consumer related issues. We are providing initial advice on the consumer and debt related issues and if necessary we also deal with the process of money advice and consumer protection advice in guaranteeing the rights and safeguards of our clients. In 2008 we dealt with 64 cases relating to Consumer and Debt Advice. We also deal with issues relating to consumer rights issues that arise out of a purchase. The usual issues with warranty and guarantee rights of the consumers are not upheld by unscrupulous traders. They generally try to ignore the consumer when they cannot communicate fluently with the traders. Usually a letter from TWAN is enough to set right the wrong. If need be we take recourse to legal proceedings to attain the rights of our clients.

We are a part of AdviceUK's Group License, registered with the Office of Fair Trading (OFT).
Our organisation helps in exploring the client's debt issues and provides advice in relation to the liability of the client to any agreement made with a lender. We draw up financial statements and help the client deal with their priority and non-priority debts. We send letters to creditors on behalf of our clients and try to negotiate with the lenders to ease the debt burden through various offers, in relation to the circumstance of individual client's, needs and possibilities of repayments.

The Consumer Credit Act 1974 and 2006 covers most agreements made between a commercial organisation and person or persons. There are exemptions that are not covered by the Acts such as; agreements secured on land, short-term agreements, hiring agreements for essential services, low cost credit agreement (where interest is lower than commercial one), weekly or monthly credit such as newspaper bills.

What is Credit?

Credit is the provision of resources (like a loan) by one party to another party where that second party does not reimburse the first party immediately, thereby generating a debt and instead arranges either to repay or return those resources

(or material(s) of equal value) at a later date. It is any form of deferred payment. The first party is called a creditor also known as a lender while the second party is called a debtor, also known as a borrower.

The Consumer Credit Act 1974 divides credit into two groups; Fixed -sum credit and Running-account credit.

Unscrupulous Creditors- Home credit industry, Loan sharks and Pawnbrokers are also other Fixed-sum creditors who aim at low income people who may not have access to mainstream lenders and the interest rates are high. The people who have trouble with that kind of creditors can avail our service. Most borrowers are frightened of these lenders as they use physical intimidation to enforce payment.

Credit Union- one can join credit unions and after saving for a short time can avail of loans offered at a lower rate of interest. Credit unions are not-for-profit organisations and are regulated by Financial Services Authority.

Fixed-sum credit

This is the traditional form of credit such as a bank loan or a hire purchase agreement. Like the name suggests, everything is fixed from the beginning; the principal, interest, repayment period and size and frequency of instalments.

Running-account credit

This kind of credit is more common and popular. The common forms are the store cards and credit cards and bank overdrafts. Most features of this credit are not of a fixed nature. There is no time period to pay off the loan, the interest rates vary and the customer can choose how much to repay each month, subject to a minimum.

Bank overdrafts- A current account holder can borrow up to an agreed amount and interest is charged each day. However banks can withdraw an overdraft facility at anytime and demand full payment of the outstanding amount.

Debt settlement

While trying to settle Debt problem the borrower or debtor has to prioritise the debts into two orders to make a financial statement which is then sent to the creditors with an offer of repayment.

Priority debts- it is necessary to make sure the debts which when not paid may lead to the eviction from living accommodation, imprisonment, disconnection of essential services or loss of goods are prioritised for payment from the income of the debtor. The debts that are secured on home such as Mortgage, money owed gas or electric suppliers, unpaid Tax or VAT returns, Hire purchased goods fall under this category.

Non-priority debts- are credit cards, store cards unsecured bank loans and water rates (unless part of Council tax). Non-payment of these debts may lead to the creditors taking the debtor to county court and ask the court to take further action. This is usually done after the creditor has written to the debtor for a while warning of court actions.

Debt liability-

There are certain debts which may not be liable to a person just because they are a couple or part of the household. Minors cannot be a party to a credit agreement and any debt of a parent will not pass on to them.

When two or more people make an agreement to be 'jointly and severally liable' it means each person is liable for the whole debt.

Couples – Partners are not liable for each others debts. There are however exceptions to these where both partners are liable such as joint tenancy, council tax for periods during which they lived together, loans in joint names where both have signed the agreement or bank overdrafts in joint bank accounts.

Joint debts- when people have signed an agreement for credit, rent, fuel etc they are 'jointly and severally' liable for such debts.

Death of a debtor- Any unpaid debt is paid off using any asset held by the debtor's assets. Any other unpaid debt 'dies with the debtor' with the following exceptions:

- Debts on which there is joint or several liability
- Mortgages

Financial Statement

A financial statement is prepared in discussion with the client and this statement will provide an understanding to the creditors of the financial situation of the debtor and any offer that is made by the advicer on behalf of the debtor will be considered by the creditors.

A key part of the money advice process is preparing a financial statement. This will give an understanding of the income, expenses, priority debts, non-priority debts with offers of payments. Priority loans, and essential expenses are first given priority for disbursement and any surplus income is then apportioned to be paid towards non-priority debts.

Sometimes the creditors may take a judgmental approach to expenses and those that are commonly challenged may be cable or satellite TV, car expenses if not work essential, Alcohol /cigarette and leisure spending, pet food or extra curricular activities for children.

Writing to Creditors

Once the Financial statement has been drawn, each non-priority creditor is sent a copy of it along with a covering letter explaining the circumstances that have caused the debt problem and requesting the creditor to accept the offer and if appropriate ask them to freeze interest and charges and make a payment arrangement.

Creditor's options- the creditor may accept the offer subject to review or pass it on to a debt collection agency. They may scrutinize the Financial statement and request more information or reject the offer and threaten legal action or initiate one.

If the creditor explains why they are not complying with the offer and have given a reason for it we will send them a reply with explanat-ions. If they have not given a reason we will ask them for a reason for refusal of our client's offer. Clients will be encouraged to pay what has been offered in the financial statement during the period of negotiations to gain confidence of the creditor on the debtor.

Bankruptcy, Individual voluntary arrangements (IVA), Debt relief order, Administration order, composition order

Case study 60

Mr PP Sri Lankan national, arrived in UK and claimed asylum in the year 1999. He was given Temporary Admission and he was allowed to work whilst his claim was going through legal proceedings. He was initially refused asylum but he appealed it. After all avenues were closed for his asylum claim he made a Fresh application following change in circumstances in Sri Lanka.

In the course of his life in UK he ran up Credit card debts in the hope he could repay them as he was gainfully employed. He ran into financial difficulties following the Home Office decision to stop him from working. His employers were sent a letter to dismiss him from work, as he was restricted from working being a failed asylum seeker.

As a failed asylum seeker he was neither entitled to any state support nor could he work. He was hoping to get asylum as he had made a Fresh application and he did not want to get a bad credit. He approached TWAN and we helped prepare a Financial Statement for his Individual Voluntary Arrangement (IVA). He was living at the benevolence of close relatives and with what meagre savings he could salvage he was willing to pay it to the creditors. TWAN sent the Financial Statement to the various credit card companies asking them to accept his IVA.

Case study 61

Mrs. BU purchased a set of table and chairs from a High street furniture shop. When she went home and started assembling the flat pack table she found one of the legs broken. She contacted the shop and asked for a replacement or a refund for the purchase. She was told that her faulty handling must have broken the leg, and they would not replace it.

Mrs. BU contacted TWAN for help in asserting her right to replacement or refund as they had sold her a faulty table. We sent a letter detailing the grievance of the client and the rights she was entitled to and the responsibilities that should *have*

been displayed by the trader in accordance with the trading standard's rules and regulations.

The trader wrote back to Mrs. BU and TWAN and agreed to replace the broken leg of the table. Most of the time, it only needs an assertive letter from the client to get the traders to fulfil their obligations to the customers.

Case Study 62

Mr. VR had an outstanding loan from a credit card company. He was facing harassment from them and he wanted to make a settlement with them to pay off their debt by a fixed sum of money. We helped him in solving this problem by sending a letter to the collecting agency and offering to pay a sum of money for a period of time, as he was unemployed and he would not be able to pay it off in one lump sum.

Limitations

The Limitation Act 1980 says that if there was no contact between creditor and debtor for at least six years about a debt that is unsecured and the creditor does not have a court judgment then such debts cannot be enforced through the courts. And if there has been no contact between the debtor and creditor for more than twelve years about a secured debt and for which the creditor does not have a court judgment then that debt cannot be enforced through the courts.

If a home was repossessed and there was a shortfall after the sale of property, then the limitation period for this is 12 years for the capital component of the secured debt (mortgage) and 6 years for the interest component of the secured debt (mortgage).

Courts and Enforcement

County court- deals with civil cases including the vast majority of cases that concern public debt. There is an absence of jury and the cases are dealt in private with the judge, claimant and defendant present. There can be representatives involved. Sometimes the cases are dealt by post itself.

When an order has been made by the county court and if there is a need to enforce collection then the service of a Bailiff is used.

Bailiffs

A bailiff is someone who acts on behalf of creditors or courts to collect debts, repossess homes or goods, or execute certain arrests warrants. A bailiff cannot force entry into domestic premises if they have not been in those premises before. However a Certificated bailiff or a Court enforcement officer can do so if they are in the process of attempting to enforce a magistrate's court fine.

Case Study 63

Tenancy Landlord dispute

Mr SJ was a tenant with a private landlord. He had made a deposit of £800 when he had rented the place and when he vacated the property the landlord took hold of the keys but did not return his deposit.

When SJ asked for his deposit the landlord told him he would not return the money as he had spent a lot on getting the property cleaned. SJ approached TWAN and said he had vacated the property in the same condition as he given to him. In SJ's opinion the landlord should have returned £670 after the other deductions.

TWAN sent repeated letters but the landlord did not oblige and we took him to the Small Claims Court. After the hearing the Judge ordered the landlord to pay £800 to SJ.

Case Study 64

TV Licensing

Mrs. KPB was issued with a County Court Summon to attend for failing to pay TV Licence. She had always been paying the TV Licence through a monthly plan and she had Pay Point receipts for them. She sent a letter to the TV Licensing authority with the proof of her payments. Further to which she received communication from them asking her not to attend court and they were withdrawing the case.

After a couple of weeks she received yet another letter from the County court where she had been issued with a fine and court costs and asking her to pay. She also received a letter from the

licensing authority asking her to attend Court for they had new evidence.

Mrs KPB came to TWAN and we made an appeal to the TV Licensing authority to sort out the issue, as there seemed to be a break of communication within their department. We furnished all the proofs of payments and the various correspondences that Mrs. KPB has received during this period regarding this issue.

In this case we see the harassment that KPB had to go through for no mistake of hers. TWAN was able to help her here, but many people suffer in silence.

NASS Benefit

On 8th January 2003, the Government implemented Section 55 of the Nationality, Immigration and Asylum Act 2002. This allowed the Home Office to deny access to the National Asylum Support Service (NASS) to asylum applicants who did not apply for asylum 'as soon as reasonably practicable'. This effectively denied support to most in-country applicants. This Act also made a difference to asylum support entitlement based on the point where an asylum claim was made; at port or inside the country.

Section55 was opposed by various community and refugee organisations and injunctions were granted to over 800 asylum seekers. Justice Kay at the Administrative Court, to avoid clogging the system took four cases as lead cases and gave his guidance on Section 55. Though it is not binding on NASS to follow Kay's guidance it has been morally obliged to bring about a few changes to the way section 55 is implemented at the practical level.

Anyone claiming asylum in country after 17 December 2003 will be considered as reasonably practicable if they had done within three days of arriving in the country. NASS has also expanded the scope subject any particular circumstances of the case which might indicate s/he could not have claimed within that period.

The Home Office suffered a major defeat in 2005 when Law Lords rejected an attempt to enforce the hardline Section55.After a three-year battle the Lords said the Home Secretary was wrong to deny support to asylum seekers if it were to leave them 'sleeping rough'.

Who is entitled for NASS support?

NASS (National Asylum Support Service) is the government department responsible for supporting destitute asylum seekers that is asylum seekers who do not have enough money to support themselves. NASS support is also known as Asylum Support, it can provide both accommodation and cash support for food and clothing. If you have accommodation, for example with friends or relatives, you can apply for cash support only.

An asylum seeker of 18 or over qualifies to asylum support to cover their family's housing and living expenses if they can show they are 'destitute' which means they do not have sufficient income or capital to cover the entire household's living and housing expenses for the next 14 days or 56 days if they are already receiving asylum support

Un-accompanied children are provided support by local authorities and not NASS. However dependant children or any other adult dependant on the asylum seeker will be entitled to asylum support (NASS).

Section 55 of the Nationality, Immigration and Asylum Act- 2002, does not apply to asylum seekers with dependant children and they will continue to get NASS support even if they become failed asylum seeker. NASS support is provided until they leave the country or their children reach 18

An Asylum seeker for support purposes is different from the immigration definition, and means:

- Is 18 or over
- Has made an asylum or article 3 claim at a designated place (the screening unit)
- The claim must be recorded by the Home Office
- The claim must not yet be decided, (or appeal disposed off)

Appeal

An appeal against the withdrawal or refusal is made to the First-Tier (Asylum Support) Tribunal within 3 days of the decision. Other challenges

must be by judicial review, regarding the quality of support, challenges to dispersal & delay in processing claim.

If the support has been withdrawn on the basis of section55, the asylum seekers can seek redress by appeal seeking remedy as provided by section 95 and 98 of the Immigration and Asylum Act 1999 when they can prove case of 'destitution'. Article 3 of the ECHR can also be applied which declares, "No one shall be subjected to torture or to inhuman or degrading treatment or punishment"

Case study 65

Mr. & Mrs. ES had sought asylum in UK in August 2000 and their application was dismissed in June 2001. They had been receiving support till Nov 2004 and were subsequently stopped. Since then they did not apply for any support as their son was looking after them. In 2008 the son lost his job and was unable to look after them. Both were suffering from arthritis for which they were undergoing treatment. They had made an application for support and had been refused support. TWAN made a Section 4 case for appeal and the client was asked to provide proof of illness and a letter from the son that he was providing support earlier and he is unable to do so now.

This appeal was accepted after the client provided evidence and consequently provided accommodation and support by NASS.

Case Study 66

Mr. RSX an asylum seeker arrived in UK in September 2000 and his claim was refused in November 2000. Only for a brief period he was in receipt of Section 95 support from December 2002 to May 2003. The appellant was granted permission to work and he supported himself from his earnings till May 2008 when his right to work was withdrawn. When he made an application for subsistence support in June he was refused and he came to TWAN to lodge an appeal.

The grounds of appeal were that RSX was an asylum seeker in accordance to Section 94(1) as his case had not yet been determined as the last correspondence from the Secretary of State had mentioned that his immigration status was being considered separately by the Immigration and Nationality Directorate on the implication of the refusal of his asylum claim. This showed that the case had not yet been determined as he was not in receipt of any correspondence relating to this from the directorate.

Advice on Voluntary Return Programme

The International Organization for Migrations (IOM) offers assistance for asylum seekers who want to return permanently to their country of origin. The Voluntary Assisted Return and Reintegration Programme (VARRP) are open to asylum seekers of any nationality, whose asylum claim is under one of the following criteria:

- Waiting decision from the UKBA
- Refused asylum by UKBA
- Appealing against the asylum decision
- Given ELR (Exceptional Leave to Remain)

How does the VARRP work?

A filled up application form, signed with a declaration for voluntary return, should be provided to IOM with a copy of UK Border and Immigration Agency (previously known as the Immigration and Nationality Directorate of the Home Office) document. IOM, on receipt of the application, will send the details to the UK Border and Immigration Agency and inform them that you have applied to return under the Voluntary Assisted Return and Reintegration Programme.

The time frame for the return will depend on various factors such as UK Border and Immigration Agency approval, obtaining travel documents, availability of commercial flights, and any special needs to be taken into consideration of the returnee.

The current security situation for the Tamil people in particular does not create the atmosphere to return to Sri Lanka under this programme. The British immigration authorities share sensitive information of returnees with their Sri Lankan counterparts, which have resulted in the persecution and harassment of returning asylum seekers. Those with visible scars are likely to face the consequences of the draconian emergency laws

of the Sri Lankan state under the preconception of LTTE connections or militant past.

The climate of war and mass detentions of people in 'concentration camp' style detention camps in Sri Lanka's Tamil speaking provinces, which is the home of most of the Tamil asylum seekers in UK, will not encourage them to go back, as their homes are under army occupation. Some of the villages and towns have been under army occupation for decades and the current situation of building long term camps for the internally displaced people of the North-East of Sri Lanka shows an intention of the Sri Lankan government from stopping people from returning to their home for a long time. This act of keeping internally displaced people from returning to their homes is not sending any good signals for those in UK who would want to use the VARRP facility operated by OIM under the circumstances.

Using IOM facility with an intention of returning to UK

The decision on asylum cases, have been outstanding for a long period of time for many asylum seekers and in the meantime they might have entered in to relationship or got married to people with the right of abode in UK. Since they are restricted from travel due to absence of travel documents and other restrictions on them to employment, and other rights and privileges that are enjoyed by 'ordinarily resident person', compels them to risk a return to Sri Lanka and apply for a family re-union, with a valid leave to enter. They use the service of IOM's VAARP programme to return to Sri Lanka. They use it for the protection it provides to returnees.

As there is a monitoring system for IOM returnees in place they find it safer to use this system instead of returning with a Sri Lankan passport. But, there have been long delays for such returnees in getting into UK. Most of the times the visa offices in Sri Lanka refuse to give leave to enter even when everything is in order for the applicant. The grounds of objection for refusal of visa are flimsy and based on information that was held against the applicant's original application for asylum in UK.

Any migrant who has breached any UK immigration law will have their applications automatically refused for the following period of time:

- 1 year if s/he left the UK voluntarily (not at public expense) after the breach
- 5 years if s/he let the UK voluntarily at public expense after the breach; and
- 10 years if s/he was removed or deported from UK

Those who intend to return to UK after going to Sri Lanka on IOM support should not take any monetary consideration from them as it will be used against the application for entry to UK, as VARRP is intended for return and reintegration in their home country (Sri Lanka).

The majority of Tamil returnees belong to this category as the situation is still dire in Sri Lanka and they resort to this, as IOM returnees will be provided with some kind of safety net, which will not be available otherwise.

Crime and Victim Support

The Tamil community is formed of asylum seekers and refugees from Sri Lanka and also people who were settled here before the war started in Sri Lanka. Tamil people have been victims of crime like any other person living in London or other parts of UK.

The Sri Lankan state historically did not adhere to the 'rule of law', in its governance, especially when it came to dealing with the Tamil community. The lack of trust of authorities and law has held back the Tamil community from approaching them for justice. Many a 'suffering in silence' victims of crime are amongst our community. There is a general need to educate the Tamil community to trust the British system in place so they can seek redress from the suffering they go through.

There are many reasons for the Tamil people refraining from seeking justice such as:

- General lack of awareness of ones rights and the means to pursue them
- Lack of trust traversing from previous experiences of legal process
- Absence of rule of law in Sri Lanka
- Not fluent in English language

TWAN provides initial advice and assistance in dealing with person who has a legal proceeding

arising out of a crime committed by them or against them as well. Not only are they of a criminal nature but also de-criminalised offences such as Traffic/ Parking or other civil offences. There has been a spate of violent attack on our community members during this year and this has mostly been attacks for gain and also attacks of racist nature. We provide assistance to such victims in applying for Criminal Injuries Compensation as well as support in dealing with the police and legal process.

There are also victims of domestic violence and anti-social behaviour activities that are tolerated in silence by the victims. Domestic violence is a very sensitive issue and it takes a lot of care and proper approach to handle it. TWAN provides help and support for victims of such crimes by providing counselling and approaching the authorities to provide security for such victims. No stone is left unturned by TWAN in approaching relevant authorities to help provide such support for independent living.

Anti-social behaviour is another crime where the victim suffers silently. This can be the result of racism or sexism or just violent behaviours disturbing the peace of the victim. Some times a complaint of anti-social behaviour is used as a tool to victimize a person. When a victim of a complaint approaches us we get in touch with the council and try to seek remedy or conduct counselling with our clients.

We offer mediation and conflict resolutions to our community members without resorting to formal legal process thereby providing a safe and trustful environment. By doing so TWAN tries to prevent keep at bay any community sensitive issues blowing out of proportion.

TWAN works with Metropolitan Police in the implementation of safety issues concerning the community. There have been instances of gang violence and TWAN assists in projects aimed at reducing it. As part of the Tamil community we understand the extent and nature of this violence and how it affects the rest of the community. We provide support in finding accommodation for surrendered gang members helping them to rebuild their lives in an environment which will not be reflective of their past.

We also encourage victims and witness of serious crimes affecting our community to come forward and provide them to the police. We also work with probation officers to provide support to ex-offenders by assisting them in finding suitable employment and accommodation to re-integrate in to the society.

The over zealous traffic wardens have not spared any community and the victims of this kind of penalty notices come to our office. Speeding and traffic related offences are dealt with by providing representation to them.

Criminal Injuries Compensation

TWAN assists victims of violent crime in various ways. One such service provided is by helping victims make a claim for compensation from the Criminal Injuries Compensation Board (CICA). Under UK laws any person who has suffered physical or mental injuries as a result of violent crime or a person has lost a close relative to violent crime are under certain conditions entitled to compensation.

In addition to that the person has to qualify for the following conditions:

- Should have been injured seriously enough, to qualify for at least the board's minimum award (£1,000)
- Should have been injured in an act of violence in England, Scotland or Wales. An offender does not necessarily have to have been convicted of, or even charged with that crime.
- Should have made their application within two years of the incident that caused the injury.

The awards can be from £1000 to £500,000 and the compensation can be paid to the victim even if the offender has not been caught or even let off. If the victim has died and if the victim or the close relative applying for the compensation has any record of unspent criminal conviction, it will be taken into consideration while deciding on the claim. Any person who causes the injury must not benefit from an award to the victim (victim of domestic violence will not be compensated if he/she continues to live with the offender).

*I*f the claimant is not satisfied with the decision then he/she can make an appeal with 90 days from time of decision.

Case study 67

Mr SR was assaulted by two youths when he was walking along the road in the night. He was rushed to the hospital and he had to have two operations on his jaw and chin. He has been fitted with metal plates for life making it difficult for him to chew.

TWAN took up his case and the police are already dealing with his case. We have approached CICA and made a claim application on behalf of him.

Case study 68

Mr PR was sent a Penalty Charge Notice (PCN) for a parking offence, which he said he had not committed. In addition he had never received any PCN but a reminder to pay was sent to him. Since the introduction of the new Traffic Management Act-2004 only the registered keeper of the vehicle can appeal and cannot be represented. However TWAN helps its clients in making their appeals.

Case study 69

Mr & Mrs V were served with a notice of anti-social behaviour against their 10-year-old son. He was accused of verbally abusing a neighbour. The clients approached TWAN and said their son was attending classes regularly and was not a troublemaker. We challenged the council to come forth with any evidence or independent witness to this accusation and the inappropriate action on the child.

The Council after further investigation concluded that this was a neighbour's dispute and finalised the complaint with warning notices to both parties.

Healthcare Rights and Counselling

Health care, or healthcare, refers to the treatment and management of illness, and the preservation of health through services offered by the medical, dental, pharmaceutical, clinical laboratory sciences, nursing, and allied health professions. Health care embraces all the goods and services designed to promote health, including; preventive, curative and analgesic interventions, whether directed to individuals or to populations. In UK public health care is provided by National Health Service (NHS) trust. Most NHS services are provided free of charge except under two circumstances:

- when the Secretary of State for Health can make regulations for certain types of health services to be charged
- when the Secretary of State for Health can make regulations for people who are not ordinarily resident

On 30th December 2003, Health Minister John Hutton announced the Government new guidance to the NHS on foreign nationals' access to free NHS health care. The changes came into force in April 2004 and included an end to free NHS care for asylum seekers who have had their applications refused and who have exhausted the appeals process.

In a test case of a failed asylum seeker YA, Justice Mittting made a ruling in April 2008. The judge said the existing guidance was unlawful because the definition of "ordinarily resident" was not restricted in time and authorities had discretion as to who qualified for "ordinarily resident" status.

A three-panel judge made a ruling in favour of the appeal made by the Secretary of State for health in March 2009[3]. Failed asylum seekers are not entitled to free treatment on the NHS But hospitals can make up their own minds on whether to treat them if they have no money, said the judges. The appeal judges ruled that a failed asylum seeker is not ordinarily resident in the UK and allowed the appeal.

The guidance of 2004 is only concerned with hospital treatment and does not concern GP, dentist or optician. There are exceptions to this guidance under the following condition when

[3] The decision of the Court of appeal was made when we were going into print. The lawyers of YA have lodged an appeal in the House of Lords.

treatment is free of charge even if the patient is "not ordinarily resident", if they fall under the following categories:

- treatment given in an accident and emergency department
- family planning services
- treatment for certain listed diseases (HIV is not in this list but TB is included)

And it also covers foreign nationals in UK who are exempt from any charges, including:

- those working lawfully in the UK
- students on a full time course of study
- those with indefinite leave to remain
- asylum seekers whose asylum claim or appeal remains outstanding
- those living lawfully in the UK for 12 months before requiring treatment.

Asylum seekers like any other foreign nationals living in UK lawfully are entitled to NHS services and registering with the GP. If their claim is refused they may still use the service of GP and gain free treatment but may be charged for routine treatment but not for emergency or immediate service. The hospital service of the NHS is now left to the discretion of the hospital though they are not entitled to treatment.

TWAN provides interpretation services to GP and NHS, as there is no such service available with the Department of Health. Our services are restricted, as we do not have expert knowledge in various fields as we lack funding to undertake them. We regret that we are unable to cater to the needs of our stakeholders who have left their home in the most trying conditions in Sri Lanka. They not only have suffered physical and mental torture but also have not come to terms with what they have gone through those darkest moments in their lives. They are both people who have been victims of a war against humanity but also and those who witnessed them. The mentally disturbed community needs a lot of healing to be done for them to lead a normal life. TWAN would need support in developing advanced counselling skills in dealing with this colossal human tragedy of pain, guilt, horror and fear that these people have to shed from the past.

Counselling- as of now we are providing counselling in issues relating to parent-children conflicts, family reconciliation, addiction etc, which we are able to with our limited resources. But, counselling for more serious issues like victims of torture: dealing in post-traumatic stress disorder (PTSD), severe depression and others, which are available on the NHS. But a community based organisation like TWAN could do better as we understand the language and the conditions under which these people have escaped from persecution.

Case study 70

TP was deported from Germany to Sri Lanka in 2006. On arrival in Colombo he was subjected to interrogation as he travelled on temporary travel document and he did not have any National ID card of Sri Lanka. As he did not have any place to stay in Colombo he went to stay with his mother in Colombuthurai in Jaffna Peninsula where he was victimised by paramilitary men loyal to Sri Lankan army and the police. He had to undergo surgery on his spinal chord and suffered from other problems due to abuse at the hands of his tormentors. He came to the UK and applied for asylum and when he went for registration with GP he was refused. The GP was adviced by TWAN on the rights of asylum seekers as well as failed asylum seekers in seeking emergency and immediate help from the GP and that the asylum seeker is entitled to registration with GP and can use service of NHS hospital free of charge as long as there case or appeal was pending decision.

Case study 71

TP was a minor asylum seeker and he had arrived in UK after facing many harassment, beatings and accusation of being a LTTE informer by the paramilitary groups and army. When he was unable to bear with it any longer, his mother organised for him to leave the country to India. He was arrested at the airport and detained for 45 days under draconian anti-terrorist laws. On conditional release he stayed in Colombo signing at the police station everyday with his mother. Using the help of the agent again he left the country and came to UK and sought asylum. He was reused registration at the GP and TWAN had

to intervene and present relevant laws to the GP to let him be registered at the surgery.

Case study 72

NHS refused Ms JS an asylum seeker service, as they did not think she could utilise the free service. JS asylum case was still under consideration and she was pregnant. She was receiving NASS subsistence support and also had a HC 2 Certificate for full help with health cost.

TWAN sent a letter to the hospital and explained the circumstances under which she was entitled to the services of NHS with no costs attached.

What is HC2 certificate?

The UK Border Agency (UKBA) on behalf of the Department of Health issues the HC2 and allows asylum supported applicants and their dependants to receive free prescription medication and help with other health costs. The HC2 is valid for 6 months.

The HC2 entitles the applicant to:

- Free NHS prescriptions
- Free NHS dental treatment
- Free NHS wigs and fabric supports
- Free NHS eyesight tests
- Vouchers towards the cost of spectacles and
- Refunds of necessary travel costs to and from hospital for NHS treatment under the care of a consultant

Housing and Accommodation - Rights and Advice

The Tamil community consists of two categories of people, in relation to their immigration status. Those with indefinite leave to remain and British citizens are one category of people whose housing needs and the problems they face and the other category of asylum seekers and failed asylum seekers, the latter having no subsistence to live on except to live at the benevolence of friends and relatives.

Many young people live in overcrowded conditions due to the delay in their asylum application decision or having been reduced to failed asylum seekers with no recourse to public funds or right of employment. This generally causes problem when you have groups of young people living together, leading to alcohol abuse and other addictions that is generated with peer pressure. Tamil community normally resides as a family, providing the vital support structure for emotional and moral support. Long term separation from family and loved ones and other distressing events from the past coupled with alienation in society as 'rejects' in their prime of life is a very lamentable situation of many young Tamil asylum seekers/failed asylum seekers.

Homelessness is not unknown in the Tamil community, there have been instances of people sleeping rough in the streets and suffering from alcohol and drug abuses. The situation is only going to get worse with more restriction being placed on asylum seekers. During this year many asylum seekers awaiting appeal have been restricted from working and are also not entitled to asylum support.

TWAN supports people in need of housing by providing accommodation through local community organisations, religious institutions and private landlords. TWAN also provides support and advice housing rights to those who are entitled to it.

Most of the Tamil people are dependent on rental accommodation for living and are generally living with private landlords and also in Council homes and Housing association accommodations.

Council Homes- who is eligible?

Most people from abroad, including virtually all asylum seekers do not qualify for council housing. Even if the person is an unaccompanied child seeking asylum, they are looked after by social services. Most of the unaccompanied Tamil children usually take shelter with relatives or other members of the Tamil community. However, some people from abroad are eligible. This applies if the applicant normally lives in the UK and:

- s/he has been granted refugee status
- s/he has been given either exceptional leave to remain, discretionary leave or humanitarian protection, as long as this status was not given with the condition that you have 'no recourse to public funds'

- s/he are from the European Economic Area and are a classed as a 'worker', or are a member of a worker's family, self-employed, or you have the right to stay here for other reasons.
- s/he has unconditional leave to remain in the UK (settled status) and are living in the UK, Eire, the Channel Islands or the Isle of Man
- s/he already has a secure, introductory or assured tenancy with a council or housing association, and are applying for a transfer
- s/he came to the UK from Montserrat after the 1995 volcanic eruption.

There is usually a huge waiting list to get on to the ladder of council homes. The waiting list does not necessarily mean ascendancy based on 'first come first serve basis' but based on priority.

Most local authorities produce a leaflet that explains how things work. The chances of getting a council house and how long one has to wait, depends on: the housing availability, the number of applicants and how much priority the applicant has been awarded.

Most councils use a points system or a banding system. Most councils will give extra priority to those people who have lived in their area for a certain length of time. The law says that certain groups should get priority, but priority can also be taken away in some circumstances.

Priority points are awarded to the applicants if:
- s/he is homeless or about to lose their home
- s/he is living in very poor conditions
- s/he has a medical condition
- s/he was seriously injured in the armed forced
- s/he needs to live in the area to avoid hardship
- s/he is at risk of violence or threats.
- s/he has been involved in unacceptable behaviour

The priority points can be removed or added by the council if there are changes to the circumstances or events since the first application.

Other forms of social housing are Housing associations and Housing co-operatives. It is best to apply for a Housing association house through the central waiting list of the council, as this will increase the chance of getting a home. Even Housing associations also provides housed on a priority basis.

Destitution and Homelessness

Homelessness (England) Regulations 2000 entitles only certain categories of people who are subject to immigration control for homelessness assistance. The Immigration Asylum Act of 1999 excludes asylum seekers from entitlement to assistance as homeless persons as they are not entitled to assistance under Housing Act 1996.

Homelessness in the community

In 2008, 192 clients came to us for assistance in either helping them get emergency housing having become homeless or threatened with homelessness. Family disputes, alcohol abuse, inability to pay rent/mortgage are the common reasons for homelessness for the people who have the right to live in this country. The other category of people who do not have any immigration status are facing homelessness due to two reasons:

- they are not entitled for NASS support or wrongfully denied NASS support ; or
- those living in NASS accommodation flee, unable to bear the harassment of officers who try deportation procedures, even whilst their appeals are pending decision

The eligibility for social housing covers two main categories; the person applying must not be subject to immigration control and must be habitually resident of UK.

There are five tests that are applied to determine if the person applying is homeless. The five tests that will determine an application for homelessness are:

1. homeless or threatened with homelessness
2. eligible for assistance
3. priority need
4. intentionally homeless
5. local connection

Those who are eligible for assistance will be provided with help in getting the applicant into suitable accommodation. Before a decision is

made the applicant will be provided with emergency accommodation. Those who are threatened with homelessness are normally helped by a Tenancy Support Officer who will liaise with private landlords to prevent harassment or illegal evictions.

The Local authorities are duty owed to provide assistance to those who have been deemed to be non-eligible for homeless assistance. The people eligible for this are; pregnant woman, dependant children, a vulnerable person or those made homeless due to natural disaster. The accommodation provided will not be a secured tenancy but of an interim nature.

In the case of intentional homeless and with a priority need, the Local Authority is duty bound to provide for an initial period of 28 days and may extend it on a weekly basis if the situation warrants it.

In the case of intentional homeless without any priority needs the duty of the Local Authority is only in providing advice and assistance to any attempt made by the applicant towards acquiring his/her own accommodation.

Asylum seeker and Homelessness

If an asylum seeker is destitute at the time of application, NASS will provide accommodation and support in a hostel anywhere in the country until the Home Office has determined their case. If the asylum claim has been rejected and the asylum seeker has lodged an appeal within the stipulated time limit and awaiting decision, they can continue to receive NASS support. If they lose the appeal then they will be evicted immediately. They can be provided with NASS support if they qualify to receive such support under section 4 of the Immigration and Asylum Act 1999.

Asylum seekers awaiting remedies through other judicial process may however continue to stay in the country but will not be provided any further NASS benefits. This creates homelessness for the asylum seekers and they have to resort to seeking help from friends or relatives. This not only generates a lot of moving around, as they have to live at the charity of others bringing a lot of mental agony to them. Sometimes they have to keep moving, as accommodations are only available for a temporary period of time.

In the long run, the asylum seeker will become impoverished with no recourse to education, work or social benefit. Most end up in overcrowded accommodation with no interaction or integration with the mainstream society making them social misfits with no confidence to face the world.

Case Study 73

Mr R had rent arrears for some time .He along with his family was evicted by the landlord. He sought assistance from the Homeless Unit and his family was put up in a Bed & Breakfast. After a brief period of stay at the Bed and Breakfast the Council refused to accept his case of homeless as an intentional one as he had not paid his rent. The Council wrote to him to vacate the B&B he was staying in and the landlord of the B&B also threatened the family that they will lock the door if they did not vacate.

Mr R approached TWAN and we informed the police as Mr R had a child and his wife was 37 weeks into her pregnancy. They got them a place to stay using the emergency team and referred their case to Social Services as they had a child. Later on Social Services got them a Council tenancy.

In this case the child and the late stage of pregnancy of Mrs R were instrumental in getting them a place to stay. Intentional Homelessness will not usually benefit a claimant unless there is a severe case of hardship as seen in the case of Mr and Mrs R.

Case study 74

Mr TS and his wife had made a claim for Housing Benefit and Council Tax Benefit. They received a letter from the Council that their claim for Housing Benefit was £97 per week but they were not entitled to Council Tax benefit.

As they were paying £1000 per month on rent and £133 for council tax they approached TWAN to help in making an appeal.

We made a Financial Statement and asked the Council to review the situation and increase the Housing Benefit and entitle our client to Council tax benefit as well.

Employment Advice

Tamil community in UK is a hardworking community with an urge to develop their skills and put to use the knowledge that they gained. In the last 25 years most of the Tamil asylum seekers

were employed in the retail industry especially in petrol stations, supermarkets and corner shops. It should not come as a surprise that many shops and retail business are run by Tamils. There were not many retail businesses, which provided 24/7 services before the arrival of the refugee communities in the 80's.

Tamil community has produced many professionals and skilled workers in various fields who are contributing significantly to the economy of UK. But it is the retail sector that the majority of the Tamils are employed in.

A Home Office study published in 2002 estimates that immigrants and asylum seekers contributed £2.5bn more in taxes than they consumed in benefits and services in 1999/2000. Though the asylum seekers are not economic migrants they have contributed their skills and knowledge in gap sectors.

But, the current immigration regime restricts work to asylum seekers and failed asylum seekers making them redundant of any contribution to this society. The Tamil migrants to a great extent suffer from this action.

Those in employment face problems with issues such as termination of job, redundancies, disciplinary actions, harassment at work etc. Such people approach TWAN and we assist them in making appeals and if necessary, we take it to employment tribunal or arbitration.

Case study 75

Mr. SG was working in a service station and was unfairly dismissed for gross misconduct. He was working in a shift-based work as a Sales Assistant. This was a 24/7 service station and the person for the next shift did not turn up. When he contacted the person, she said she was not supposed to work so she would not turn up. He contacted his Manager who asked him to hold fort until she made the necessary arrangement. When no one turned he called her and told her he had to go home to look after his unwell, 5 months old baby and wife. At this point the manager turned hostile and initiated disciplinary action against him and he was eventually dismissed from his job.

He made an appeal to them and in the internal appeal process he was not able to articulate himself well enough and his lack of clarity in English language did not help in making his views clearly to the Area manager who was conducting the appeal hearing.

He approached TWAN to provide him with assistance in this case. A letter was drafted explaining his point of view but the company stuck to its original decision to dismiss him. TWAN has now lodged proceeding with the employment tribunal.

Case study 76

Mr SE was working as a setter in a sealing unit. He was made redundant based on a redundant matrix prepared by the company. He felt that the Managers had unfairly made him redundant based on manipulation of the matrix.

His employers had employed a scoring system. He was scored 2/5 for team work as he was not flexible and working as a team and at the same time he was given a lower score for work rate as he was consulting the Quality control inspector and other team members for opinion. He was given a 3/5 for job knowledge and again for quality of work he was awarded 4/5.

He felt that since he had a good knowledge of the job he was able to give quality work and he could not be scored less for job knowledge as it contradicted the scoring on quality of work. Similarly he was scored less for not being a team player and at the same time he was penalised for consulting the QC inspector and his team.

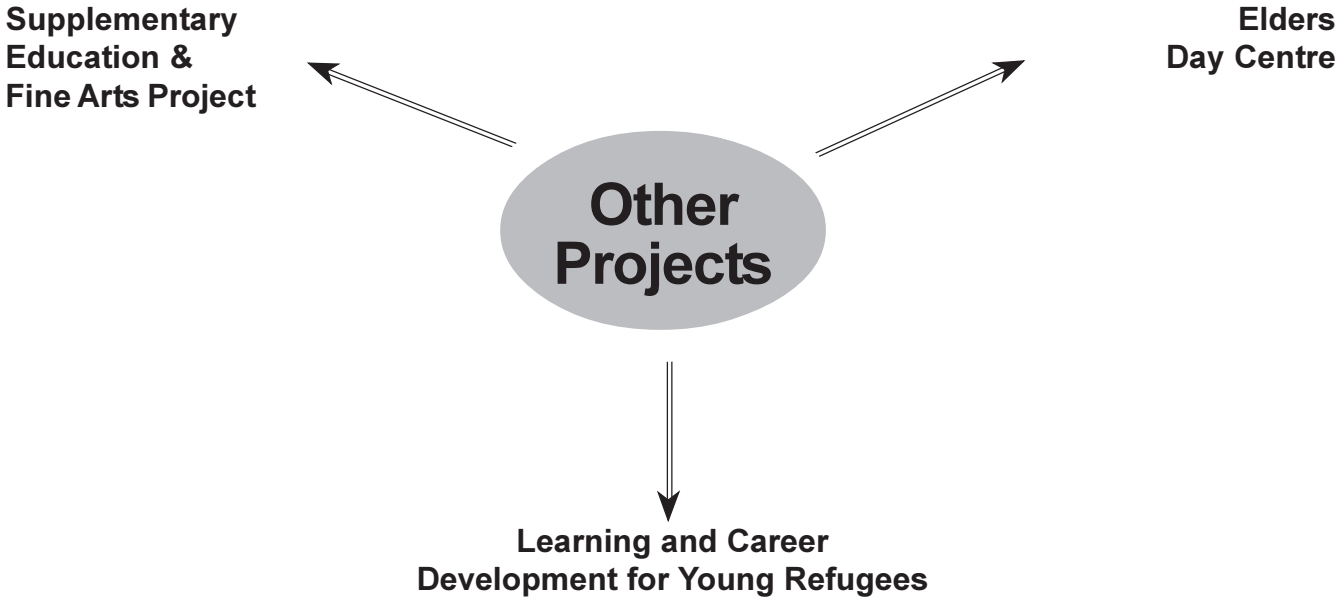
He approached TWAN after he had exhausted his internal appeals procedure. We have taken his appeal with the employment tribunal.

Case Study 77

Mr SL had gone to India for a two week holiday and whilst in India his daughter was sick and could not travel. He informed his employer that he will come after two more weeks and when he arrived back in UK he contacted his employer. His employer told him not to come back to work, as he had been sacked.

SL approached TWAN for help in this regard. We contacted the employer and sent him a letter explaining the rights of SL and that his dismissal was unfair. The employer contacted TWAN and after an informal arbitration has reinstated SL in his employment.

OTHER PROJECT AND SERVICES



The Elders Project was funded by Awards from all England fund and The Trusthouse Charitable Foundation. This is an ongoing projected initiated by TWAN in early 90's and enjoys good support from our community elders who are in a state of disadvantage due to their unfortunate circumstance, the outcome of forced migration from war torn Sri Lanka. Many of these elders are living alone and have very little contact with the outside world.

Every Thursday a weekly luncheon day care session for elders is held at the day care centre. During this session healthcare professionals provide information on health and diet. Yoga, keep fit, creative dance and drama are some of the on-going programmes conducted for cultural and recreational purposes. Seminars and workshops are held regularly on issues relating to health, welfare rights and legal issues relating to asylum and immigration as well. These workshops provide TWAN an insight into the problems faced by the elders and helps us in evolving new policies to cater the needs of our community. This project is run by volunteering elders and benefits over 160 elders in the community. On an average 40-50 people utilise the weekly session.

These kind of befriending schemes and luncheons are aimed at fighting loneliness and isolation of our elders. This serves as a good starting point to meet people of similar backgrounds to socialise and relate to.

The day care centre also helps them develop language skills to fight the barriers of surviving in UK. In this process young Tamils are also involved in working with them to give them an opportunity to understand each other. We also provide transport facilities to the elderly so that they can access this service.

Another unique implementation in this project is the involving of young people with problematic or anti-social behaviour into this scheme. This has given a purpose of life to these youngsters and it is still at an experimental level. This scheme was introduced to provide a social fabric, which is missing in the modern society where people have no time for elders and youngsters alike. This aims at helping each other to survive and develop into

useful members of this society using the acquired wisdom of the elders and the inquisitiveness of the young minds.

Case Study 76

Mr KM wanted to apply for the Winter Fuel payment as he was on low income and also on pension. He approached us to get help with his application to get Winter Fuel payment. An application was made on his behalf and sent. He received the payment well in time for a warm winter in his house

Supplementary Education and Fine Arts Project TWAN conducts regular Sunday classes at the Little Ilford School for children. This is aimed at helping the children with their studies and performance at school. Experienced volunteer teachers help refugee children in their schoolwork and provide the additional support they might need to improve their knowledge and understanding of regular subjects such as English, Maths and Science.

In addition to the regular educational needs the Fine arts project provides the cultural and recreational needs of the children. Music and dance have been a part of our ancient community and like any other community it quenches the thirst of creativity and enrichment of the soul. The antiquity of our entertaining arts are manifold, we however are restricted in only focusing on a few forms of the arts such as Karnatic Vocal, Mridangam, Veena, Violin, Tabela, Guitar and Bharatanatyam dance and contemporary Bollywood dance.

All classes are conducted from 9-30am to 2-30 pm. The children who learn these arts also participate in our cultural programmes and also undertake exams conducted by the Oriental Examination Board London (OEBL)

KPMG Foundation till July 2008 funded these projects. This project is still continuing without adequate funding and support at the present. We hope to get additional funding in the coming year.

Learning and career development for young Refugees

This project was also supported by the KPMG foundation funding and it helped in the development of young refugees who come as dependants as well as unaccompanied minors. This project is part of the above-mentioned Supplementary and fine arts educational work as well as other projects.

Our contribution in helping young people to prepare for adult life has received appreciation by The Trident Trust, Sarah Bonnell School amongst others.

TWAN works with local schools in Newham borough by providing an opportunity to young adults to work in our offices and give them the skills needed to develop their career in adult life. We have a regular intake of such young adults from the refugee communities as well as migrant communities. This part of the project involves non-Tamil people as well.

Supplementary education has been very useful in developing the confidence in refugee children in catching up to their peers socially and academically. We have observed and had inputs from parents indicating a positive change in the lives of the students who have used our service. Over 250 students have benefited from this programme and we are able to provide policy advice to Home Office on integration and assimilation of refugee children into the mainstream through confidence building measures brought about by supplementary education. Unfortunately the funding of this project by KPMG Foundation has ended and needs to be supplemented by other funding.

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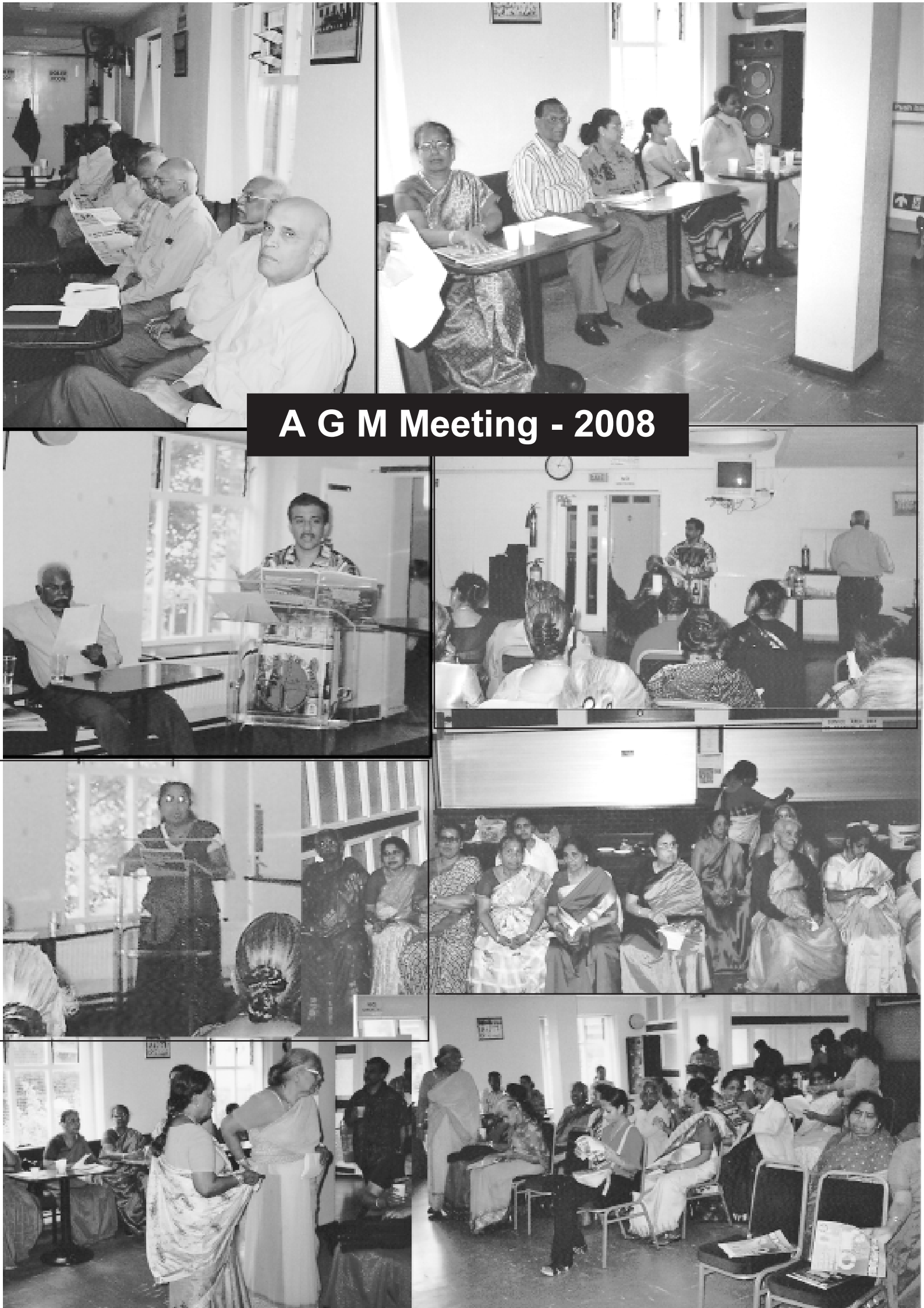
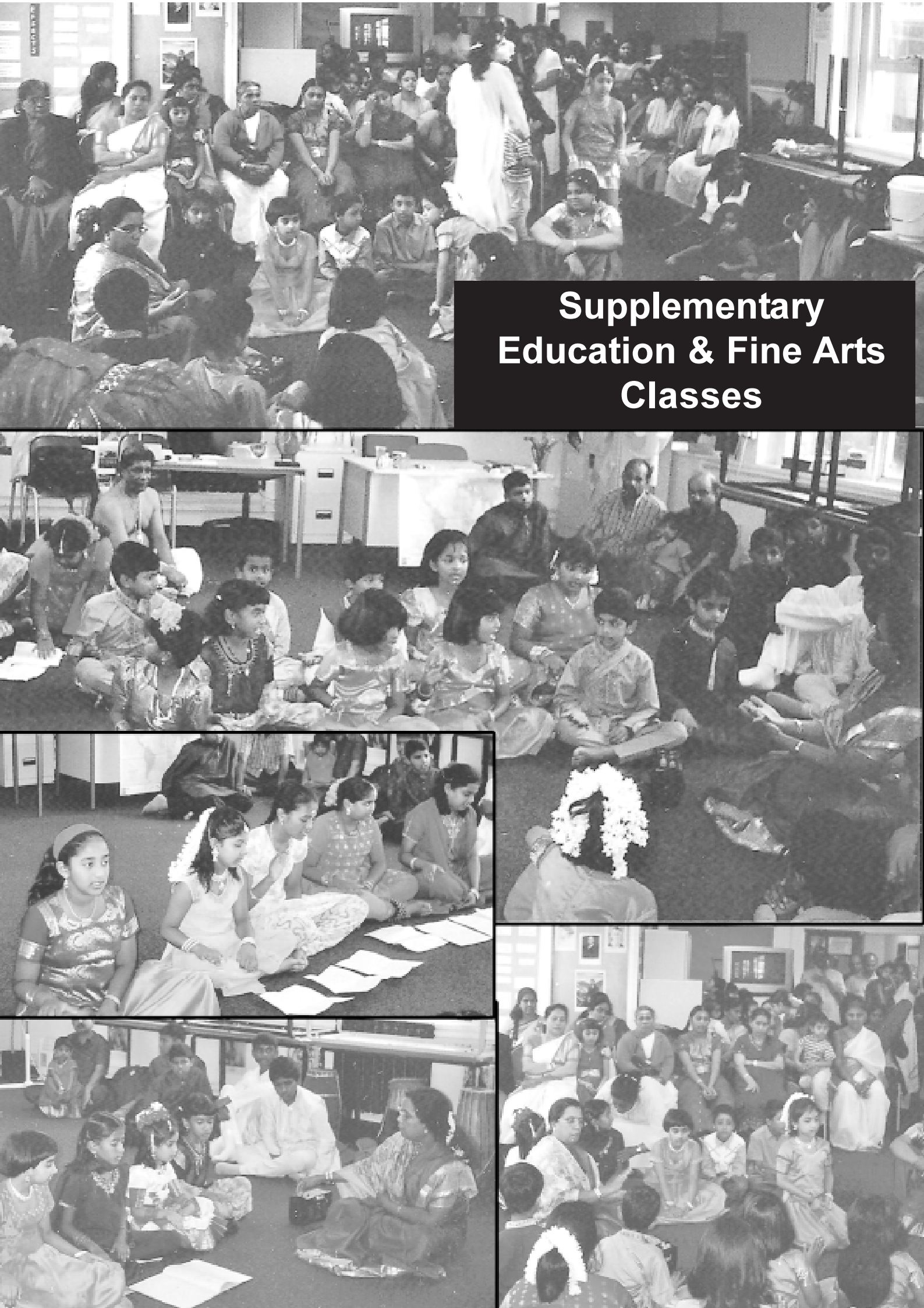
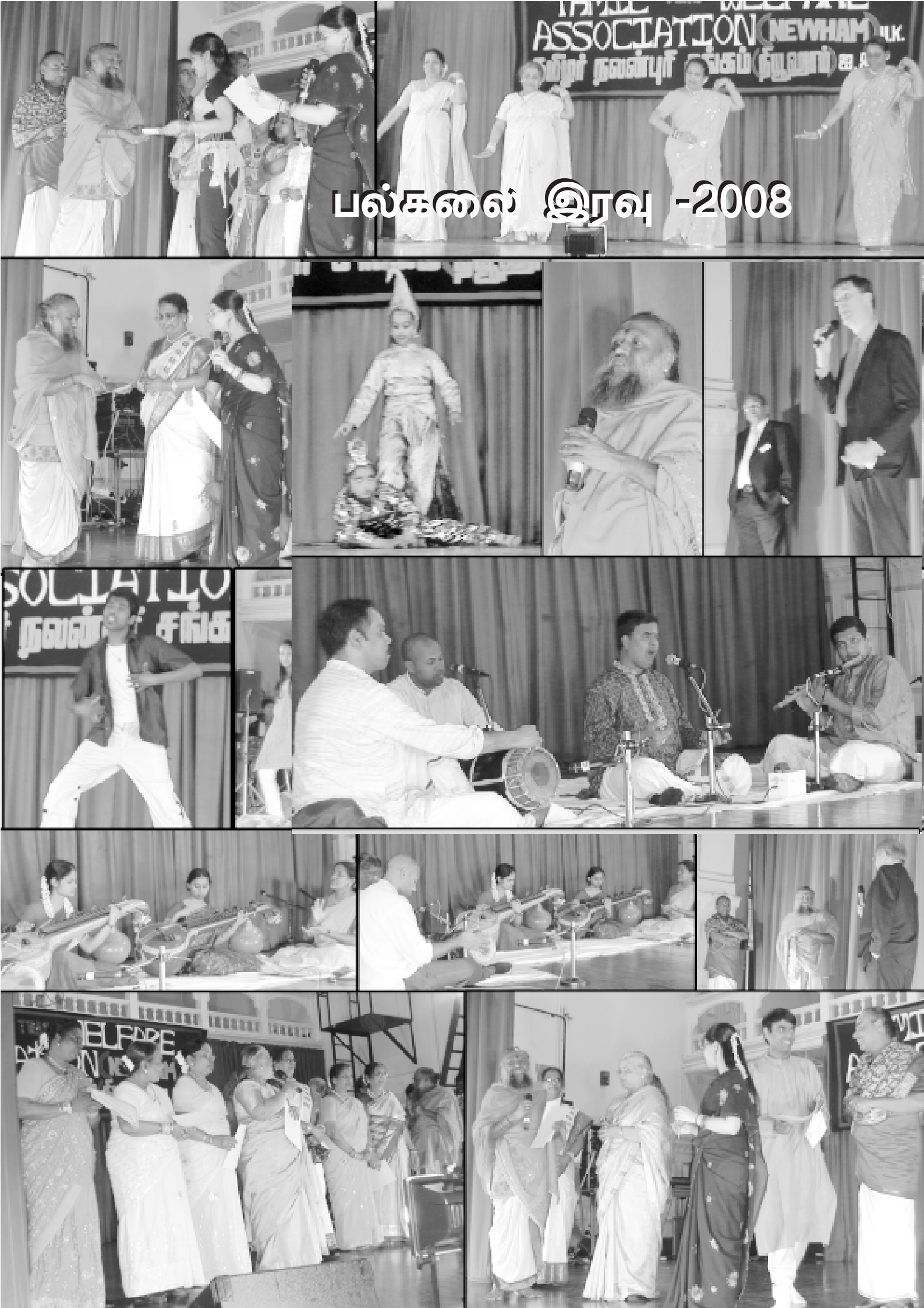


A G M Meeting - 2008



Supplementary Education & Fine Arts Classes


நத்தார் ஒன்றுகூடல் - 2008



பல்கலை இரவு -2008

பல்கலை இரவு -2008

ACKNOWLEDGMENTS

We Heartily thank

all of you who have supported us over the last 23 years
and the funders who have recognized our services
and aided us with grants to enable us to deliver our services.

Particularly our client's, staff,
volunteers, members and well- wishers

Mr. Stephen Timms MP

Mr. Unmesh Desai, Mr Clive Furnes and other
Local Councilors

Legal Services Commission, London Council, KPMG Foundation,
Trusthouse Charitable Foundation and Lloyds & TSB Foundation.

OISC, Medical Foundation, Professional Doctors,
Health Advocacy Services and GP's.

Advice UK, MODA, NCVO, Newham Voluntary Sector Consortium,
North East London Network, British Refugee Council,
JCWI, LASA, ILPA, and BID

Redbridge Refugee Forum, The Renewal Programme
and Glory Community Accounting Service,
Newham Trident, City University,
London School of Economic
and University of Westminster

Newham Community Education Services,
Kensington Primary School, Little Ilford School,
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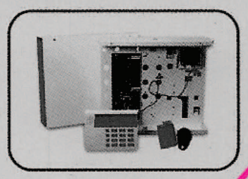

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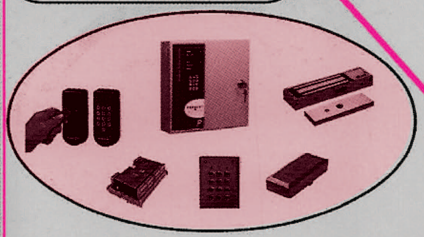

We can provide the Access Control system which is Fast and accurate system to record employee's hours of working and site security.

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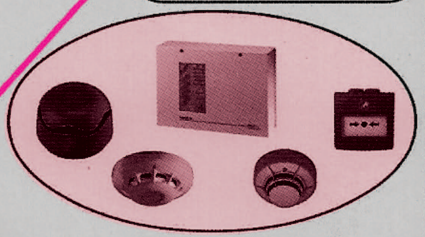

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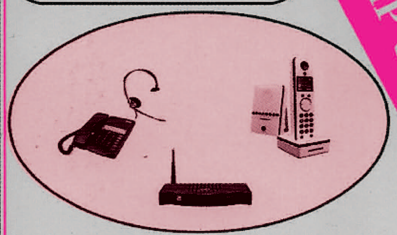

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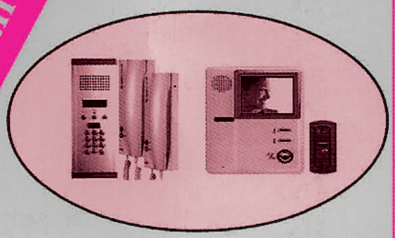
Door Entry



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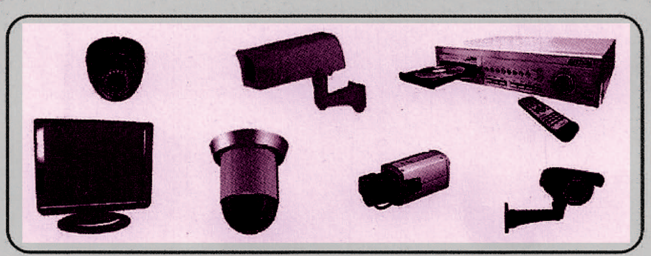

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