ADVISORY PROJECTS

Accommodation and Housing Advice

Health Care Rights and Counselling Advice

Family Advice

Asylum and Immigration Advice

Support to Asylum seekers

Welfare Benefits Advice

Crime and Victim Support

Employment Advice

Debt and Consumer Rights Advice

Education Advice

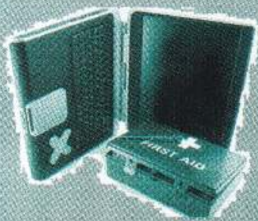
TWAN

தமிழர் நலன்புரி சங்கம் (நியூஹாம்) ஐ.ரா.

TAMIL WELFARE ASSOCIATION (NEWHAM) UK

ANNUAL REVIEW REPORT 2009

HiTEC Empire Ltd



NO FIX NO FEE

PC repairs, upgrades & installations
Hardware upgrades on desktops and laptops - Fixes for Blue-Screen problems, freezing and random restarting. Motherboard repairs including replacement of capacitors, USB Ports, Mouse & Keyboard Ports.

Laptop specific repairs
We don't just fix desktop PC's; we handle laptop (notebook) specific repairs including faulty DC Power Sockets, broken USB Ports and Network (RJ45) Sockets. We replace broken screens and fix dim screens too.

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Removal of most trojans and malware is possible with reputable Anti-Virus / Anti-Spyware software but some variants may be more difficult to detect and remove, requiring manual cleaning techniques.

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Member of BCS & IET

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TAMIL WELFARE ASSOCIATION (NEWHAM) UK.
தமிழர் நலன்புரி சங்கம் (நியூஹாம்) ஐ. ரா.

வாழ்த்து

வருஷங்கள் பல உருண்டு ஓடிடினும்
இவ் வையகத்தில் வாழ்வதற்காய் ~ இத்தேசம்
வந்தோரின் உணர்வறிந்து அவர் வழி நின்று
இன்னல் களைந்து இன் முகம் காட்டி
சேவைதனை தனதாய் கொண்டு தொண்டாற்றும் ~ தமிழர்
நலன்புரி சங்கமே பன்னினெடும் காலம நீ நீடு வாழி
உன் மானிடத்தின் சேவை வாழி வாழீ....

குடிவரவோ மானியமோ இருப்பிட வசதியுமாய்
வேலை வாய்ப்பும் தேடித் தந்து கடன் தொல்லைதனை குறைத்து
அகதிகளாய் நாம்வரினும் ~ நம்
வாழ்வு மிழிர்ந்திட தீபச்சுடர் எற்றும்
தமிழர் நலன் புரி சங்கமே
மனித சேவையில் நீ ஓர் முன்மாதிரி

மலர்ந்திடும் புதுவருடமதில் நடப்பாண்டின் தேவை அறிந்து
நம் சமூகம் வாழ வழி செய்து
'விஹிர்தி' ஆண்டதனை வரவேற்று
விழா காணும் தமிழ் இனமே
உன் முயற்சி ஜயித்திடும்
உன் வாழ்வு செழிர்பதற்காய்

சுபம்

Annual Review Report - 2009

TAMIL WELFARE ASSOCIATION (NEWHAM) UK.

**602 Romford Road, Manor Park,
London E12 5AF**

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STEPHEN TIMMS

Working hard for East Ham

Stephen Timms

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w: www.stephentimms.org.uk

Tamil Welfare Association (Newham)
602 Romford Road
Manor Park
London
E12 5AF

20 April 2010

Dear Friends

Thank you very much for inviting me once again to the Tamil New Year Celebration at the Town Hall. I am delighted to accept. I look forward to joining you on 15 May.

The past year has seen untold anguish for Sri Lankan Tamils. Many in East Ham have suffered loss. I extend my deepest sympathy to all those affected. Gordon Brown led world leaders in calling for a ceasefire in Sri Lanka.

Last July, as a Treasury Minister, I met the All Party Parliamentary Group for Tamils to discuss the proposed $2.6 billion IMF loan for Sri Lanka. We discussed the vast number being held in camps. After the meeting, I advised the Chancellor of the Exchequer that Britain should not support the loan. He accepted my advice.

In February, after a one year examination of human rights, the European Union announced Sri Lanka's suspension from the Generalised System of Preferences (GSP+) from August. Supporting this to the Global Tamil Forum, the Foreign Secretary David Miliband set out UK Government worries on: *"civil and political rights ... violence and allegations of malpractice in the election campaign and ...media freedom"*. Since September 2008, Britain has given £13.5 million to impartial humanitarian organisations in Sri Lanka like the UN and Red Cross.

Labour's election manifesto commits Labour to continuing to press for *"a full and fair investigation into war crimes committed in the final months of the civil war"*. We are determined to work for a peaceful future for all in Sri Lanka.

With all best wishes, and looking forward to the Town Hall celebration,

Yours sincerely,

STEPHEN TIMMS

Promoted by Unmesh Desai on behalf of Stephen Timms both at 262 Central Park Road, East Ham E6 3AD
Printed by Jupiter Associates Ltd, 21 The Waldrons, Croydon, Surrey CR0 4HB

Message from the Chairman

The agony that engulfed us during the closing days of the wars in May 2009 and the period of anxiety and pain that preceded it when thousands of Tamils who were trapped in Mullivaikkal in Sri Lanka's North mars most of the events in the first half of 2009 for Tamil people in UK and across the globe

My heartfelt condolences to the families and survivors!

It will be hard to forget from our living memories, the human tragedy that followed the 'silencing of the guns'.

Breaking all human decency thousands were incarcerated in barbed fence camps with little or no shelter. A proud population had been pushed to a life of penury and the mercy of those who waged war against them.

The lone consolation being the end of the war and hopefully a period of peace may prevail. There has been some progress in the rehabilitation and resettlement of people back in their homes, but many are still unable to go back to their homes as the military still occupies them. The government of Sri Lanka has to settle the long standing aspirations of Tamils, if genuine peace is to prevail in the North and East as well as the whole of Sri Lanka.

I am as always hopeful that things will change and the Sri Lankan government will come forward with a reconciliation formula to engage all nationalities in the island of Sri Lanka to lead a peaceful and co-existent life as was the case for thousands of years before the advent of colonialism.

In UK our work is changing in its form, as more Tamil people become British Tamils. The Tamils living in the UK are mostly settled people. Tamil culture and religious practices are observed but when faced with difficulties they are given sympathetic hearing and assistance by our organisation. Although the Tamil refugees arriving into the U.K has come down dramatically; we still deal with clients whose cases are pending and at various stages of appeal. Our team of experienced and qualified staff prepare and present cases to the appeal courts and higher courts until final judgement.

The elderly group of Tamils have a weekly session for a luncheon meet which is a very popular platform for them to share and heal with other elders. Their activities have been going un-interrupted and the active participation of women is promising as they get to be independent and physically active and which keeps them more relaxed at home as they feel a sense of a fulfilled life rather than have a bored, isolated and routine life at home.

Our focus on the younger generation will bear fruits in the future when they will be proud of their heritage and culture for which we have dedicated a team of volunteers and staff to provide Supplementary Education and Fine Arts tutoring.

The Tamil people expect that peace should prevail and the life in our homeland should return to a land of happiness. Our people are hardworking & resilient and let us not deteriorate or sink. Our children who are displaced should get back to serious education and achieve the high standards in education that was prevailing before the war.

We as an organisation are dedicated to serve the community. A team of expert and experienced volunteers work hard sometimes sacrificing their social hours and also weekends to clear any back logs of work. We would continue to work hard and continue to take any challenges that affect the lives of the Tamils living in this country and back home in Sri Lanka. Let peace and tranquillity return to our home land and let every one be treated with dignity and provided opportunities fairly and equally.

The British Tamils living in U.K should make our new nestling ground called Britain a progressive nation by contributing to its growth positively by executing our rights and obligations with sincerity and honesty and abiding by the rule of law.

I wish all success to everyone in the work they endeavour and hope to see a better future for us in Britain and our friends and families in our homelands.

R. Rajanavanathan

R Rajanavanathan

TRUSTEE'S REPORT 2009

In the 23rd year of its existence TWAN can proudly look back at its achievements and also look towards a brighter future for its users, members and other stakeholders.

The primary aim of our organisation is to help the Tamil community to settle in the U.K. We are able to provide our distinctive service in the form of legal support and other advisory services through our drop in office situated in London Borough of Newham, one of the most deprived boroughs in the U.K.

History of the Tamil people fleeing Sri Lanka and the history of TWAN can be read as a cause and effect phenomenon. The effect of providing relief to people arriving in the UK in groups and also as families and individuals resulted from the cause of a man-made catastrophe in that island.

Today, the Tamils are a visible community in Britain and TWAN has pursued the needs of the community through services and lobbying with organisations, people in government and pressure groups. There are new issues arising everyday for the Tamil community, as it changes to become a community of British Tamils and also a steadily growing second generation, whose interests have to be catered for in the future. At present we are running the Supplementary Education and Fine Arts project for this second generation of Tamil children growing up in the UK alongside migrant children from Sri Lanka and India. The future needs of children growing up in London may need more imagination and creativity in introducing projects in consultation with the children and young adults as we grow towards the integration of the children and adults of the Tamil community in to the mosaic of multi cultural Britain.

In 2009 many asylum seekers received their permanent residence (indefinite leave to remain) from the 'Legacy cases', we hope many more will reach an end to their long wait and become residents of this country and contribute their skills and potential to the growth of British society, culture and economy.

Annual General Meeting - 2009

The AGM of 2009 was held on Sunday the 21st June 2009 at the Manor Park Community Centre starting at 2 pm and finishing at 5.30 pm.

The AGM started after lunch with welcome speech by Mr Rakavan one of the board members. This was followed by the unanimous election of Mrs Leela to chair the AGM.

The staff who work from TWAN's office in Romford road; Mrs Maheswary Balasundaram, Mrs Sujitha Kirupakaran and Mr Amit Bonnet talked about their role and services provided. They also answered the queries of the users.

Mr V Jana also made a report and answered to questions relating to organisation, finance and progress of TWAN.

The outgoing directors; Mr S Kirubakaran, Mrs M Balasingam and Mrs T Janaka were unanimously re-elected.

The AGM concluded with the newly elected Board of Directors thanking the users for putting their trust in them. The vote of thanks was delivered by Mr V. Jana.

Strategic plan to achieve self reliance

In an attempt to depend less on grants and generate our own income TWAN has decided to go ahead with a plan for a social-enterprise scheme.

We had weighed three options and decided to go with the first one:

1. To Purchase the adjoining premises or any other suitable property with good rental value
2. To purchase the first floor of the current premises
3. To extend the adjoining premises

Having had the experience of running social-housing in the past and also generating a regular rental income in the past, it has been decided that we buy a property in the open market with a 50% contribution from the designated fund and the rest by mortgage.

As the purchase of the adjoining premises did not materialise we have decided to get a property with good rental potential. It is our objective to realise at least £10,000 per annum as rent from that project.

The new Business Plan was approved by the B.O.D and we have chalked out better way of handling our service and looked into wider aspects of how effectively we can deliver service and what kind of service is possible taking into account the changes in the needs of our community.

Staff and Volunteers

TWAN's service is staffed by experienced and qualified people. There are two full time and two part time staff at present and a number of volunteers provide their time, experience and service through various roles. Our volunteers work as advisors, teachers, project assistants and play workers.

TWAN also provides work experience and work placement opportunities for young people living in and around Newham. We work with the Redbridge Business Education Partnership and Newham Trident's work experience team.

The Trustees along with the users are thankful for the work and service provided by the staff and volunteers of TWAN for their passion, efficiency and dedication in their service to our community.

Our Projects

The Day Centre for Tamil Elders and the Supplementary education and Fine Arts Project are two projects which have been going on without interruption since they started.

Supplementary education- TWAN provides tutoring in English, Mathematics and Science for students in Primary and Secondary Schools. This additional tutoring is needed as the students are from disadvantaged families unable to support them at home due to parent/guardian illiteracy in English as well as suffering from post-traumatic experiences of fleeing from war zones. Some of the children have not been able to attend schools for 1-2 years before they arrived in UK and find it difficult to concentrate on their studies. Some schools in Newham and Redbridge encourage our Supplementary education project as they have experiences and knowledge of the problems faced by students and teachers with the induction of a refugee student in to their school.

The parents who accompany the students to our supplementary classes also gain an insight into the civil norms of UK and get to know the needs and rights of the child. It also brings them in touch with our organisation and helps us in meeting with our main objective of helping Tamil refugees settle in UK.

Fine-Art classes- Tamil people belong to an ancient community well developed in the fields of music and dance. They also have integrated Western musical instruments into the style of music practiced by them. Our refugee children and young adults pursue their creative interest in the field of Karnatic style of classical music. Music classes are conducted in Vocal, String and Percussion instruments as well as dance forms such as Bharatanatyam and Bollywood genres.

The Supplementary education and the Fine-art classes are conducted at The Little Ilford School in Manor Park, London-E12. Classes are held from 9:30 am to 2:30 pm. With the support of eleven experienced volunteer teachers who are paid only £10 per day each, to conduct the classes in 13 disciplines. The teachers are all professionally qualified, and possess many years of valuable experience. Volunteers have noted that they gain insight and perspective by teaching children from refugee and immigrant communities.

The Day centre for Elderly Tamils- this is a drop in centre for elderly Tamils to come and meet other people from similar background. This projects aim is to help older Tamils gain self confidence and participate in day to day activities without inhibitions.

Every Thursday a group of at least 40 people meet and have lunch together and also entertain each other with songs and anecdotes from their lives. There is also a dance group which performs at community events in London.

This project has brought many elderly Tamils who felt like prisoners trapped within the confinements of their houses. The major problems they suffered were isolation, fear of the outside world and loss of independence. Today the total number of people who use our day centre number more than 250.

The Elders group also meets at the Eastham Library for reading activities. Health, safety and security workshops are held to keep the elders updated on the needs of a active and safe living.

Funding and Financial Management

As with the principles of TWAN we make the best use of our resources so as to enable the organisation to survive even in times of funding shortage. This year the organisation benefited from the legal aid we received from the Legal Services Commission for the legal service provided to our users. Lloyds TSB Foundation and London Council Grant provides for the advisory services.

The funding for our Elders project is safe for the next three years with the approval of our funding application by the City Bridge Trust. The part funding of our advisory project by Lloyds TSB grant came to a close and it has been secured through a grant from the City Parochial Foundation.

However, we are yet to secure funding for the Supplementary Education and Fine Arts Project. This is a popular project and is currently being funded with support from our unrestricted fund

This year the organisation transferred £80,000 to the Designated Funds- Building Fund for the purpose of establishing a Social-Enterprise scheme. At present we have £205,320 collected in this fund.

The total restricted funds received this year were £131,943 and total unrestricted funds were £87,661 making the total income to **£ 219,604.** After transfer of **£80,000** to the **designated funds- Building fund** and expenditure amounting to £ 134,731 we have been left with a net profit of **£ 4,873.**

Service Delivery

TWAN generates two kinds of service to our users; the advisory service and the project based services. Both these services have been well received in the community and they compliment each other.

Our services are monitored and user feedbacks are used for analysing the quality of the work. The users come to the office at Romford Road for drop-in sessions during weekdays for advisory work on legal and welfare related matters. The drop in service is open to public from 9am -3pm Mondays and Tuesdays and 9am to 1pm on other week days. TWAN is also operating a telephone service between 2pm - 4pm on Tuesdays and Thursdays. Advice is provided on asylum, immigration, welfare benefits, employment, education, family counselling, healthcare access, Debts and in areas where we do not have the expertise we refer or

signpost our users to appropriate organisations.

Elders Day Care centre is held every Thursday at the Manor Park Community Centre and the Supplementary Education and Fine Arts project is held at the Little Ilford School in Manor Park every Sunday. The two projects are handled by the executive Director and sub-committees formed of volunteers and users.

Users, Members and Management

TWAN operates under the guidance of its Board of Directors which provides the vision and strategy for its progress of it. Our organisation is built on the bedrock of its users who are either existing members or new members who want to use the service of the organisation.

It operates under a democratic premise that any self help organisation will be proud of. The directors are elected in a democratic fashion and the Board of Directors meet every month for 12 months in a year and at the end of it go through the process of election at the AGM. Every one who uses the service is encouraged to become members of TWAN and participate in the activities of the organisation.

Conclusion:

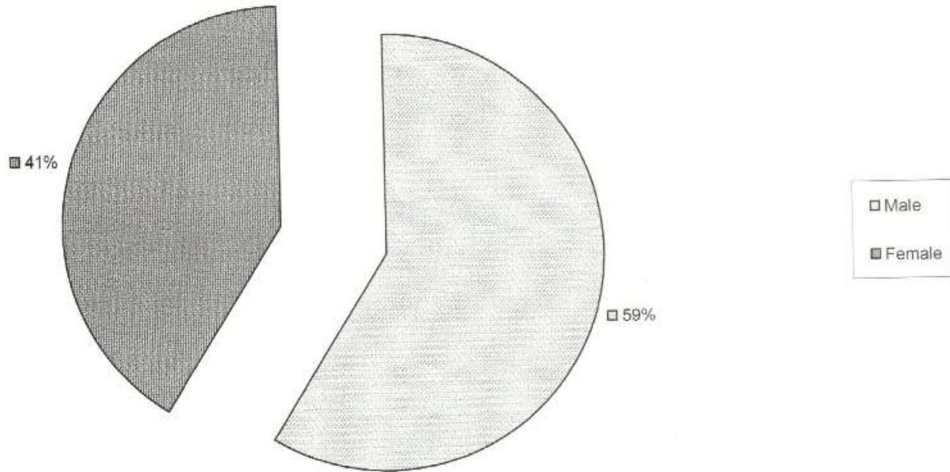
In 2009 the organisation along with other Tamil community members went through a period of immense sorrow when over 40,000 people were killed in a merciless war in Sri Lanka, from January 2009- May 2009 in which many died from lack of food and medicine as the world watched in muted silence. As a mark of respect for the dead and dying and in solidarity with the grief of those who survived, TWAN did not conduct the annual cultural festival for 2009.

The inner strength emerges whilst we grieve for our dear ones who perished. At the same time we thank those who provided strong, kind and encouraging words to make us overcome that grief.

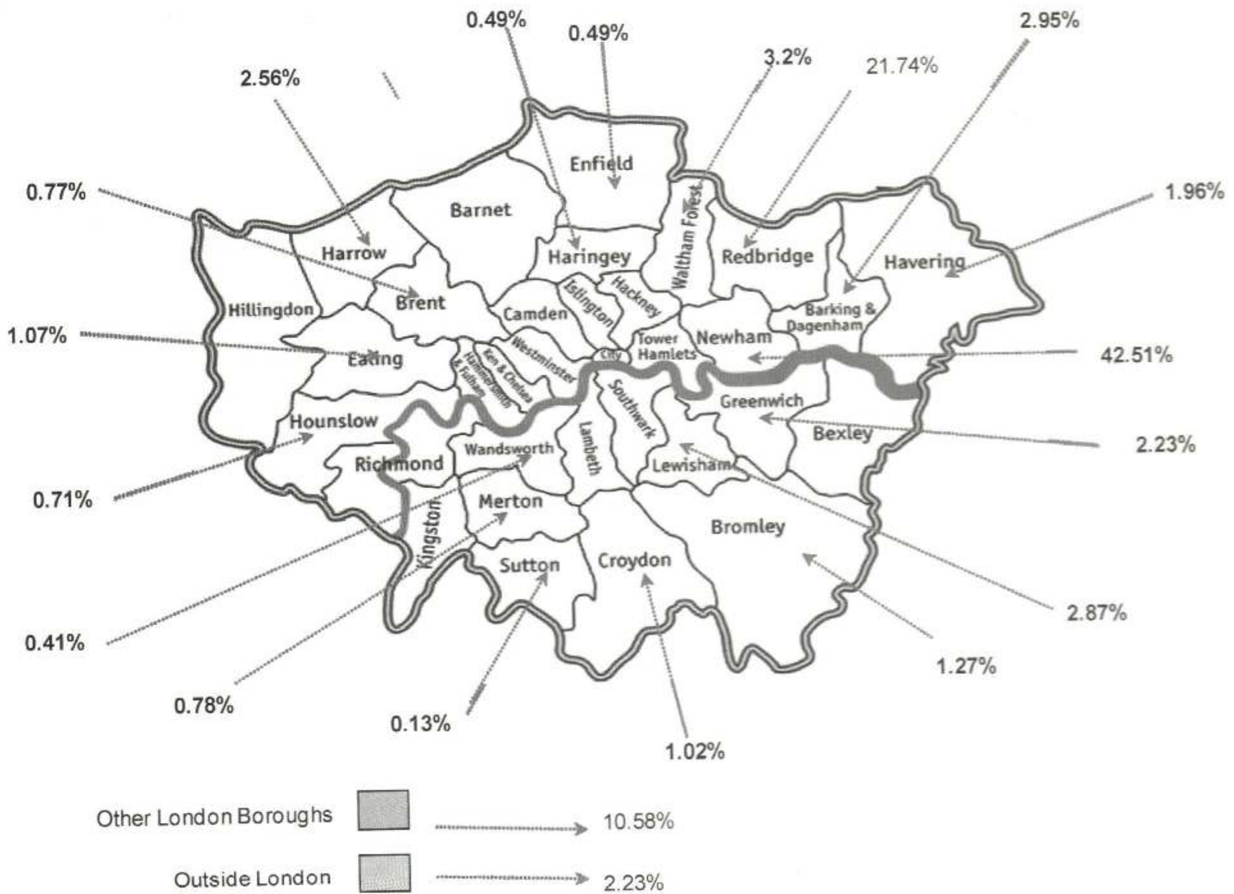
In the UK our work is still unfinished as our community is still a struggling community even if many of us are getting settled. Refugee communities take a long time to heal mentally, physically, emotionally and economically. TWAN will take a pragmatic and dynamic path in the future to contour the needs of our ever growing and changing community.

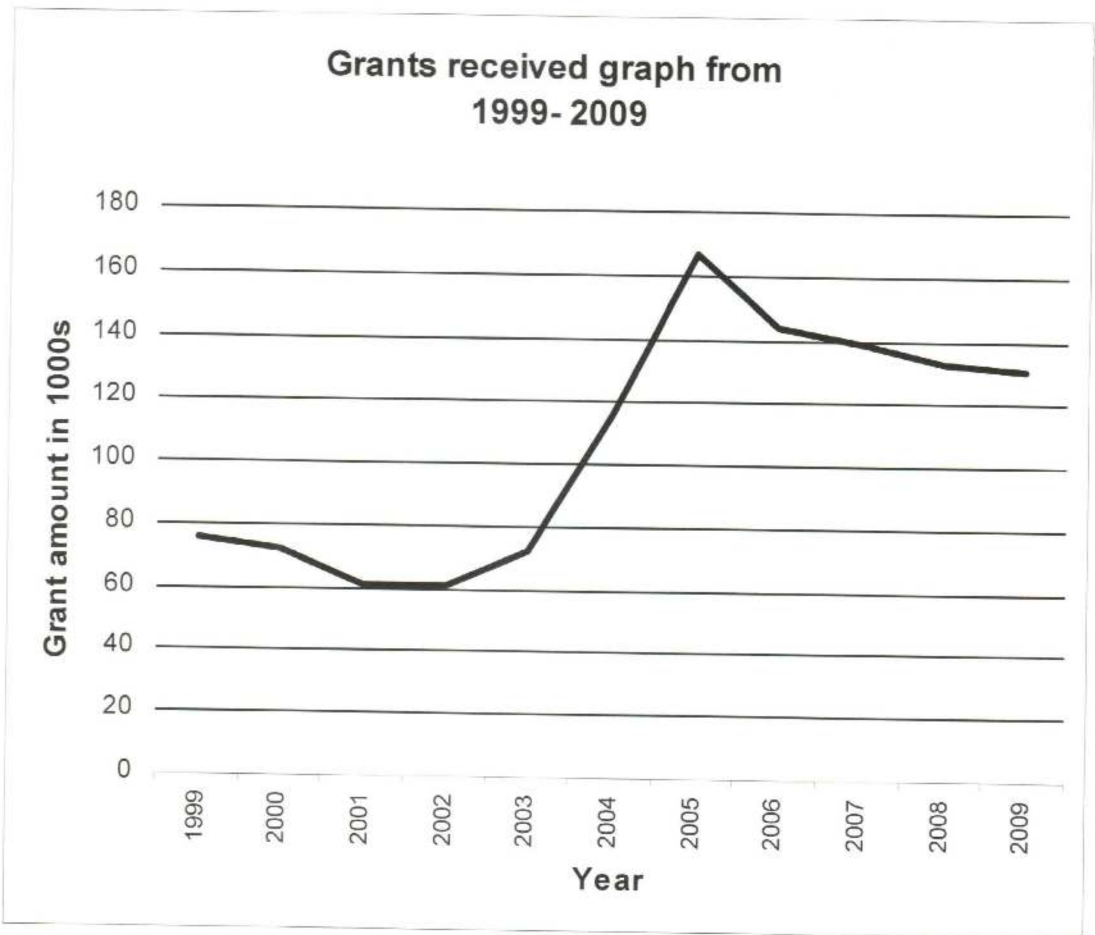
◆◆◆

Gender Distribution of Service Users



Distribution of our Users in London




Grants received graph from
1999- 2009
180
160
140
120
100
80
60
40
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Grant amount in 1000s
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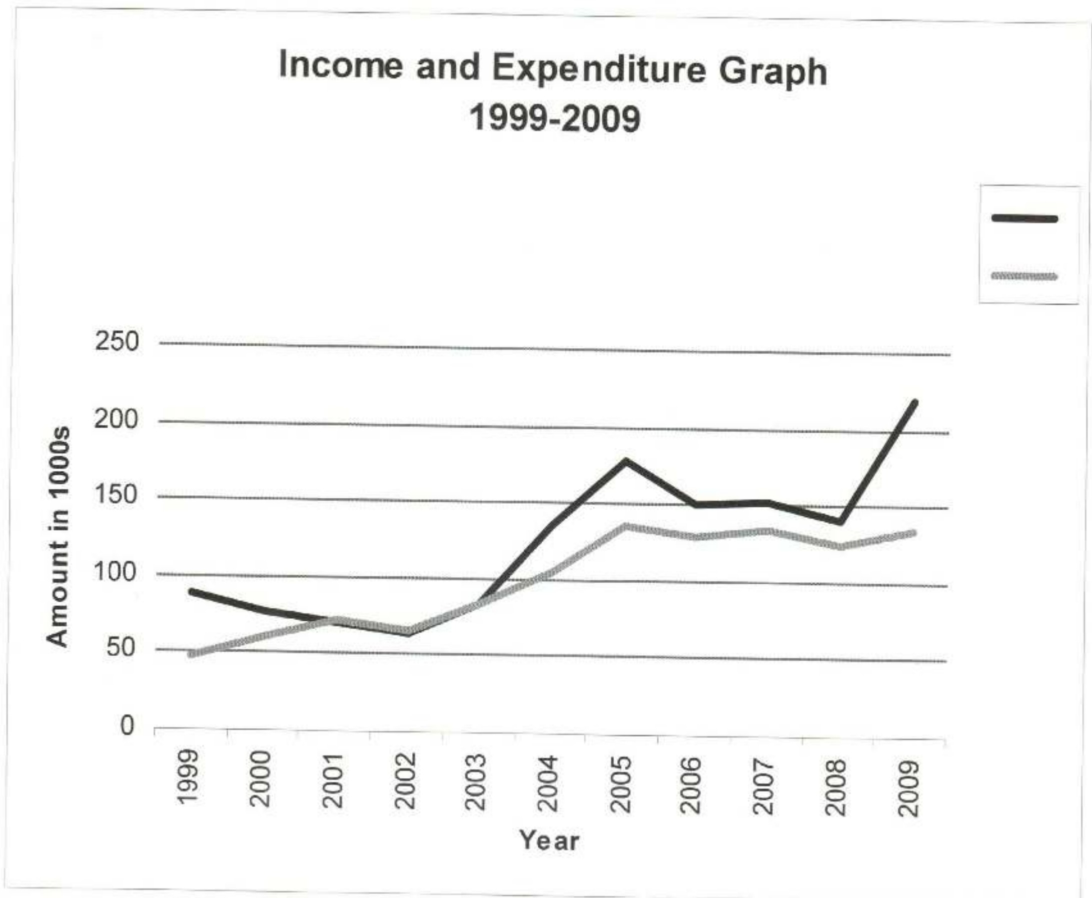
Year


Income and Expenditure Graph
1999-2009
250
200
150
100
50
0
Amount in 1000s
1999
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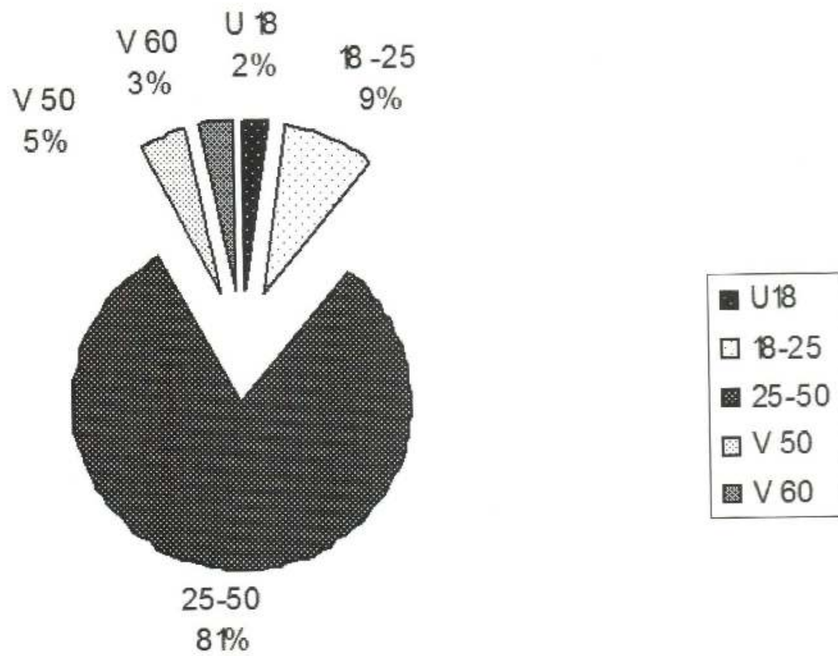
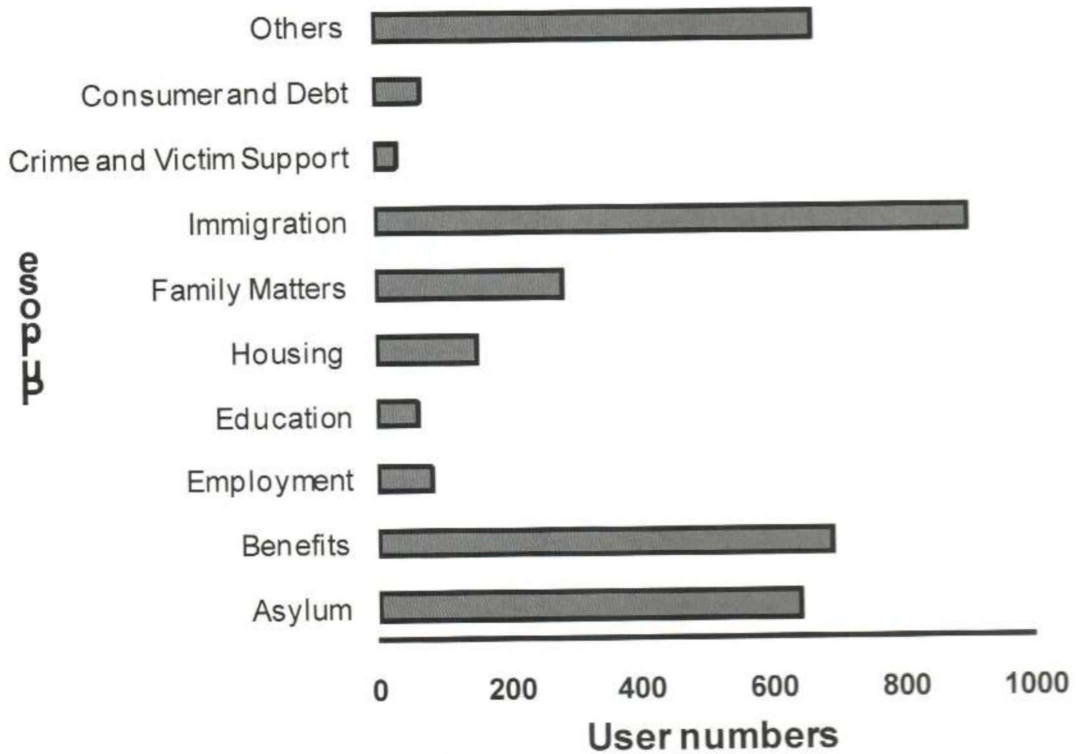
2006
2007
2008
2009
Year

Age Distribution of Service Users



Purpose of Visit



FINANCIAL STATEMENTS FOR THE YEAR ENDED 31ST DECEMBER 2009

TAMIL WELFARE ASSOCIATION (NEWHAM) UK

COMPANY NO: 2962857

CHARITY NO: 1047487

FINANCIAL STATEMENTS

- FOR YHE YEAR ENDED -

31ST DECEMBER 2009

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

TAMIL WELFARE ASSOCIATION (NEWHAM) U.K

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S Ramanan (Mrs)
S Paneerchelvan Esq
R Rajanavanathan Esq
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737 Barking Road
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TAMIL WELFARE ASSOCIATION (NEWHAM) U.K

REPORT OF THE DIRECTORS

The directors present their report and audited financial statements for the year ended 31st December 2009.

PRINCIPAL ACTIVITIES 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 of all groups within the area of benefit.

DIVIDENDS

The directors recommended that £80,000 be transferred from the Unrestricted funds to the Designated fund account.

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

DIRECTORS AND THEIR INTERESTS

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

DIRECTORS' RESPONSIBILITIES

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 going 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.

AUDITORS

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

P Chandradas Esq
Secretary

Date: 31st March 2010

TAMIL WELFARE ASSOCIATION (NEWHAM) U.K

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

We have audited the financial statements of the company for the year ended 31st December 2009 which comprise the Statement of Finacial Activities, the Balance Sheet and related notes set out on pages 6 to 10. These financial statements have been prepared under the accounting policies set out herein.

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 matters we are required to state to them in an auditors' report and for no other purpose. To the fullest extent permitted by law, we do not accept or assume responsibilty 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 responsibilities of the directors and auditors

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 and explanations we required for our audit, or if 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 misstatements or material inconsistencies with the financial statements. Our responsibilties do not extend to any other 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.

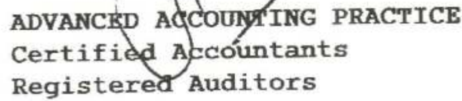
We planned and performed our audit so as to obtain all the information and explanations which we considered necessary in order to provide us with sufficient evidence to give reasonable assurance that the financial statements are free from material misstatement, whether caused by fraud or other irregularity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

TAMIL WELFARE ASSOCIATION (NEWHAM) U.K

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

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 2009 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

23 Langmead Drive
Bushey Heath
Herts
WD23 4GD

Date: 31st March 2010

TAMIL WELFARE ASSOCIATION (NEWHAM) UK.

Quality Mark

தமிழர் நலன்புரி சங்கம் (நியூஹாம்) ஐ.ரா.

602 Romford Road, Manor Park, London E12 5AF
Tel: 020 - 8478 0577 Fax: 020 - 8514 6790
e-mail: twan@twan.org.uk

Supplementary Classes

at

Room A6 - 2nd Floor
Little Ilford School Browning Road,
Manor Park, London E12
Every Sunday 9.30 AM to 2.30 PM

Maths, Science, English

(For School Age Children)

Further Details please contact 0208 478 0577 During Office Hours

Company Registration No:2962857

Charity Registration No: 1047487

TAMIL WELFARE ASSOCIATION (NEWHAM) U.K

STATEMENT OF FINANCIAL ACTIVITIES FOR THE YEAR ENDED 31ST DECEMBER 2009

	Notes	Restricted Funds £	Unrestricted Funds £	Total 2009 £	2008 £
INCOMING RESOURCES FROM GENERATED FUNDS					
Voluntary Income					
Grants	2	131,943	-	131,943	133,575
Donations			1,602	1,602	1,523
Membership subscriptions		-	831	831	837
Income from generating funds		-	85,190	85,190	5,137
Interest receivable	4	-	38	38	559
Total Incoming Resources		131,943	87,661	219,604	141,631
RESOURCES USED					
Direct Charitable Expenditure		110,531	-	110,531	100,273
Governance costs	3	19,551	4,649	24,200	24,601
		130,082	4,649	134,731	124,874
NET INCOMING RESOURCES BEFORE TRANSFERS		1,861	83,012	84,873	16,757
Transfer to Designated funds		-	(80,000)	(80,000)	(15,000)
Net Movement in funds		1,861	3,012	4,873	1,757
Balance brought forward		13,276	7,730	21,006	19,249
Balances carried forward		15,137	10,742	25,879	21,006

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

TAMIL WELFARE ASSOCIATION (NEWHAM) U.K

BALANCE SHEET AT 31ST DECEMBER 2009

	Notes	2009 £	2009 £	2008 £	2008 £
FIXED ASSETS					
Tangible assets	7		160,432		158,734
CURRENT ASSETS					
Debtors	8	7,985		40,079	
Cash at bank and in hand		120,077		18,646	
		128,062		58,725	
CREDITORS: Amounts falling due within one year	9	(13,427)		(23,601)	
NET CURRENT ASSETS			114,635		35,124
TOTAL ASSETS LESS CURRENT LIABILITIES			275,067		193,858
CREDITORS: Amounts falling due after more than one year	10		(43,868)		(47,533)
			231,199		146,325
CAPITAL AND RESERVES					
Designated Funds	12		205,320		125,320
Profit and loss account	13		25,879		21,005
SHAREHOLDERS FUNDS			231,199		146,325

The financial statements were approved
by the board on 31st March 2010
and signed on its behalf by

S Muthucumarasamy Esq Director

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

TAMIL WELFARE ASSOCIATION (NEWHAM) U.K

NOTES TO THE FINANCIAL STATEMENTS FOR THE year ENDED 31ST DECEMBER 2009

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 lives:-

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.

2. GRANTS RECEIVED

Analysis by:-	2009 £	2008 £
CPF/LTSB Grant	10,000	12,000
ALG Grant	42,334	30,000
Legal Services Commission re: Legal work	74,184	80,800
Education Project	-	5,000
Age Concern Project	5,425	5,775
	131,943	133,575

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

TAMIL WELFARE ASSOCIATION (NEWHAM) U.K

NOTES TO THE FINANCIAL STATEMENTS FOR THE year ENDED 31ST DECEMBER 2009

3. NET INCOMING RESOURCES

	2009	2008
	£	£
The net incoming resources is stated after charging:		
Depreciation	1,052	1,237
Auditors' remuneration	2,796	2,448
Operating lease rentals:		
Land and buildings	7,280	7,280

4. INTEREST RECEIVABLE

	2009	2008
	£	£
Bank and other interest receivable	38	559
	38	559

5. INTEREST PAYABLE

	2009	2008
	£	£
On bank loans and overdrafts	1,587	4,172
	1,587	4,172

6. DIRECTORS AND EMPLOYEES

	2009	2008
	£	£
Staff costs:		
Wages and salaries	59,962	46,566
Social security costs	2,728	3,598
	62,690	50,164

NOTES TO THE FINANCIAL STATEMENTS FOR THE year ENDED 31ST DECEMBER 2009

7. TANGIBLE ASSETS

	Land & buildings £	Fixtures & fittings £	Total £
Cost			
At 1st January 2009	151,721	37,838	189,559
Additions	2,750	-	2,750
At 31st December 2009	154,471	37,838	192,309
Depreciation			
At 1st January 2009	-	30,825	30,825
Charge for year	-	1,052	1,052
At 31st December 2009	-	31,877	31,877
Net book value at 31st December 2009	154,471	5,961	160,432
Net book value at 31st December 2008	151,721	7,013	158,734

	2009 £	2008 £
Analysis of net book value of land and buildings:		
Freehold	154,471	151,721

8. DEBTORS

	2009 £	2008 £
Other debtors	7,412	3,776
Prepayments and accrued grant income	573	36,303
	7,985	40,079

9. CREDITORS: AMOUNTS FALLING DUE WITHIN ONE YEAR

	2009 £	2008 £
Bank loans and overdrafts	6,547	8,100
Taxes and social security costs	4,280	-
Other creditors	-	623
Accruals and grants recieved in advance	2,600	14,878
	13,427	23,601

TAMIL WELFARE ASSOCIATION (NEWHAM) U.K

NOTES TO THE FINANCIAL STATEMENTS FOR THE year ENDED 31ST DECEMBER 2009

10. CREDITORS: AMOUNTS FALLING DUE AFTER MORE THAN ONE YEAR	2009 £	2008 £
Loans	43,868	47,533
	43,868	47,533

11. BORROWINGS	2009 £	2008 £
The company's borrowings are repayable as follows:		
In one year, or less or on demand	6,547	8,100
Between one and two years	15,784	15,784
Between two and five years	23,675	23,675
In five years or more	4,409	8,074
	50,415	55,633

Details of security:

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

12. DESIGNATED FUNDS - BUILDING FUND	2009 £	2008 £
Balance at 31st December 2008	125,320	110,320
Transfer from Unrestricted funds	80,000	15,000
Balance at 31st December 2009	205,320	125,320

13. PROFIT AND LOSS ACCOUNT	2009 £	2008 £
Retained profits at 1st January 2009 as restated	21,006	19,248
Profit for the financial year	84,873	16,757
Transfer to Designated funds	(80,000)	(15,000)
Retained profits at 31st December 2009	25,879	21,005

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.

TAMIL WELFARE ASSOCIATION (NEWHAM) U.K

NOTES TO THE FINANCIAL STATEMENTS FOR THE year ENDED 31ST DECEMBER 2009

14. 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	
	2009	2008	2009	2008
	£	£	£	£
Expiry date:				
Within one year	7,280	7,280	-	-
Between one and five years	29,088	29,088	-	-

Quality Mark

TAMIL WELFARE ASSOCIATION (NEWHAM) UK.

602 Romford Road, Manor Park, London E12 5AF

Tel: 020 - 8478 0577 Fax: 020 - 8514 6790 e-mail: twan@twan.org.uk

We are recognised by the Legal Services Commission as a Quality Services Providers and awarded Specialist Quality Mark with Immigration Franchised contract.

1. அரசியல் தஞ்சம் (Asylum & Appeals) 2. குடிவரவு (Visa Extension, Entry Clearance, Work Permits, Citizenship, EU Residency Permit) 3. தடுப்புக் காவல் விடயங்கள் (Detention Matters.)
4. தஞ்சம் கோருவோருக்கான மானியங்கள் (NASS Application & Appeals) 5. சமூக நல மானியம் (Social Welfare Benefits) 6. தங்குமிட /வீடு வசதிகள் (Accommadation, Housing)
7. உடல் /மன நல விடயங்கள் (Healthcare) 8.வேலை/கல்வி வாய்ப்புக்கள் (Employment, Education)

இதுபோன்று நமது சமூகம் எதிர்நோக்கும் மேலும் பல விடயங்களில் உதவி வழங்கும் எமது தமிழர் நலன்புரி சங்கம் (TWAN) வார நாட்களில் திங்கள், புதன் கிழமைகளில் காலை 9:00-3:00 வரையிலும் செவ்வாய், வியாழன், வெள்ளிக்கிழமைகளில் காலை 9:00-1.00 மணிவரையும் நேரில் வருவோருக்கான சேவையினையும், மற்றும் தொலைபேசி ஆலோசனைகள் செவ்வாய், வியாழன் ஆகிய நாட்களில் பிற்பகல் 2:00-4:00 வரை நடைபெறும் என்பதையும் அறியத்தருகிறோம்.

TAMIL WELFARE ASSOCIATION (NEWHAM) U.K

DETAILED INCOME & EXPENDITURE ACCOUNT
FOR THE year ENDED 31ST DECEMBER 2009

		2009		2008	
		£	£	£	£
Income					
Restricted Funds					
Grant received	(Sch)		131,943		133,575
Less: Expenditure					
Client disbursements		22,156		20,254	
Childrens' project		425		788	
Education project		5,797		9,249	
Age Concern project		6,454		6,401	
Salaries and wages (incl N.I)		62,690		50,164	
Volunteers and sessional workers		3,681		3,017	
Staff recruitment and training		620		950	
Rent,rates and insurance		8,708		9,450	
Light and heat		1,959		1,704	
Telephone and fax		3,147		2,534	
Printing, postage and stationery		3,248		2,440	
Office maintenance		3,960		3,067	
Organisation & Development		900		700	
Accountancy		2,796		2,448	
Security costs		363		352	
Travelling		519		592	
Bank charges		1,072		536	
			128,495		114,646
Net surplus			3,448		18,929

TAMIL WELFARE ASSOCIATION (NEWHAM) U.K

DETAILED INCOME & EXPENDITURE ACCOUNT
FOR THE year ENDED 31ST DECEMBER 2009

Unrestricted Funds		2009 £		2008 £
Income				
Income generated by association		85,000		-
re: bonus from LSC		-		1,595
Cultural activities collections		831		837
Membership fees received		473		3,577
Rent receivable		1,319		1,488
Donations and other income				
		87,623		7,497
Less: Expenditure				
Cultural activities	-		3,296	
Meeting expenses	215		170	
Sundry expenses	152		129	
Membership and subscriptions	3,230		1,224	
Depreciation	1,052	4,649	1,237	6,056
Net Surplus		82,974		1,441
Gross Incoming Resources before Interest and other income		86,422		20,370
OTHER INCOME AND EXPENSES				
Interest receivable: Bank deposit interest	38		559	
		38		559
Interest payable: Bank interest	1,587		4,172	
		(1,587)		(4,172)
NET INCOMING RESOURCES		84,873		16,757

TAMIL WELFARE ASSOCIATION (NEWHAM) U.K

DETAILED INCOME & EXPENDITURE ACCOUNT

FOR THE year ENDED 31ST DECEMBER 2009

Schedule - Grants received

	2009 £	2008 £
CPF/LTSB Grant	10,000	12,000
ALG/Advice UK Grant	42,334	30,000
Legal Services Commission re: Legal work	74,184	80,800
Education Project	-	5,000
Age Concern Project	5,425	5,775
	131,943	133,575

Community Legal Service

Quality Mark

602 Romford Road, Manor Park London E12 5AF

Charity No 1047487

Company No 2962857

Fine Arts Classes

Little Ilford School Browning Road, Manor Park, London E12

Every Sunday 9.30 AM to 2.30 PM

- ☆ **Miruthangam: Sri N. Somaskandtha Sharma** - Room A5
- ☆ **Tabla & Gitar: Sri Thayalan** - Room B6
- ☆ **Veena: Smt Seimani Sritharan** - Room B2
- ☆ **Bharatha Natiyam Smt R. Somasundaram** - Room B5
- ☆ **Violin: Kalaimamani M Nandini** - Literacy Room
- ☆ **Karnatic Vocal: Smt Suganthi Srinesa** - Room A4
- ☆ **Bollywood Dance & Yoga: Smt Marseeda** - Room B7

Further Details please contact: **020 - 8478 0577** during the Office hours.

Tamil Welfare Association (Newham) UK

தமிழர் நலன்புரி சங்கம் [நியூஹாம்] ஐ.ரா

PROJECT PROGRESS REPORT 2009

Introduction

Tamil Welfare Association (Newham) U.K, simply known as TWAN is a user led organisation of Tamil people who have come to reside in the UK. The organisation aims to relieve Tamils from poverty, distress and homelessness and to support their assimilation and integration into British society.

Tamil refugees established TWAN on 24 March 1986 to address issues of resettlement, poverty, housing and trauma that they faced upon arrival in Britain. TWAN set out to relieve these problems by offering services that addressed the social, cultural, welfare related and educational needs of the community, and offered advice and legal services where needed, especially with asylum claims and welfare benefits.

From May 1987, the office at 33 Station Road, London E12 was used to provide advisory services to our users. A structured form of providing advice on welfare and immigration issues came into being in 1991 and in 2001 we moved to 602 Romford Road, Manor Park, London E12, where our service continues currently.

We are accredited with OISC and Community Legal Services with General Quality Mark and Specialist Quality Mark in Immigration and Asylum. As a LSC contracted organisation we provide free legal casework for merited cases.

The strength of TWAN lies in its continuity of services, regulated services, shared experiences, community led projects and support of trust funds and grant making bodies. We have run services and projects without interruption even when facing funding difficulties. To make the organisation less dependent on external funding we are in the process of creating regular income through prudent investment of our designated funds.

This advisory project is funded by the London Council and Lloyds TSB foundation whilst the main source of funding for our immigration specific casework is covered by LSC funding.

Under LSC funding, 326 caseworks (New Matter Starts) in Immigration and Asylum areas were opened, of which 32 cases were taken to the Asylum Immigration Tribunal (AIT) for determination. Of these, 14 were allowed by the tribunal.

It is always not possible to get legal aid for our users as a merit or means issue may come in the way of helping those through LSC contract work. Advice workers funded by agencies outside of the LSC are utilised to provide relief for such users.

A total of approximately 650 visits were made for advice on Asylum and around 900 for other non-asylum immigration advice.

The Day Centre has developed a well knit and regular user community of elderly Tamils who meet every Thursday for a luncheon and befriending meeting. There are regular events which are integrated with luncheon meets to aid

our elders in building and maintaining independent living. City Bridge Foundation has also approved funding for this project, for the next three years.

Funding was not available for two of our most popular projects 'Supplementary Education & Fine Arts project' and 'Holiday Play Scheme'. We were unable to run the Holiday Play Scheme for children from refugee families, a popular project with the children and volunteers and are hoping to be funded for it next year. The Supplementary Education and Fine Art project has also not been funded for this year but in spite of this we have been running this project as it is an absolute need for the academic and cultural growth of Tamil refugee children in London.

Our primary aim of helping Tamil people settle in UK continues to exist and thereby our welfare and immigration casework has been increasing over the years. This year was no exception, with over 5600 clients making use of our services.

Though we are an East London based organisation we work across London and provide service to a significant number of users from other regions of United Kingdom. On an average, 25-30 people use our services every working day, approaching us for advice and casework. Our advice workers and case workers deal with most users needs and a small number are signposted to other appropriate service providers.

The number of asylum seekers arriving into UK from Sri Lanka has not decreased after the silencing of the guns by LTTE and declaration of ending war by Sri Lanka. The human catastrophe that unfolded in Sri Lanka's northern Vanni territory in the aftermath of the war has seen major human rights violation including summary executions, extra judicial killings, rape and other degrading treatment of prisoners and civilians by soldiers, police and other arms of the Sri Lankan Government.

In year 2009 the UKBA followed a set of guidelines it uses for determining the asylum claims of the Sri Lankan Tamils negatively. In case of B the Honourable judge has unfolded the Home Office Policy of not sending back failed asylum seekers to Sri Lanka. Even though a policy is in existence on the understanding that the human rights situation is in a deteriorating situation, UKBA tried to use information which are favourable for it to dismiss the asylum applications. Towards the end of 2009 we were able to fight the appeals of a few users based on this Home office Policy kept in the dark by UKBA.

Asylum and other immigration casework continued to occupy the services we provide this year. There has been a steady flow of people applying for Permanent Residence and Citizenship. The 'earned citizenship' route for immigrants will come into force in July 2011. This has also stimulated many to apply for British nationality in earnest.

Visitors visiting the UK for various reasons have been on the increase and UK sponsors utilise our services on this matter. In this Annual report we have a special section dealing with visitor's visas.

Our advisory work on welfare benefits such as housing, employment, poverty reduction, debt and health benefited 3000 users. Work relating to employment cases has also been on the increase due to the recession. Most cases stem from unfair dismissal or discrimination. We have been able to resolve these through negotiations with employers and also by taking the matter to the Employment Tribunal.

Providing access to welfare rights and entitlements is a key element of the work TWAN does helping families come out of thier poverty. Many families in poverty are not aware of the various benefits available to them and end up in debt from lenders. This is a major problem as they are unable to pay in times of recession, such as now. TWAN has the dual objective of helping those families out of poverty by increasing access to income and reducing debt through negotiations with lenders to either write off or reduce the payback amount.

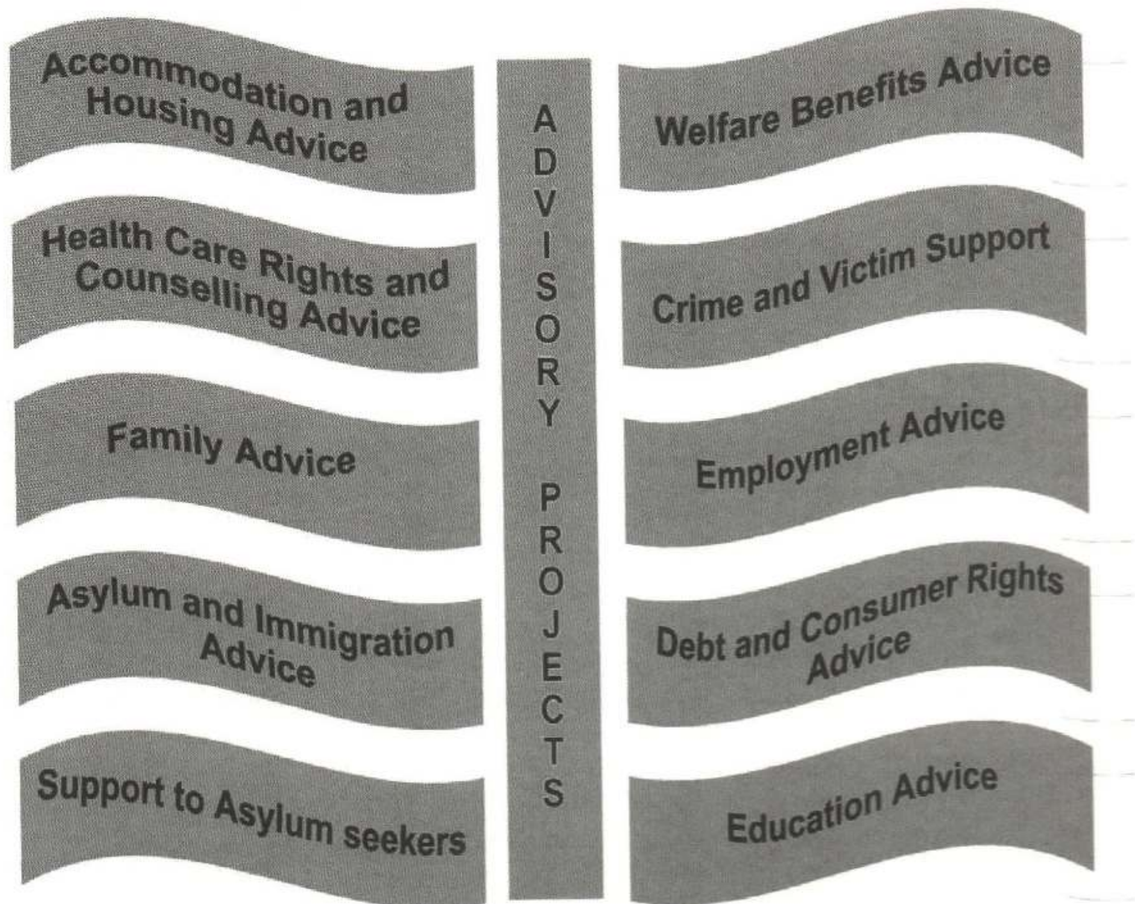
The new Employment and Support Allowance (ESA) which replaced the Incapacity Benefit and Income Support based on incapacity has caused more difficulties for the users as the Work Focused interview and assessments are new components which are not familiar for them.

Advisory work

When the organisation was formed one of the most successful and popular activities was the provision of advice and sharing of information with our users. This activity was started in an informal way and over the years has grown into a trained and regulated structure, serving the community needs. After many years advisory work remains the organisation's primary activity. Around 25 people per day visit our office to obtain advice to solve their problems or find useful information.

Most cases are dealt with by us and a few cases are referred or sign-posted to other appropriate service providers locally. Ongoing matters are treated as case work and such matters will be continuously attended to and dealt with until they are resolved.

This project is mainly funded by the London Council Grant Aid and also supplemented by the Lloyds and TSB Foundation. The project aims to meet most of the needs of the Tamil community over an assorted range of advisory services:



Employment Advice:

TWAN provides assistance in employment matters in two main capacities:

1. Career improvement - This involves helping clients to find employment by advising on where to find further information or training opportunities
2. Keeping clients in employment - This may entail negotiating with employers on behalf of clients, resolving disputes or providing representation in order to help them enforce their rights.

There are several issues pertinent to the Tamil community that make finding or keeping employment difficult which TWAN endeavours to accommodate. Firstly, as with any ethnic minority, Tamil people who are searching for employment may face discrimination or have trouble finding work as they cannot speak English. Secondly, organisations, such as Jobcentre plus, that exist for the purpose of helping people to find employment, have not yet found adequate inroads into the Tamil community to enable them to assist them effectively enough. Lastly, Newham itself is a deprived area of London that has high rates of poverty and unemployment. Tamils in this area

will find it especially difficult to find jobs.

Another issue affecting many of TWAN's clients is that their immigration status often prevents them from taking up employment. Failed asylum seekers or asylum seekers whose claims are being processed may not be given permission to work by the Home Office. In some cases, clients who were initially given permission to work have had this revoked without good reason. TWAN challenges these decisions on behalf of clients to ensure that they are given the opportunity to support themselves through employment.

In the 2004 Guidance for UK Employers on the law of preventing illegal working, it clearly states that there is no need to apply for document checks on any of their current employers if they had been employed on or before 30 April 2004. Yet many employers have dismissed their current employees who had the right to work when they had joined work before the said date but did not have the documents required under the new law i.e. passport or other travel documents from List 1 and in addition to that a document from List B e.g. National Insurance card, Job centre document etc.

In the same document Q21 on page 32 is "Can I employ asylum seekers?" The answer provided by Home Office clearly states that an asylum seeker who was granted concession (to work) before it was ended on 23 July 2002 will still be able to work until they have received a final negative decision in their case where their claim was rejected.

While most of our users who were declined permission to work had not received their final negative decision as their application were pending with European Human Rights Commission or they had made a fresh application due to the change of circumstances in their country.

The asylum seekers may also be in a situation where they have established a family life and by making them un-employable the Home Office is making a breach of Article 8 which is a right to 'Respect for Private and Family life'.

While the aim of the Home Office is to frustrate and exhaust the resourses of the asylum seeker to leave the country, it is also unable to send them back due to the worsening situation in their country. The user is left in a limbo as s/he is left with no work and a burdening debt as they have established a family life including some having motgages to pay.

Case study 1

JS claimed asylum in 1996. While his claim was being processed he was given permission to work by the Home Office. He was later refused asylum and he also lost his appeal in 1998. Further submissions were made and by 2007 he had made an application for Indefinite Leave to Remain due to the length of his residence. His permission to work was withdrawn in 2007 with no explanation. TWAN filed for judicial review of the decision to withdraw the permission as it was contrary to case law which stated that those waiting for a decision should continue to be allowed to work if they were given permission to do so previously. JS was subsequently granted ILR.

Rights and Entitlements at Work

As an employee one is expected to work with responsibilities and diligence and at the same time benefit from the rights and entitlements enshrined in this country's laws.

Whilst most employers stick by the guidelines, it is the employees in the unregulated industry and small retail units who may not benefit from employment related rights and entitlements. Many of our users are in such employment and they have to put forward their grievances if any to their employers. The following information may benefit you in understanding your rights and entitlements.

National minimum wages (NMW)

There are different levels of NMW, depending on your age. The current rates (from 1 October 2009) are:

- £5.80 - the main rate for workers aged 22 and over
- £4.83 - the 18-21 rate
- £3.57 - the 16-17 rate for workers above school leaving age but under 18

If you are of compulsory school age you are not entitled to the NMW. Some of your other employment rights are also different.

Flexible working

Flexible working describes a range of working patterns which can benefit you with your work-life balance. Find out if you have a statutory (legal) right to make a flexible working request.

'Flexible working' is a phrase that describes any working pattern adapted to suit your needs. Common types of flexible working are:

- part time: working less than the normal hours, perhaps by working fewer days per week
- flexi time: choosing when to work (there's usually a core period during which you have to work)
- annualized hours: your hours are worked out over a year (often set shifts with you deciding when to work the other hours)
- compressed hours: working your agreed hours over fewer days
- staggered hours: different starting, break and finishing times for employees in the same workplace
- job sharing: sharing a job designed for one person with someone else
- home-working: working from home

Remember, this list is not exhaustive and there may be other forms of flexible working that are better suited to you and your employer

Holidays and time off

There is a minimum right to paid holiday, but your employer may offer more than this. The main things you should know about holiday rights are that:

- you are entitled to a minimum of 5- 6 weeks paid annual leave (28 days for someone working five days a week)
- part-time workers are entitled to the same level of holiday pro rata (so 5- 6 times your usual working week, e.g. 22 days for someone working four days a week)
- you start building up holiday as soon as you start work
- your employer can control when you take your holiday
- you get paid your normal pay for your holiday
- when you finish a job, you get paid for any holiday you have not taken
- bank and public holidays can be included in your minimum entitlement
- you continue to be entitled to your holiday leave throughout your ordinary and additional maternity leave and paternity and adoption leave

Issues at work

Problems with your employer will probably come under one of two categories, grievances or disciplinary.

Grievances

These are concerns, problems or complaints that you raise with your employer. For example, concerns you have about:

- your job
- your employment terms and conditions
- your contractual or statutory rights
- the way you are being treated at work

If you believe there is a real problem, explain your concern to your immediate manager to see if you can sort it out informally. You may find it helpful to suggest what you would like them to do to resolve your problem.

Disciplinary

Your employer might have concerns about your conduct, your absence from work or the way you are doing your job.

If they raise these concerns informally with you, it is generally best to try to agree a solution then. Otherwise these issues could lead to disciplinary action, including dismissal in more serious cases.

Case Study 2

SS was working as a Head Chef with a leading food chain. He was a victim of bullying and was unfairly given a disciplinary quoting his behaviour was unacceptable in the work place. His salary was reduced and he was demoted to a Sous Chef and transferred to a different branch.

TWAN sent a letter requesting explanation for SS's demotion and unfair reduction of his salary. The food chain refused to communicate with TWAN, but acknowledged receipt of our letter to SS and asked him not to bring in third party (TWAN) intervention.

TWAN contested the approach of SS employers and asked them to provide a solution to SS even if they did not want to talk to us. TWAN supported

SS in his appeal but, he was offered a job as a Sous Chef in a different branch. SS and TWAN did not agree to this and after negotiations he was given back his original job as a Head Chef in a different branch.

Even though the employers did not want to talk to TWAN directly regarding their employee grievance, they did acknowledge the grievance of SS and addressed it and resolved it to the satisfaction of SS.

Case Study 3

TP was working as a driver for 12 years for the same bus company. He had five years continuous service with the company. He was dismissed on assessment by a DMI.

At the disciplinary hearing he was dismissed from service. He came to our office to find a solution. After discussions with him it was found that he would benefit more from approaching the management for an appeal through the Union he was affiliated with.

Redundancy

Redundancy is a form of dismissal from job, caused by the employer's need to reduce the workforce. Reasons include:

- new technology or a new system has made the job unnecessary
- the job the employee was hired for no longer exists
- the need to cut costs means staff numbers must be reduced
- the business is closing down or moving

Case study 4

SE was working in the production industry of a reputable industry. When he was made redundant based on his redundancy assessment by his line manager and dept. manager. SE was not happy with it. He approached us for challenging the reason for targeting for redundancy was not due to the real reason of underperformance as indicated by his employers but out of vendetta for raising the issue of quality and production he had raised with the management.

A letter was prepared by TWAN with instructions from the user and sent to the employer demonstrating the job knowledge of SE and that every year he has been given a pay rise which had demonstrated the appreciation of the employer for his work. His redundancy was to be treated as unfair as his assessment was not in compliance with the real personality and job skill of SE.

His job was reinstated after proper re-assessment of his skills and his academic pursuit. This was taken into consideration by the assessing authorities this time around.

Employment tribunal

Employment tribunals were set up in 1964 as part of the Industrial Act of 1964. Employment Tribunals hear cases involving employment disputes. They are less formal than a court. However, the employee will give evidence under an oath or affirmation, and if s/he lies can lead to conviction on grounds of perjury.

Cases are usually heard by a panel of three people, called a 'Tribunal'. It is made up of a legally qualified Employment Judge, and two 'lay members' that represent the employee and employer sectors. The lay members use their experience to bring balance to proceedings.

Sometimes the Employment Judge will sit alone to hear any legal arguments or to deal with financial claims caused by the termination of the employee.

There is no charge for making a claim at an Employment Tribunal. So unless a payment has to be made to a representative (for example, a solicitor) there is no cost in making a claim.

It is advisable that one follows the employer's grievance and disciplinary procedures before making an Employment Tribunal claim.

Case Study 5

SJ and SG were two of our users who worked in a petrol station as sales advisers in a shift closing at 10.00 pm. The incoming shift staff did not turn up for work and after 10 minutes past the end of their shift, SJ contacted the night shift staff and his Manager and who in turn contacted the staff, who was unaware of her shift. She agreed to come but she said it will take 90 minutes to be at site.

The Manager asked one of them to stay and wait for the incoming staff. SG stayed back and was

given 2 hours off in lieu for the next day of work.

The two were suspended from work the following day after the manager saw the CCTV and sent a report that the site had been closed and customers not served till the night staff arrived.

Both of them approached TWAN and we tried reconciliation and arbitration but the employers refused to take them but agreed to pay a small sum of money as out of court settlement for the period they had been suspended.

The case was taken to the Employment Tribunal.

The Employers contented that the dismissal of the two was based on gross misconduct of company procedures of shutting the site without proper authorisation. The two employees had been working for three years and were well versed in the company procedures and they had also undergone training on the procedure in the form of a workbook, which had been signed by them.

The claimants (SJ & SG) contended that they had never gone through a proper training with company procedures and the workbook signed by them was a tick box they had ticked yes and no.

The Tribunal agreed that the criticism about the training was acceptable but since they had three years experience they would have known that the procedure to close the site was only possible with authorisation and they had not been authorised by anyone to close the site. The judgement was passed in favour of the employers and upheld their dismissal of SJ and SG.

TWAN with the instruction of SG and SJ took the case to the tribunal as the users were not happy with the out of court settlement offered by their employers. TWAN also felt the rights of our users are not challenged whenever they are unfairly dismissed. TWAN will continue to help our users in their disputes and grievances with their employers as it is a right they have to exercise.

Employees should also not sign papers that they are not completely clear about. Employees should get translations and interpretation of the documents before they sign them. Employers will not present a document to be signed immediately. You have to make sure you understand what you sign. Users can make use of the free interpretation service provided by TWAN.

Debt Advice

Any migrant community settling in another country will take some time to understand the system and lifestyle this is more appropriate to the debt and consumer related issues which our community are facing big challenge during their settlement process, Not familiar with the credit card culture or the awareness of the Consumer Act members of our community often end up with dispute and financial difficulties. The financial burden is mostly created by the unplanned usage of credit cards and also they are trapped in with a money system called 'Chit Fund' which forces them to get into a need for money to access this. The chit funds by themselves are not a bad system for saving money, but when people try to access funds beyond their reach, they end up in debt to pay for this chit funds.

There is a culture of trying to keep up with the lifestyle of people from a higher standard of living. This also makes people to aspire for a life outside their means and to achieve this, they end up in debts.

The credit crunch and the recession is also having its mark on the Tamil community as the majority of them are living on the borders of poverty line and when they are hit by un-employment or under employment they sink below the poverty line. This also forces them to access funds which push them into the debt and poverty.

This year around 72 persons received advice and support in relation to debt and consumer related advice. Around 11 case matters were taken up as caseworks.

Under the current economic condition, lot of people have found themselves engulfed in debt related situations. Be it the inability to pay off mortgages or just accumulated bills which turns into a hefty sum and makes it impossible for the debtor to pay. This can sometimes turn even uglier and have debt collectors chasing or a bailiff landing at the door steps following a court order.

County Court Judgment and Bailiffs

A creditor can approach a County Court to get a CCJ (County Court Judgment) and may even use a bailiff order to collect back the monies owed. CCJ record on a person will result in bad credit for the creditor and in due course may become root cause for refusals of credit from banks and other credit/ lending agencies.

Two of TWAN users received Bailiffs order asking them to report to Bow County Court.

Case study 6

NK was handed a notice by a bailiff agent and asked to contact the County Court Bailiff. Though NK did not have any outstanding debt or loan for settlement he received harassment from the Bailiffs.

He approached TWAN and a letter was sent to the Bailiff with the explanation of NK.

Case study 7

In a similar circumstance SS a German national who moved to UK in 2008 was asked to pay for a claim and judgment order passed in November 2007 from a London based Bus Company. In this instance SS was sent a letter about an unknown claim by the bus company. Even though she did not own any property or even a Bank account and never been to UK until 2008, she was harassed.
A letter was sent to the Courts to rectify the mistake as she was not in the country when the original judgment was passed on her to pay for the claim.

SS did not receive any reply from the courts but she went to the hearing.

Handling Debt

The most important thing one has to understand is that the debt cannot be just wished away by taking no actions. It is important that the debtor (borrower) has to approach an organisation, which has the capacity to sort out their debts either through negotiations with the debtor, or deal with them legally. There are a few prominent test cases that have been made by consumers against the creditors and decisions have been made by competent courts in the last year which are going to have a huge bearing on how the law is going to deal with claims by creditors or debtors as may be the case.

In this years report, we will look at the way debts can be managed and also about insolvency procedures. But, it is always best to negotiate with the creditors for time and low payment options to avoid getting a county court judgement or bad credit report.

When there is absolutely no other way of getting rid of debt one can apply for Bankruptcy to relive oneself from the burdens of re-payment.

There are possible avenues to get relief from debt without having to resort to Bankruptcy these are:

a. Debt relief order (DRO)

DROs provide debt relief, subject to some restrictions. They are suitable for people who do not own their own home, have little surplus income and assets and less than £15,000 of debt. An order lasts for 12 months. In that time creditors named on the order cannot take any action to recover their money without permission from the court. At the end of the period, if your circumstances have not changed you will be freed from the debts that were included in your order. DROs do not involve the courts. They are run by The Insolvency Service in partnership with skilled debt advisers, called approved intermediaries, who will help with applying to The Insolvency Service for a DRO.

To apply for a DRO, the debtor must meet certain conditions:

- must be unable to pay off the debts.
- must owe less than £15,000.
- The debtor can own a car to the value of £1000, but the total value of other assets must not exceed £300.
- After taking away tax, national insurance contributions and normal household expenses, the debtors disposable income must be no more than £50 a month.
- must be domiciled (living) in England or Wales, or at some time in the last 3 years have been living or carrying on business in England or Wales.
- must not have been subject to another DRO within the last 6 years.
- must not be involved in another formal insolvency procedure at the time you apply.

b. An informal arrangement or "family arrangement"

If one knows that they cannot pay all of their debts, the debtor could consider writing to individual creditors to see if a compromise can be reached. The disadvantage with an informal arrangement is that it is not legally binding, so your creditors could ignore it later and ask you to pay in full.

Case Study 8

Mr PP had made an informal arrangement through TWAN in 2008 for a reduced payment plan. This was accepted by both parties and he was paying £10 every month without fail.

In November 2009 he was contacted by the bank through TWAN to inform him that his payment terms will revert back to the original standard term (before the reduced payment arrangement) with interest and fees. There was no change of circumstance for MR PP but the bank wanted to withdraw from the plan.

TWAN contacted the bank and after negotiations the reduced payment plan was accepted.

Case Study 9

KK a Sri Lankan asylum seeker came to the UK in 1998. He was employed and had taken loan from his bank and used credit card for his education. The Home Office prohibited his employment as he was a failed asylum seeker and he ran into trouble with repayment.

He was sent repeated letters from his creditors and KK came to TWAN. He was helped with preparing a Financial Statement and letting all his creditors know about his financial status.

Negotiations is still going on for a minimum amount of payment whilst KK has been advised to make a minimum payment of £10 per month to all his creditors even if they have not yet agreed in principle.

c. Administration orders

If one or more of the creditors have obtained a court judgment against the debtor, the county court may make an administration order. Administration is a court-based procedure whereby you make regular payments to the court to pay towards what the debtor owes the creditors. The total debts must not be more than £5,000 and the debtor should need enough regular income to make weekly or monthly repayments. There is no need to pay a fee for an administration order but the court will take a small percentage from the money the debtor pays towards its costs. If the debtor does not pay regularly, the order could be cancelled and the debtor may become subject to the same restrictions as someone who is bankrupt.

If the debtors circumstances change and cannot pay as ordered, he/she can apply to the court to change the order. The court which made the order will tell him/her what to do. Details of administration orders are available at the local county court.

d. Individual voluntary arrangements (IVA)

This is a formal version of the arrangement described in (a). An Individual Voluntary Arrangement begins with a formal proposal to one's creditors to pay part or all of their debts. The debtor needs to apply to the court and must be helped by an insolvency practitioner. Any agreement reached with their creditors will be binding on them.

To make an IVA:

- The debtor has to identify an authorized insolvency practitioner prepared to act on their behalf.
- Then the debtor has to apply to the court for an "interim order". This prevents his/her creditors from presenting or proceeding with, a bankruptcy petition against you while the interim order is in force. It also prevents them from taking other action against you during the same period without the permission of the court.
- The insolvency practitioner tells the court the details of the debtor's proposal and whether in his or her opinion a meeting of creditors should be called to consider it.
- If a meeting is to be held, the date of the meeting and details of the proposals are sent to his/her creditors. Only those creditors who had notice of the meeting are bound by the arrangement, so it is important that the debtor has accurate records of all the creditors' names and addresses. Otherwise, the arrangement might fail because the practitioner cannot contact all the creditors and bind them to it.
- At the meeting, the creditors vote on whether to accept the debtor's proposals. If enough creditors (over 75% in value of the creditors present in person or by proxy, and voting on the resolution) vote in favour, the proposals are accepted. They are then binding on all creditors who had notice of, and were entitled to vote at, the meeting.

- The insolvency practitioner supervises the arrangement and pays the creditors in accordance with the accepted proposal.

Cost of arranging an IVA through an Insolvency practitioner

Insolvency practitioners are usually accountants, some are solicitors and their fees are similar to those charged by members of these professions for other kinds of work.

Advantages of an individual voluntary arrangement compared to going bankrupt

- It gives the debtor more say in how his/her assets are dealt with and how payments are made to creditors. The debtor may be able to persuade his/her creditors to allow him/her to retain certain assets (such as home). The onus is on the debtor to act responsibly and flexibly in order to reach agreement with the creditors.
- the debtor avoids the restrictions which apply to a bankrupt person under section 10.
- the debtor will not have to pay some of the fees and expenses which are charged in a bankruptcy, the overall costs are likely to be less

Bankruptcy

Experts say that for someone with considerable debts, no income and no assets, bankruptcy is probably the best option.

The people it has the most detrimental effect on are those with equity in property, disposable income and those with professional qualifications because they stand to lose the most.

The Bankruptcy Process

If a person decided to apply for Bankruptcy proceedings, s/he should contact the local county court, or the High Court if living in London. If the creditor presents the petition, a bankruptcy order can still be made even if the debtor refuses to acknowledge the proceedings. The first step towards obtaining bankruptcy is to approach a solicitor, a qualified accountant, an authorised insolvency practitioner, a reputable financial adviser, a debt advice centre or Citizen Advice Bureau or similar organisation within ones community.

If the debtor dispute the creditor's claim, one should try and reach a settlement before the bankruptcy petition is due to be heard. Trying to do so after the bankruptcy order is made will be difficult and expensive.

Court costs

As from 6 April 2009, the Government has increased the cost to self petition for bankruptcy to £510. This includes a charge of £360 towards the cost of the administration of bankruptcy by the official receiver. Court fees on top of that are £150, although if on income support the self-petitioner may not have to pay this.

Role of the receivers

An official receiver will be appointed to administer bankruptcy, liquidate what assets he/she have and pass them on to the necessary creditors. The receiver will be an official of the court and will usually also act as trustee of your bankruptcy estate. After the bankruptcy order any earnings or assets received will have to go straight to the receiver to then administer to creditors.

An insolvency practitioner is sometimes appointed as trustee instead of the official receiver. The official receiver or insolvency practitioner is responsible for disposing of your assets and taking payment for the bankruptcy procedure and making payments to your creditors.

Assets that can be kept

As a bankrupt s/he will no longer control his/her assets - this will be done through the receiver or trustee. The only possessions will be the right to keep any tools, books, vehicles and other items of equipment which is needed for personal use in his/her employment or business. A bankrupt person will also be able to keep clothing, bedding, furniture and basic household equipment.

Restrictions

There are four main things forbidden to do as a bankrupt person:

- you should not try to get credit for more than £250 without disclosing that you are a bankrupt - and this includes trying to get credit jointly with someone else. It also

applies to goods or services you might order and then failing to pay on delivery.

- you should not continue with a business in a different name from the one in which you were made bankrupt without telling all those involved the name in which you were made bankrupt.
- you should not form or manage a limited company or act as a director without the court's permission.
- you cannot hold certain public offices, such as MP, JP, school governor, the trustee of a charity or a pension fund.

Financial Statement

At TWAN we try to help our users to avail our service of negotiating with the creditors and try to ease the burden of debt. Most banks will ask for a Financial Statement of the debtor which is prepared after taking instructions from the user. 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 adviser on behalf of the debtor will be considered by the 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 explanations. 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.

Case Study 10

VV had run into debts with a few credit organisations and he had lost his business and was unable to pay off his personal loans. He was harassed by the banks and debt collecting agencies and he came to TWAN for redress. A Financial statement was prepared with the instructions provided by VV and sent to the various debtors. A reduced payment option was agreed upon and VV is currently sticking with the plan.

Consumer Advice

In a Consumerist society like Britain, we all are victims of consumerist goods. With so much advertisement around us we end up buying things that are necessary and some that are not that necessary. In most cases immigrant communities like us are unaware of many rights that we are entitled to as a consumer.

Most products come with warranty and guarantee and in case of faulty workmanship or danger to the well being of the user, one can approach the manufactures for a refund or damage reclaim. In cases of injury to the person not occurring due to the negligence or wrong use of the buyer a claim for compensation can also be made.

It is always best advised to seek redress from the place you purchased the product, if they do not provide you with a proper redress then you can approach Consumer Direct on 08454 040506 , www.consumerdirect.gov.uk.

Users can also approach TWAN for help in accessing these rights through our advisory service in person or over the phone during stipulated times. We handle consumer related issues. In most cases there will be no need for approaching Ombudsman services but at times TWAN resorts to registering a complaint with the Ombudsman service.

Ombudsman

Independent complaints schemes aim to settle disputes about financial products or services impartially. Their services are free for consumers. You can normally only get help from one of these schemes if you haven't been able to resolve the complaint using the firm's internal complaints procedure. There are various Ombudsman services set up for different issues such as financial, pension, telecom, health, estate agents etc.

Case Study 11

JV was customer of a telecom company. He was using it for both telephony and broadband use. In Jan 09 his connection was disconnected without informing him. They also continued to harass him to pay £11.74 for Feb 09 international calling facility which was part of the telephone scheme, even though his lines were disconnected from Jan 09. His repeated appeal to them to withdraw failed.

He was later sent a letter from a debt collecting agency asking him to pay £21.74 when he challenged this he was sent another letter from the debt collecting agency demand he pay £35.24 within 72 hours.

When JV told us about his repeated appeal to settle the issue by the Telecom Company had resulted in harassment and illegal demands by the rogue debt collector TWAN suggested that he make a complaint to Otelo- a telecom Ombudsman. TWAN helped JV in writing a formal complaint to Otelo.

Case Study 12

KP had a mortgage on his property with a now nationalized Bank. His mortgage was a tracker mortgage but when Bank of England (BOE) lowered the interest rates the lower interest rate benefits did were not passed to him even when the interest rate was only 0.5%.

He complained to his lender who said they were not bound to give the full relief even though BOE had done so.

He was not happy and came to TWAN. TWAN suggested he write to the Financial Ombudsman and helped him make a complaint to it.

He however got a reply from the Financial Ombudsman that though there was some vagueness in the definition of tracking, the lender was entitled to have a cut off point beyond which they need not pass on the benefit as the key facts and agreement did not have any clause about passing on the full benefit of interest rate cuts.

KP has made an appeal.

Users have to listen carefully when the mortgage advisor explains the key facts of the mortgage if anything is not understood to ask for clarification from the mortgage advisor or take a copy of it and get it translated or interpreted before accepting the loan. There is usually a 14 days period for cancellation of a loan.

Awareness on Scams, Rogue traders and Bogus callers

There has been many schemes and scams that usually crops up during times of recession .The Office of Fair Trading, The Met-Police and other organisations have been warning the public of these practices. TWAN is initiating a workshop on Bogus callers and Rogue traders next year under the auspices of Age Concern and Met-Police. We will discuss scams which our users will be aware of or heard of victims of such scams.

Mails or e-mails claiming to come from banks or other organisation requesting to update, confirm or validate account information is a common occurrence. Sometimes these mails and e-mails have e-mail or websites similar to the original organisations. At no given time will any genuine organisation ask for updates from their clients over the e-mail or phone.

What to do?

There are many scams such as Work from home opportunities, Lotteries, Foreign money offers, Pyramid selling, Miracle Cure etc. If you are in doubt, want to complain or have been a victim; contact Consumer Direct on 08454 040506 , www.consumerdirect.gov.uk.

Or you can visit Tamil Welfare Association (Newham) UK office at 602 Romford Road Manor Park - E12 5AF during office time or telephone during the telephone advisory time for further help.

What to do if one is not sure or don't want to receive mail. Telephone, text message or e-mails from unwanted scamsters?

Mailing:

To reduce unwanted mail register free, with the Mailing preference Service.
www.mpsonline.org.uk Tel: 0845 703 4599.

If you are in doubt of a letter, bin it. Or if you want to confirm the letter, contact the organisation using

a telephone directory or internet search for the organisation. Do not contact the number on the letter. I

Telephone calls

Register with Telephone Preference Service (TPS) to reduce unwanted sales call. Register at www.tpsonline.org.uk or Tel: 0845 070 0707

This will block callers from UK who withhold their number. You can also bar all calls to premium rate services and/or international calls

Text messages (SMS)

You should not be charged for receiving a text unless you send a message agreeing to the charge. If you receive a SMS service you don't want, reply with the word stop. The service should end immediately

To register for unwanted marketing text messages register your details with Telephone Preference service.

Register with Telephone Preference Service (TPS) to reduce unwanted sales call. Register at www.tpsonline.org.uk or Tel: 0845 070 0707

Case Study 13

JR a pensioner received a call from a person claiming to be from a Bank and asked her information about her bank account details. As information of her banks details are not handled by her, she asked the person to call back later when her daughter will be at home. The caller was persuasive and told her that this was an important matter and had to be resolved immediately. She had a doubt in her mind and put the phone down. JR is also a member of the Tamil Elders Day Centre and she called TWAN for advice about the call she received. This she did immediately after the call from the bank. TWAN advisor told her not to divulge any details but tell them to send the information they want in writing to her and then she will deal directly with her bank manager.

When the caller called again she asked for a number to contact him and also asked him to write to her. She never heard from that person again.

Welfare Benefits Advice

The second most used service of TWAN after legal advisory service is 'advice on welfare benefits'. The general advice on welfare benefits continues to be the mainstream our users have a need for. The single biggest factor for this is the handicap of the fluency in English language as most of our users are from among migrants who have made the UK as their homeland. Our users fall under the following categories:

- Refugees
- Sponsorship visa or Settlement visa
- EEA National
- British Citizens
- People who have right of abode in the United Kingdom

To access benefits for the above mentioned categories the Habitual Residency Test (HRT) and the Right to Reside Test (RRT) play a major role in determining what benefits one can avail and whether one is entitled to benefits.

There is another category of our users, the Asylum seekers; they are people subject to immigration control who also comprise a bulk of our users. They are determined for benefits under the People Subject to Immigration Control (PSIC).

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

Whilst most people under PSIC will not be entitled to benefits there are exceptions of which we will discuss further and users can avail our advisory services for clarification of their individual situation.

Both the HRT and RRT for British and EEA nationals as well as people who are PSIC are

eligible for benefits based on their individual characteristics. Similarly the family and spouses also can or cannot avail such benefits.

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?

Habitual Residence Test (HRT)

The application of the Habitual Residence Test on many of our users who are either resident in UK as a national, refugee or European national exercising treaty rights they are put through a lot of hardship before eventually getting their entitlement.

Even though an EEA national who is economically active as a worker or self employed person is needlessly put through this test and benefits are denied.

The same goes for people with Humanitarian or discretionary protection and also to those who have been granted refugee status.

However TWAN has been able to overturn the initial decision of the assessing officer but this exercise can take up to six months waiting period for the user.

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.

Case Study 14

Client SN came to this country from France to reside with his children. He is aged 74 and was on pension credit in France as a French national. Although he has free movement with the EEA countries he has been restricted in accessing benefits as not satisfied with the habitual

Right to Reside

A person has a right to reside if:

- If you are a British citizen or have the right of abode. The right of abode applies to the British Commonwealth citizens who satisfy certain conditions.
- If you have leave to remain in the UK under UK immigration rules
- If you satisfy certain conditions under European Community Law

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.

Many of TWANs PSIC users are wrongly assessed by the benefit officers not looking at exceptions to the general rules or by wrongly interpreting their status. The common situations where TWAN has to intervene are given below:

When a person who has applied for extension of visa makes a claim the assessing officers often ask them to produce their passport even when it is with the Home Office.

Many of our users who have been granted refugee status try to use reunite with their families. When family members or spouse arrive in the UK they are misread as people being sponsored and refused benefits.

When an 'undertaking to maintain' was not given when the application was submitted does not deny that person 'recourse to public funds'. But, some benefit officers still treat them as such and this results in undue delay for them in accessing their benefits.

One other common problem faced by PSIC is when there is a break down or marriage or relationship before the period of 'no recourse to public fund' has expired. The sponsored person is denied access to benefits even though their personal circumstance has changed and it is always a hard job getting access to benefits.

There are instances where the family members have different immigration status. Where a wife has been granted refugee status and the husband is still a PSIC, the wife is denied benefits based on the husbands status. TWAN strongly criticizes this attitude of the benefit assessing officers when they try to deny the rights of the person making a claim by wrongfully using the status of the husband or vice versa to frustrate the person making the claim.

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;
- Social fund payment;
- Child benefit;
- Housing benefit;
- Council Tax benefit;
- State Pension credit;
- Attendance allowance;
- Severe disablement allowance;
- Carer's allowance;
- Disability living allowance;
- Allocation of Local Authority Housing
- 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.

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.

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'.

Family members of EEA nationals and their rights to reside

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.

Based on the above discussed rights of PSICs and those with Right to Reside we will look at individual benefits and how they are assessed. We will also look at appeals, revisions and case studies. We will look at benefits based on means tested and non-means tested for ease of understanding.

Benefits are affected by contribution to National Insurance (NI) and are classified as: contributory benefits and non-contributory benefits. They affect what benefits one can apply for based on their NI contribution. Benefits are also assessed called "means test". These assessments are not based on NI contribution but, assessed on the capital, savings and/or Income of the claimant

Non contributory benefits include:

- Attendance allowance (AA)
- Sever disablement allowance (SDA)
- Disability living allowance (DLA)
- Child benefit (CB)
- Carer's allowance (CA)
- State Pension and

Contributory 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),

Attendance Allowance (AA) & Disability Living Allowance (DLA)

Most of our community members do not understand the entitlement to Attendance Allowance criteria as they think Pension Credit is the only benefit they are entitled for their age. However through advice and educating the elder members of the community through specific sessions they are able to understand and obtain this Attendance Allowance where they have a need.

Furthermore describing their inability to carry out their day to day activities in the AA form to convince the decision maker of the benefit agencies is not within their grasp. This is mostly to do with language abilities and also cultural issues. Tamil community do not normally have a dedicated carer and even if they do the carer does not keep a proper record of the care that is needed for the claimant.

Most of the users have to make use of welfare advisers to fill in their AA claim forms as the importance of the questions to assess the incapacity of the claimant is not understood by them. Usually it takes a lot of time and prompting from our advisers to get them to explain simple things which have a bearing on understanding their disability or inability to do their day to day activities.

About the Benefit:- if the claimant is below 65 years of age then she/he is eligible for DLA and if above 65 years of age is eligible for AA. These are non-taxable benefits and are a passport for other higher levels of means tested benefits.

Care component

DLA consists of care component and if the claimant has a need for care or supervision. There are different levels of care highest, middle and lowest and AA also has care component but only two different rates; higher and lower.

Mobility component

Only for DLA there is also a mobility component, if help is needed for getting around. It has two different rates higher and lower.

Making a claim

To make a claim one has to complete the claim form which is dated if the form is submitted within the given date then the start date will be treated as the day the claimant made the claim.

Keeping a diary

If the claimant keeps a diary to demonstrate the care and supervision need will greatly improve the success in claiming the care component.

How it is assessed?

After the claim form is sent the 'Decision Maker', the officer who will assess the claim will make his/her decision based on the form and queries they may make with the claimant, or who is taking care or supervising the claimant. If still not satisfied they may ask a Doctor to come to the claimant's house and make a medical assessment. The Doctor will not be the GP of the claimant.

It will take 39 working days before a decision is made and the outcome will be made in writing.

Decision- appeal – revision process

After a decision has been sent to you can ask for a revision or review which is different from an appeal. This is asking the decision maker to reconsider your claim. This can be for a rejection of claim or for the amount given may be in dispute. This must be done within a month of the decision date.

A revision is a reconsideration request made to the decision maker by providing more information or getting facts to make a review of your claim.

An appeal is a process where you take your disagreement to an independent appeals tribunal. If the claimant attends the tribunal it will enhance their chance of getting the claim. If there is a carer involved it will be a good idea to take them to the tribunal as the tribunal can ask for information from the carer.

The tribunal is an informal place and it is not like a court.

Case study 14

Mr AS applied for Disability Living Allowance on the basis of his illness which was certified by his doctor and we have assisted the applicant in completing the DWP form. The Department of work and Pensions request more information from

the applicant to approve the Disability allowance. The burden of proof is on the applicant to confirm his disableness for which the doctor must confirm the severity of the applicant's illness. The application is still pending.

Carers Allowance

Carers Allowance can be claimed by you if you are looking after a person receiving Attendance Allowance or Disability Living Allowance care component at the middle or higher rate.

- To be eligible for this benefit the person claiming it must be 16 years or above
- Must not be studying for 21 hours or more a week.
- Can earn up to £95 a week on average and still claim Carer's Allowance

Carer's Allowance is a non- contributory benefit, but it is also a means tested benefit. The claimant cannot claim it if one earns more than £95 a week.

CA is not paid for breaks in caring until the carer has been caring for the person in care for at least 22 weeks out of the 26 weeks. The 22 weeks can include the time when the carer was caring for a person in care even before the claim was made.

The 22 weeks can be reduced if the person in care or you the carer had been in hospital.

If the person you are caring for loses the AA or DLA then the CA stops at the same time. CA will however be continued to be paid for 8 weeks after the death of the person you are looking for.

Income Support, Job Seekers Allowance and Employment Support Allowance

Many of our clients in the past claimed income support because they haven't paid enough NI contribution for Job Seekers Allowance. Due to this or other reasons (Single mother) they claimed Income Support.

This category of people in the past were directly adviced by the Job centre and benefit agencies in a straight forward manner to make application for Income Support. Furthermore the Benefit advisers could also directly obtain this form and complete the appropriate form on behalf of the client. But recently all these applications are no longer available as printed material and it is done through the telephone. There is no face to face human contact and the applications are dealt with in a mechanical manner.

The major issue affecting people who are entitled to Income Support are the wrong applications filled by the benefit officers over the phone. Even though the claimant does not have any NI contribution or little contribution the officers make an application for Job Seekers Allowance (JSA) which is aptly rejected and the claimant is informed that s/he is not entitled to JSA. They are not told to apply for Income Support and this gives the claimant the understanding that they are not entitled to benefit. This confusion and also the delay in being able to access their benefits is a frustrating experience for the people in such situations.

Most people who approach the benefit agency for their entitlements do so when they have a dire problem with their finances. The long delay and the rejection of claims which they should have not applied for is an unwanted waste of time and bureaucratic experience for the person in need. Further there is no clear division of who is entitled to Income Support or Employment Support Allowance. This leads to confusion not only to the claimant but also the officer filling up applications over the phone causing delay and suffering to the claimant.

By controlling the applications behind closed door bureaucracy and not allowing organisations like TWAN to fill up these applications the ignorant clients face an uphill task to access their rights and entitlements without having to go through a lengthy period of suffering and struggle.

Income Support

Income Support provides basic living costs for people aged under 60 who are not expected to sign on for work. It may be paid to top up other incomes. To qualify for this one has to meet some rules and also be in the qualifying group.

Qualifying group for accessing Income Support benefit include:

Responsible for a Child

- Must be a lone parent responsible for a child under the age of 10

- A single parent looking after a foster child under the age of 16
- You are responsible for a child and your partner is living abroad
- Some parent on unpaid parental leave from work
- You are pregnant and due to have a baby within the next 11 weeks
- You have has a baby within the last 15 weeks Sickness
- In receipt of Statutory Sick pay or Incapacity Benefit
- You are disabled and your earnings or hours are 75% less than other doing similar jobs For those who were in receipt of Income Support before 27th October 2008
- You are registered blind
- You work while living in a care home
- You are incapable of work
- You have been assessed as being capable of work but you are appealing against this decision

Carer

- You are caring for someone and are receiving Carer's Allowance or the person you care for is getting AA or DLA with a higher or middle care component or has claimed one of those benefits and is awaiting a decision.
- You stopped being a carer as described above, within the last 8 weeks
- You are looking after a family who is temporarily ill
- You are looking after a child while the person usually responsible of temporarily ill or away

Others:

- You have been accepted as a refugee and have started an English course in your first year in GB
- You are a person from abroad with limited leave to be in UK and your funds are temporarily disrupted, or you are a sponsored immigrant and your sponsor has died
- You have to attend JP, witness, juror, defendant or plaintiff
- You are an under trial in custody. You can be paid for housing costs
- If you are entitled to Income Support while in education (if it satisfies certain exceptions)
- If you are aged 16-24 and are on a training course provided by the Learning and Skills Council in England, a local enterprise company in Scotland or the National **Assembly for Wales.**

There are rules with exceptions that guides who can be assessed to benefit Income Support claims.

Rule1. Age

You must be at least 16 and below 60 years of age to qualify

Rule 2. Capital (savings) limit

You must not have lesser than £16,000 in capital (savings and investments)

Rule 3. Full time work

You must not be working 16 hours or more a week. If you have a partner s/he must not be working 24 hours or more a week. There is however exceptions to these rules and you have to seek an adviser for more information.

Rule 4. Full time education

You cannot get Income Support if you are in full time education but again there are exceptions.

Case Study 15

Mr RT is a British Citizen, working in the UK and he suddenly fell ill and he was not able to work. Then he approached us in 2007 and we applied for income support. The Job centre plus replied that the client was entitled to income support IN 2007 and he continued to receive income support. This was stopped in 2009 and he was advised by the job centre plus to apply for employment support allowance. Client applied with our assistance. This was refused by the jobcentre plus. After we intervened and established his rights by saying that he must given either Job Seekers allowance or Employment support allowance/ unemployment benefit or income support. Otherwise he will become destitute. The Jobcentre plus then sent letter to the client that he would be paid employment and support allowance and the payment could be back dated.

Employment and Support Allowance and Job seeker's Allowance

Employment and Support Allowance

Employment and Support Allowance (ESA) can be claimed if you have limited capability for work. Your weekly ESA is the amount the law says you need to live on each week less the amount you are treated as having in weekly income. There are two

types of ESA; Contributory ESA and Income - Related ESA.

The following conditions apply for getting Income-related ESA:

Rule1. Age

You must be at least 16 and below 60 years of age to qualify

Rule 2. Capital (savings) limit

You must not have lesser than £16,000 in capital (savings and investments)

Rule 3. Full time work

You must not be working 16 hours or more a week. If you have a partner s/he must not be working 24 hours or more a week.

Exception to this rule:

You can work 16 hours or more per week and still claim ESA if:

- You do supported work
- You work as a volunteer and are not paid or only paid expenses

Rule 4. Full time education

You cannot get ESA if you are in full time education (16 hours or more) unless you also get Disability Living Allowance.

The Following conditions apply for Contributory ESA:

- You must have paid NI contributions at least 25 times the lower earnings limit in one of the last three tax years, and
- Paid or been credited with contributions at least 50 times the lower earnings limit during both the relevant years (the last 2 complete tax years before the current benefit year)
- You were aged under 20 or in some cases 25, when your period of 'limited capacity for work' began and you have had 'limited capability for work' for 196 days.

If you qualify for both contributory and income - related ESA then you can be paid for both at the same time. The contributory part will be paid in full and the income-related part is paid to top up your income to the applicable amount.

Jobseekers Allowance

Jobseeker's Allowance can be claimed if you are unemployed or working less than 16 hours a week. You have to sign on as available for work and also show that you are actively seeking work. Couples without dependant children are both required to sign on.

This has two parts income based and contribution based. You can apply for both if you qualify the conditions.

For contribution based jobseeker's allowance you must have made NI contribution in the last 2 years and it can be paid for up to 182 days.

Conditions for claiming Income based Jobseekers Allowance

Rule1. Age

You must normally be at least 18 years old and below pension age, i.e. 60 for a woman and 65 for a man.

Rule 2. Capital (savings) limit

You must have less than £16,000 or less in capital or savings

Rule 3. Full time work

You must not be working 16 hours or more a week. Your partner must not be working more than 24 hours a week.

Rule 4. Full time education

Usually you cannot qualify while you are in full time education.

Rule 5. Actively seeking work

You must satisfy the labour market conditions for getting Job seekers Allowance

Case Study 16

Our client Mr VP applied for Jobseekers Allowance as he is aged 38 and seeking part time job due his health condition. The Job centre plus initially refused to grant him with the Jobseekers allowance. Jobcentre plus was repeatedly asking for medical reports of our client. Even though he sent the entire documents he was not received Job Seekers Allowance until 16th November 2009. The particular delay of the Government agents in paying jobseekers allowance or Unemployment benefits will cause problems for the victims and later they become destitute.

Case Study 17

Mr RJ approached us to help her in applying Jobse-

ekers Allowance. According to his instructions we have contacted the Jobcentre plus and the client was interviewed by an officer from Jobcentre plus over the telephone in September 2009. A letter dated 2nd October 2009 was received by our client from Jobcentre plus stating that they are pleased to pay Jobseekers allowance to RJ from September 2009.

Case Study 18

Mr SS has been residing in the UK since 9th July 1999 as an asylum seeker. He was given permission to work and was working until May 2009. Due to the prohibition in his employment by the Secretary of State after his refusal of asylum, the employer requested him to produce evidence of permission to work. Then SS was stopped from work as he has no permission to work. SS was experiencing hardship and sought assistance from Jobcentre plus and applied for Employment and support allowance. Currently Mr SS has been requested by the Job Centre Plus to produce status document and he has been requested to complete a questionnaire to see the eligibility.

Case Study 19

Our client KY applied for Employment Support Allowance after she obtained her Immigration status document from the Home office. KY has a minor child who is her dependant. Whilst KY was successfully receiving employment support allowance, she received letter from Job Centre Plus stating that they are not able to pay the employment support allowance from 13th August 2009 as KY did not pay enough National Insurance Contributions. The letter also states that they reduced the one person money and pay the rest of the money. We have written on behalf of the client to the Jobcentre plus to reinstate the actual benefits to the client. The claim is still pending and the client has not yet heard from the Job Centre Plus.

Housing Benefit (HB)

Our users approaching us for HB difficulties are linked with their other welfare benefits related issues. When their welfare benefits entitlements are delayed as a knock on effect their HB payments are also delayed which prompt eviction by landlords and leads to homelessness as the claimants are unable to meet the rental costs.

Other area of HB related problems are when a user in employment or business who was in possession of a house is forced to sell it due to bankruptcy or long term un-employment such person is not entitled to rent benefits as s/he was a house owner. Even though there is no blanket denial of HB for former house owners the claimant is made to wait for a long time asking for documents they cannot produce. At times they do not even let them know of the refusal of their claim and they only get to know about it when they approach the benefit officer at the counter.

There is a similar situation when a divorce settlement is done the lump sum money of the claimant is used against them and their HB is denied on that basis.

The long wait and uncertainty leads the users to get into debts which could have been avoided had they been informed at the earliest so that the claimant can find an alternative solution.

Hosing benefit helps a person in need to pay their rent when they are on a low income.

Conditions applying for getting HB:

Rule 1. Capital (savings limit)
You must have less than £16,000 or less in savings or capital. However if you are on Pension Credit or Guarantee credit you will qualify regardless of how much you have in savings or capital.

Rule 2. Rent Liability
You or your partner has to be liable, or treated as liable, for payment of rent including payments such as license agreements.

You cannot claim HB if you are any one of the following:

- A full time student
- Leasing with a lease of more than 21 years
- Paying rent to someone you live with and the arrangement is not commercial or the person is your close relative
- You had previously owned the property and it is less than 5 years since you owned it. This does not apply if you have to sell the property to continue living there.
- In a contrived (artificial) agreement to pay

rent in order to take advantage of the HB scheme

Case Study 20

Mr. KS applied for Housing benefit as his income was low to pay his rent amount of £750.00. The Newham council applied the objective test and said to the client that he is eligible for £150.00 weekly. However Mr KS was paid £100.00 per week. As Mr. KS was disappointed with the payment, he approached us to assist him in negotiating with the New Ham Council to upgrade his benefit as decided earlier. We have assisted Mr. KS in drafting letter.

Council Tax Benefit (CTB)

Many of our users who are also home owners are not aware that they can be entitled to CTB even though they may not be entitled to Housing Benefit. People on low income if they are eligible can apply for CTB.

The single person rebate is also not properly utilized by the users when they are the only occupant of a house or flat.

In a multi resident household it is the responsibility of the landlord to pay Council Tax and not that of the residents. Some of the Landlords sometimes make the residents to contribute to the Council Tax.

When a person is entitled to CTB the council tax they are instances where the entry is not done and users have reported getting summons from court and having to pay court fees.

You can claim Council Tax Benefit if you are liable to pay Council Tax and you have a low income. Council Tax Benefit is based on:

- The money the claimant or his/her partner has as savings or capital.
- The people living in their household, and what is their liability to the Council Tax.
- 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 child care (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 21

Mr KKS was receiving housing benefit and the council did not pay the council tax benefit. Then he approached us and asked us to contact the Newham Council. We have assisted the client in completing the form and a letter was received from Newham Council that the client is eligible for council tax benefit and then he was weekly toped up with £21.40.

Pension and Pension Credit

Pension and Pension Credit are available to people of retirement age and many people from the Tamil immigrant community are unaware that they are eligible for these two benefits.

The reasons for not claiming these benefits come from their immigration status of being a sponsored migrant and they are not entitled to public funds. Even after the five year period when they are entitled to apply for benefits they refrain from claiming it as they think they have not worked in this country and 'Pension' is related to work as is the practice in Sri Lanka or India.

Even people with Indefinite Leave to Remain are wrongly identified as sponsored migrants and wrongly rejected for Pension and Pension credit by the benefit officers.

When an application for Pension or Pension Credit is rejected, the claimant do not use appeal rights as they are unaware of it.

Pension and Pension credit can be a passport for a lot of freedom for these elderly people who have become dependent on their sponsor's for financial needs. This benefit will make these people more independent and also have a better lifestyle to lead

an active and healthy life.

TWAN runs an elderly support group every Thursday at the Manor Park Community Centre where elders can meet other elders from similar background and also use the services offered by our office to claim benefits that is applicable to them.

Case Study 22

Mrs TS arrived in the UK and applied for asylum in 2001 and was granted Indefinite Leave to Remain by the Home Office. She is aged over 65. She did not know which benefit she is entitled to get. We have advised and assisted her in applying for Pension credit in 2009. Our client has been told by the Department of Work and Pensions that it may take from 6 to 8 weeks for processing her claim.

Case Study 23

Mr RN approached us to apply for pension credit as he is aged over 65 and have no restrictions in his stay in the United Kingdom. We contacted the Department of work and pensions and assisted the client in applying fore pension credit. Client applied in June 2009 and the DWP approved the application and crediting £130.00 per week as his eligible amount.

State Pension

One can claim a State Pension of you have reached 65 if you are a man and 60 if you are a woman. One need not be retired to access this. State Pension is categorised as follows:

Category A- the pension will be based on the persons own National Insurance contribution. The weekly rate is £93.25

Category B- the pension will be based on the contribution made by spouse or partner. The weekly rate is £57.05

Category C- this pension is for widow, widowers and surviving civil partners. The weekly rate is £95.25

Category D- the pension is for people over 80 and is non-contributory.
The earnings are not counted for entitlement but the income from pension is taxable.

There are also private pensions that one can contribute and this will be in addition to the state pension. Private pensions can be voluntarily paid if their employers will have a scheme. It is always a good option to have an additional private pension as it will add to the state pension and make a substantial amount to live on during retirement.
National Insurance contribution makes a difference to State Pension so users are adviced to pay NI contributions every year to benefit fully from State Pension.

Pension Credit

Pension credit can be claimed if you are aged 60 or over. There are two parts to Pension credit; Guarantee Credit and Savings Credit.

Guarantee Credit: this credit ensures that no one aged 60 or over lives on less than the set amount of £130.00 per week for a single person and £198.45 for a couple. If your income is less than the set amount, then it will be topped up.

Savings Credit: this is payable to those aged 65 or over, who have modest savings and extra income above the savings credit threshold. The maximum amount of savings credit is £20.40 per week for single person or £27.03 for a couple. You may still get the Savings Credit even if the money you have coming in is up to about:

- £181 a week if you are single
- £266 a week if you have a partner

These amounts may be more if you are disabled, have caring responsibilities or certain housing costs, such as mortgage interest payments.

If you qualify for Pension credit guarantee credit then you will be entitled to maximum Housing Benefit and Council Tax Benefit. This means you will be entitled to these benefit even if you have capital or savings over £16,000.

If you receive Pension credit savings credit, then Housing Benefit and Council Tax Benefits will be subject to normal means test and you must have capital of less than £16,000 to qualify for this.

Child benefit

The common problem in accessing this benefit for our users arises when they do not have a bank account due to lack of identity documents. The

other issue is the delay in getting Child benefit when the birth certificates have not been received by the agencies.

These are minor issues that affect our users. The claims for child tax credit are not recommended by the benefit agencies when people access child benefit. Most of our users are in the low income group and would be entitled to the tax credits. By informing the claimants of CB about the other benefits they are entitled to would make a big difference to their financial and childcare issues.
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.

Tax Credits

Many of our clients have benefited from Tax credits in trying to get out of poverty. This is a very beneficial financial support especially for families with children and on low income as they are able to afford better childcare.

The issues that our users face in accessing this benefit is due to a variety of reason the most common being the wrong tax code used by employers which causes confusion and delay in getting this benefit.

Tax credits will change if there has been a change of circumstances and the claimant has to inform HMRC of the changes. But, the system is not simple and it leads to the agencies claiming back money as overpayment and clients get penalized.

Clients are also reluctant to send Immigration documents as they do not want to get their documents lost or misplaced as has been the case with some of our users.

Many of our users especially those who are self employed do not claim Working Tax Credit and even Child Tax Credit. These credits have to be applied so many people do not think they can avail of this entitlement.

Tax credits are payments from the government. If you're responsible for at least one child or young person who normally lives with you, you may qualify for Child Tax Credit. If you work, but earn low wages, you may qualify for Working Tax Credit.

Whether you qualify for tax credits depends on your personal circumstances (such as your age, if you work or have children) and your total income. The higher your income, the less tax credits you may be able to get.

Child tax Credit

If you have a new baby or you're responsible for any children under the age of 16 - or under 20 if they're in full-time education or approved training - you may be able to claim Child Tax Credit to help with the cost of looking after them. If you have a new baby, the Tax Credit Office can backdate your payments to the date the baby was born as long as you claim within three months.

You can claim Child Tax Credit if you have responsibility for a child. This could be for example if:

- the child usually lives with you
- the child keeps their toys, clothes and so on at your home
- you pay for their meals and give them pocket money

If your child lives with more than one person Only one household can claim tax credits for a child. So if you look after a child who sometimes lives with you and sometimes lives with someone else, you'll have to decide who'll claim.

If you can't agree who'll claim

The Tax Credit Office will decide for you. They'll contact both of you so that they can work out who has main responsibility for the child. They will look at things that include the number of days the child lives with you and where the child keeps most of their clothes and toys.

You can't claim tax credits if your child doesn't live with you at all - even if you're paying maintenance.

Working Tax Credit

You can get Working Tax Credit if you or your partner work enough hours a week and your income is low enough. You don't need to have children to qualify. It doesn't matter whether you are working for someone- else or self-employed. The number of hours a week you have to work to be able to get Working Tax Credit depend on your circumstances. There are four different ways you can qualify:

- If you are 16 or over and you work 16 hours or more a week, you can get Working Tax Credit if you are responsible for a child or young person (see under heading Working Tax Credit if you are responsible for a child)

- If you are 16 or over and you work 16 hours or more a week, you can also get Working Tax Credit if you are disabled, and you get a qualifying benefit (see under heading Working Tax Credit if you are disabled)

- If you are 50 or over and you work 16 hours or more a week, you can get Working Tax Credit if you were getting certain benefits for at least six months before you started work (see under heading Working Tax Credit if you are over 50)

If you are 25 or over and you work 30 hours or more a week you may get Working Tax Credit. In this case, you do not have to have a child in order to claim, but you do have to work enough hours

Case Study 24

Mr. and Mrs. MK approached us to assist them in applying for Working families tax credit and Child Tax Credit. They have two qualifying children who are aged between 1 and 16. The income of Mr & Mrs MK has to be toped up with the tax credits to manage their family cost of living. The Inlad Revenue and customs perused the completd application with supportive evidence and send us the reward notice of eligibility of tax credits.

Healthcare Rights and Counseling Advice

TWAN undertakes a role in helping clients to access health care and also by providing information on various health related problems of our users by getting them in touch with established health professionals from the community.

Health promotions and talks are conducted with support from community members and as we are not funded for this kind of activity it is a low key affair.

We provide basic advice and facilitate appointments and negotiations with medical authorities when there are issues between the user and the health care provider.

Most of the time we get involved with the health provider esp. GP's, when they try to refuse registration of asylum seekers with their practice. It is either ignorance of the general guidance from the Dept. of Health which lays down the rules of who can or cannot get free treatment. Once necessary legislations and guidance are pointed out to the admin staff in the GP surgery or practice then only they accept the asylum seekers registration.

HC2- UKBA on behalf of the Dept. of Health also provided HC2 certificate which allows asylum seekers and their dependants to receive free medication, prescription and help with other health costs. It is valid for 6 months and has to be renewed every six month until a decision is made on the asylum claim.

Counseling advice is provided for three hours every week benefiting 3-4 individuals. We are usually referred to by social services, hospitals and the police. We are also referred to by other charities.

This is also another service lacking in funding and it can be better organized once we getter better funding and resources.

Health Care in England

Public health care services in England is generally provided by the NHS and most services are provided free of charge. The National Health Service Act of 1977 however has provided two circumstances under which charges may be made for NHS services.

1 the Secretary of State for Health may make regulations for certain types of health service to be charged.
2 the Secretary of State may make regulations for circumstances in which people who are "not ordinarily resident in GB" may be charged.

In 1989 a regulation was passed using the 2nd clause and making asylum seekers as" not ordinarily resident".

In a case decided in the House of Lords in Shah v Barnet London Borough Council in 1983. It was decided by the House of Lords that an asylum seeker who has been granted temporary admission pending further action on his or her case may therefore be ordinarily resident in the UK.

But, time and again our users find difficulty in getting health care access and have to be provided with a copy of the guidance papers to the GP to register asylum seekers.

In the 2004 guidance issued by the department of health which deals mainly with hospitals also clearly includes asylum seekers and whose asylum claim or appeal remains outstanding access to most of medical care available to "ordinarily resident" persons.

In A v Secretary of State for Health the court decided that the guidance of 2004 was wrong in failing to recognize that refused asylum seekers may still be entitled to free treatment despite the 1989 regulation.

So the Department of Health has come up with a new guidance of 2008 which does not necessarily allow all refused asylum seekers to free medical treatment. It will depend if the person meets the "ordinarily resident test" However, a refused asylum seeker who has been in the UK for more than 6 months and cans how a current IS96 form granting temporary admission is now likely to receive free treatment.

People ordinarily resident in UK and unable to access healthcare can avail of form HC1 which provides low income people with the following medication and support free of charge.

- NHS prescription charges
- NHS dental treatment, including check-ups
- sight tests
- vouchers towards the cost of glasses or contact lenses
- travel costs to and from hospital for NHS treatment under the care of a consultant or on referral by a doctor or dentist
- wigs and fabric supports, such as abdominal and spinal supports

One is eligible if they are claiming certain kinds of benefits or on low income and eligibility will depend on other circumstances as well such as age, health etc.

Case Study 25

Miss VS was an asylum seeker exhausted her right of appeal in her asylum matter. She became pregnant after cohabitating with her partner. She then had religious marriage. When she attended to Maternity Unit in King George Hospital she was ceased with her medical card and was told by the maternity department that they would contact Miss VS soon. Letter was sent to Miss VS from hospital stating that Miss VS should pay £2500.00 for the delivery of her baby. Miss VS approached us and we have cited the case of A vs The secretary of state stating that the client is entitled to receive free NHS service. The Hospital did not reply to TWAN after our reply to their invoice.

Case Study 26

Mr. SS moved to this country from Germany and suffering from numerous diseases. He has been referred to Diabetics unit, epilepsy unit, counseling and he has lack of calcium. The medicine he was prescribed by his GP was complicated therefore he wished to maintain one GP in his surgery. An acting GP in his surgery stopped prescribing a tablet without giving proper explanation to Mr SS. This happened repeatedly and he was not satisfied with the service of the surgery. This is because some times the manager was advising the patient and giving prescriptions without seeing the doctor. Mr SS approached us and instructed us to sort out his complications with the surgery as he felt that his health condition would deteriorate if the situation remained. We have sent letter to the GP to take care in Mr SS's health condition. GP telephoned and explained the situation that he cannot be the only one seeing patients. There are two more Doctors in the surgery who also see the patients and he requested to change the surgery if our client was not satisfied with their service. We have advised the GP to respond to TWAN in writing so that we could advise the client. After receiving letter from Surgery the client was not satisfied and made complaint to General Medical Council (GMC). Also we assisted him to contact the National Accident health line to seek remedy for medical negligence. This matter is on going.

Education & Career Advice

At TWAN we have been involved with the community for its basic needs and education for the Tamil community is a basic and a very important need along with food and shelter. Tamil community prides itself in achieving academic excellence and this is one path where we need more support and funding.

Our supplementary education project is a successful one with our stakeholders the students, parents and teachers. Many of our directors come from teaching experience and have contributed towards the successful running of this project despite fund shortage. We hope to get funding for the Supplementary education in the future year.
In recent times the people needing more help with school admission, free school meal for their ward and admission in a school of their choice in the catchments area are provided with advice, support, appeal & representation and negotiations with school authorities are European citizens settling down in the UK. As they are new to the school system here they need more support then those ordinarily living here.
Asylum seekers dependants and unaccompanied minors also access our service and find the necessary help that is needed to get them into schooling. TWAN advises our users to get admitted to school even if the school of choice is not awarded to them as appeals and representation may take time and waste the educational time of their wards.

We also support University students in making a decision with choice of subjects or courses. At times we have to negotiate the fees structures with the university administration as they sometimes are unable to decide on the immigration status of the student and charge higher fees structures. This again is the problem for students from EEC nations and asylum seekers.

TWAN provides placement for students from various schools, colleges and universities. Our partners are Trident school placement, Newham Work Experience Team, Redbridge Business Education Partnership, University of Westminster, Thamesview School with Business & Enterprise status and London School of Economics.

Family Advice

Marriage and separation of spouse:
We assist either couple and act as a mediator by avoiding police or social service to interfere. But we deal fewer cases in this category. When there are cases referred from social service, police, solicitors we work to find a solution.

Case Study 27

Mrs. CT was not happy with her spouse's conduct and decided to separate from her spouse. Mrs CT and child became destitute. She was attempting to suicide as she was thinking about her marriage life and 5 months old child. A passerby saw that she was trying to obstruct the vehicles on the road and brought her to TWAN. Due to her immigration control we were not able to sought assistance from social security and contact homelessness unit. We finally contacted the children team of Red bridge council and requested them to

allocate a bed and breakfast as the child is British and not subjected to Immigration control.

Later of the day the Red bridge council agreed with us and allocated food stamp and bed for the mother and child.

Later we have contacted Mr TT for negotiation. The couple are not agreed to live together due to Mrs CT's past traumatic experience with Mr TT. However Mr TT is self employed and agreed to pay the maintenance for his child and requested us to take his child once in a week. We have obtained consent from Mrs CT and the child was seeing by her father once in a week. Currently we have taken steps to obtain British passport for the child and Domestic Violence application to the Home office to regularize Mrs CT's stay in the United Kingdom.

Marriage counseling ad mediation centre: Most of our clients are vulnerable and we have arranged counselors to see our clients for counseling. This was most helpful for their immigration cases as well.

Case Study 28

Miss GM came to this country and claimed asylum. Although she suffered from Post Traumatic Stress Disorder, her GP was not noticed and she was not referred to counselor until we make attention to the GP. Miss GM was regularly attending counseling sessions to TWAN and our appointed counselor sent letter to the GP for follow up actions.

Referrals and signposting-

We help either couple in the custody of the child or divorce matters. If it is consent divorce it is straightforward and we refer the local solicitors for county court representations. TWAN Staff help in interpretation and legal side of the case if legal aid is not provided

Crime and Victim Support Advisory

People harassed by police have increased in the recent years. Anti Social Behavior Ordinance came into force and the youngsters often charged under this act. Parents of the children were disappointed as their immigration history would be damaged. We contact Police and make referral to the local solicitors for proper representation.

Benefit and support for people subject to Immigration Control

TWAN staffs were invited to attend training by LASA in June 2009 and accordingly TWAN staff advised our users of the rules that apply to them who have come to the UK for the first time or following a period abroad. The rules vary between the benefits, but entitlement to most of the main benefits can be affected by a person's immigration status and, as a separate condition, whether they satisfy the rules about residence and presence in UK. The Benefits agency always applies the residence and immigration status tests before approving their benefit. This is more explanatory under the Habitual residence principle which is mentioned in the benefits section. The 9 benefits that are now restricted to those with a right to reside are income support, income based Jobseekers allowance, income related employment support allowance, pension credit, housing benefit, council tax benefit, child tax credit, child benefit, health in pregnancy grant.

Case Study 29

Mr & Mrs RP came to this country and claimed asylum in 2001. They were issued permission to work in their SAL paper and started working in 2002. They toped up with the tax credit as they have a qualifying child who was under 16 years. This was paid from 2002. Due to the exhaustion of their right of appeal in immigration matter, the enforcement Unit withdrew their permission to work while the fresh claim and a seven year concession application was pending consideration at the Home Office. A letter was received by our clients that they were not entitled to tax credits as they have no legal basis to stay in the UK from 7th December 2004. From 2006 the Inland Revenue stopped paying them with tax credits and required the clients to repay the overpayment of £11404.29 for the period of 7th December 2004 to 14th November 2006.

Mrs RP approached us to advise them in relation to their overpayment tax credit as they are subject to Immigration Control.

Mrs RP instructed us that they do not work from 2008 and not receiving NASS benefit. Also they do not have any means to survive in this country. TWAN wrote letter to the Inland Revenue, and gave explanatory Immigration history about the entitlement of work permission and the wrong

decision was taken by the employer to stop the client from work in accordance with Sec 8 of the 1996 Immigration and Asylum Act.

Client's immigration and welfare benefits matter is still pending consideration with the home office and Inland revenue and we continue to represent her in welfare matter.

Excessive traffic related offences and issues

Most of our users are asylum seekers and EU nationals (non British citizens) who come to TWAN with penalty notice of the Metropolitan Police for advice and assistance. The Police often take statements of incidents from the users and send the copies to the county court trial by tracing the disadvantage information.

Case Study 30

Mr SP came to us that his car was waiting for right turn and there were two more cars behind him. A fast driving motor bike hit his car and the motorbike driver was thrown away. This happened in a busy road in Lewisham. There were three witnesses supporting SP that he drove the car and was standing in the right position. Insurance was paid to him one year ago for this incident. He received Crown court letter for which Mr SP must declare whether he was guilty or not guilty. He pleaded not guilty. When Mr SP was giving statement of the incident he mentioned two witnesses' names in his statement. But the Police traced the witnesses' names and copied his statement and included in the bundle which was sent to the crown court and to Mr. SP before the trial. Fortunately Mr. SP copied his original statement where the witnesses' names appear. He approached us to complete the form before trial and we assisted in competing him and made an additional statement of the negligence and the error of the Metropolitan Police.

Case Study 31

Mr. AS applied was a German citizen who exercise treaty rights in the UK and established his family in the UK. He has tow vehicles. When using the second vehicle he telephoned the Insurance Company and changed the Insurance to the driving vehicle. One hour before driving the current vehicle he paid the additional money to the insurance company. Mr. AS's vehicle was stopped on a busy road and asked for Insurance documents. He explained to the Police and showed the payment he made to the company. The Police gave notice to Mr. AS to surrender his driving license and pay the penalty. Accordingly he surrendered the driving license to the Police without any guilty. When surrendering the license he gave the Insurance and approached us that he is unable to drive his van or car without license. He also had an important function in Germany which he was to attend. We have written to the Police about his non guilty and to return the driving license at their earliest opportunity.

Stop and search of Tamil community members has increased

Community felt that the police harassed demonstrators who went for the demonstration.

Case Study 32

Mr. KN was an employee at East enders & Co in Barking. One evening KN was busy as a fork lifter, unloading the truck to the cash and carry. While unloading he saw a group of men with black clothes holding guns, rushing towards the cash and carry. As he was shocked he ran to the passage and was completely horrified. Upon raising his hands and remaining in a still position, three officers proceeded to beat him with severity. Also smashed his face with riffle butts. An officer compelled to kick his head against the ground. Mr. KN often told them that he was an employee with wife and three kids. Later only Mr. KN realised that the armed men were Police. Mr. KN was taken statement by the Police with other staff. Mr. KN was admitted at Newham Hospital for bad injuries and after discharging him he approached us to ask for Justice from the Metropolitan Police Fire arms group. We have made representations to fire arms Unit and the case is on going between the Fire arms Unit and TWAN and we have been told that the meeting will be conducted after the investigations.

Compensation for Victims of Violent Crime.

Criminal Injuries Compensation authorities (CICA) pay damages for the victims who were injured in a crime; but they consider the circumstances when paying damages for the victims. This will include racial attacks and general mugging. This scheme came into force in 2001.) CICA cannot pay compensation in the following circumstances;

- the crime took place outside England, Scotland or Wales
- the victim suffered only a single minor injury, such as a black eye.
- The crime took place more than two years ago, unless we can still get enough information about what happened and there is a good reason why the person did not apply before. They will probably not accept late applications unless the victim is a child, or English is poor or have a learning difficulty.
- Victim of sexual abuse, or other sexual assault ended before 1979, and the person who assaulted were living together as members of the same family.
- The victim of a road traffic incident, unless a vehicle was used deliberately to injure the person

Case Study 33

Mr. ER became as a victim of an assault. He approached for advice after discharged from Hospital. Mr. ER sustained a big fracture and was treated by his GP who referred him to the Neurology department. ER approached us to make compensation. We have contacted CICA who sent us the Criminal Injuries Form. We have gathered evidence in relation to his treatment and assisted him in completing the form. We have received acknowledgement from CICA who are investigating the assault before approving compensation to the client.

Homelessness:

The homelessness is continuously problematic area. This is because as a community group, referral agencies are expecting us to provide accommodation and support to members of our community. However we have limited resources to provide accommodation or shelter. in most occasions homeless persons shelters are also unavailable for our users. Our users are most vulnerable. In two ways homelessness are arising.

1. Abandonment of NASS support (including sec 4 and sec 95). People voluntarily leave their support provided by the Home Office due to various circumstances.
2. When people receives Immigration Status document the NASS support will be discontinued by the Home Secretary and the people becomes destitute. Suddenly the community or the council will not be allocating accommodation for the victims.
3. The people becomes destitute due to alcoholic problem and other misconduct in which circumstances the Community dislike to keep them as private tenants.
4. Homelessness arises from repossession of houses. In this circumstance the people will not be able to obtain housing benefit to enable them to become a private tenant.

Members of the Tamil Community often frustrated and we are not able to seek help from the Community for accommodation. Same time we are not able to seek accommodation from the council as well. Council often refuses to allocate accommodation.

Case Study 34

Mr. VY was accommodated in sec 4 accommodation as he was an asylum seeker. He was then granted settlement visa by the Home Office. Mr. VY received discontinuation of support letter from the Home Office and he had to leave fro sec 4 accommodations. Mr. VY approached us that he is not able to find an accommodation and became destitute. We have contacted a bed and breakfast named Heathrow Travel care to provide emergency accommodation. Heathrow Travel care is currently assisting him to receive Job Seekers allowance and other entitlements.

Asylum and Immigration Advice

Tamil Community faces difficulties in instructing Solicitors in respect of their immigration matters. Despite of having proper Solicitor for their immigration matter, they are reluctant in attending the Solicitors offices due to financial problems. The community members attend for various matters.

We do sign postings and referrals in the asylum and Immigration matter. Some people have work restriction and we assist them to write letters to the home office and the enforcement Units. This work is one off and consider as advice work.

If we starts doing substantive work the advice work will become as case work and we represent them until they get leave to remain and nationality.

Legal Case Work

Entry Visa and Immigration Rules related Visitors

We are providing entry visa related case work on the instructions from sponsors who settled in the UK and wishing to bring their family members or relatives or friends. Approximately four cases per month are dealt with by us as case work and cases failed under the means assessments are continued to be represented under the London council funding. As a community group, serving a particular migrant community in the UK, we daily receive a good number of people needing our services.

Non EEA nationals entering the UK are subject to the immigration control and in need of leave to enter on entry. Those who have right of abode in the UK are free to enter and live here. There are two types of procedures adopted in practice.

i) Visa Nationals have to get entry clearance before starting their travel to the UK from the Entry Clearance officer in their country. The persons must have an entry clearance before applying for leave to enter in the UK. Otherwise, entry clearance will be refused at the port of entry by the immigration officers. The list of countries is in the Appendix 1 of the immigration rules and is also available on the UK visa website.

ii) Non-Visa Nationals can apply for the leave to enter at the port of entry without an entry clearance. But, it is advisable to get an entry clearance prior to their travel, if the person has a poor immigration history which is discernable by an immigration officer from his/her passport.

Entry clearance is always required by citizens of ANY country who are applying to stay in the UK for a period of more than 6 months. This will apply to Non EEA nationals.

A person must always possess leave to enter or remain [visa] in the UK to be lawfully present in the UK. After entering the UK, one has to extend the visa before it expires. The person has to submit an in country visa application to the Home Office. It can be both to extend the same type of visa, or to switch to another category. Switching from one immigration category to another is heavily restricted by the Immigration Rules.

Changes in Immigration Law

The largest category of passengers passing through the immigration control in the UK are Visitors.

On 4th November 2008 the Immigration Rules were amended to create distinct categories for visitors' visas. The main categories are general visitor, business visitor, sports visitor, entertainer visitor and special visitor.

Visitors

General Visitor

Any visitor who is required to meet the requirements of paragraph 41 in their application can carry out general visitor activities whilst in the UK. The applicant must satisfy the Immigration Officer on the following points:

i) what he intends to do during his stay in the UK and the length of time he will stay here;
ii) intends to leave at the end of the period;
iii) during his stay, he does not intend to undertake any activity which is not allowed by the rules relating to visitors including the following.

a) does not intend to take employment in the UK;
b) does not intend to take a course of study;.
c) does not intend to do any business activities direct to the general public;
d) does not intend to marry or form a civil partnership;
e) does not intend to receive private medical treatment;
iv) there are sufficient funds available to finance the stay [including any dependants] and onward and return journey.

The following categories are included :
i) Temporary child-minders for relatives
ii) Carers of a sick family members or friend.
iii) Family visits.
iv) Tourists.

Under the visitor visa category, an applicant is normally seeking entry for a limited period of time. Normally the visa is provided for a maximum period of 6 months.

Business Visitor

A business visitor is someone who works abroad but who intends to visit the UK for a short period of time in order to transact business on their own or their employer's behalf. The following are included as Business visitor:

i) Academic visitor
ii) Doctors taking the PLAB test.
iii) Film crews.
iv) Representatives of overseas news media.
v) Religious workers
vi) Advisors, consultants, trainers or trouble shooters.

Visas are normally valid for 6 months, 12 months, 2 years, 5 years and 10 years. If the visas are valid for unlimited journey [multi-entry] then it can be used for any number of entries within the validity period. However, holder of the visa may only remain in the UK for a maximum of 6 months on any one visit. A business person issued a long term multi-entry visitor visa will be able to use that visa to return to the UK as a general visitor [eg. for tourism or to visit family as well as for further business visits].

Visitors as Religious Workers

The religious workers who come to the UK for a business visit [eg. to attend a conference] and undertake some preaching or pastoral work during the visit may be included and permissible as business visitors. But, they are based abroad and do not intend to take up an office, post or appointment in the UK.

People who are coming to the UK to fill a vacancy as a religious worker for a recognised religion need to apply under Tier 2 [Ministers of Religion].

People who are coming to the UK to work temporarily as a religious worker for a recognised religion need to apply under Tier 5 [Religious Workers].

A religious worker who entered the UK under the Business visitor rules as a visiting religious visitor may not switch to another category.

Sports Visitor

A sports visitor visa is granted for a short time to take part in certain events mainly based on previous concessions.

Entertainer Visitor

An entertainer visitor visa is granted for a short time to take part in certain major arts festivals, music competitions and charity events mainly based on previous concessions.

Special Visitor

A special visitor visa is granted for a short-term visit in specific circumstances which includes

i) visitor for private medical treatment.
ii) visitor coming to get married or form a civil partnership.
iii) visitor is a parent of a child at school in the UK.
iv) child visitor
v) student visitor
vi) prospective student
vii) visitor in transit.

The visitor visas as described above are divided into many categories. Some of them are very rarely used. Most of the people seeking advice from us are under the following categories.

1. General Visitors
2. Family Visitors
3. Religious workers
4. Marriage Visitors
5. Medical Visitors
6. Entertainer Visitors

How to Apply:

The applicant must submit his application in the prescribed form. The application forms are divided into the following categories for Visitor Visas. These Forms can only be used to apply from outside the UK.

General Visitor

Form VAF1A [if the main reason for visiting the UK is as a tourist or to visit friends in UK].

To come to the United Kingdom as a general visitor, you must be able to show that:

a) you are 18 or over;
b) you only want to visit the United Kingdom for up to six months, or up to 12 months if you are accompanying an academic visitor;
c) you intend to leave the United Kingdom at the end of your visit;
d) you have enough money to support and accommodate yourself without working or

help from public funds, or you and any dependants will be supported and accommodated by relatives or friends;
e) you can meet the cost of the return or onward journey; and
f) you are not in transit to a country outside the common travel area.

You must also show that, during your visit, you do not intend to:

a) take employment, produce goods or provide services, including the selling of goods or services direct to members of the public;
b) undertake a course of study;
c) marry or form a civil partnership, or give notice of marriage or civil partnership;
d) carry out the activities of a business visitor, a sports visitor or an entertainer visitor; or
e) receive private medical treatment.

The general visitor needs to submit the following documents.

a) if you are employed, a letter from your employer granting leave of absence from your job for a specified period - the letter should also say how long you have been employed by that employer, in what job(s), and when you are expected back at work;
b) if you are self-employed, evidence of your business activities and financial standing;
c) evidence of any property you own in your home country;
d) if you are a student, a letter from your school or college stating the course you are on, its start and finish dates, and the dates of the holiday period when you intend to visit the United Kingdom;
e) evidence of any family or social ties and responsibilities to return to;
f) evidence of any firm travel plans you have made;
g) bank statements going back over a period of several months; and
h) evidence of savings available to you.

How to extend your stay as a general visitor:

If you come to the United Kingdom as a general visitor, you are allowed to remain here for a maximum of six months (or 12 months if you are accompanying an academic visitor).

If as a general visitor you have permission to enter for three months and you would like to extend your stay to a maximum of six (or 12) months in total, you will need to apply for an extension using the application form FLR(O). You should send your completed application form to us or to the Home Office by post before your permission to stay ends. If you are given permission to extend your stay, you must continue to meet the requirements as a general visitor. In some circumstances, you may be able to transfer to a different category of visa - you should see the appropriate category for more information.

Family Visitor

Form VAF1B [if the main reason for visiting the UK is to see your family in the UK. This includes the following types of applicants: Temporarily to look after the baby or child of close relatives and/ or look after sick family members who are in need].

You must meet the same entry clearance requirements as a general visitor.

Case Study 1

The applicant wished to sponsor his in-laws to visit the UK for six months and spent some time with their daughter and her family as she was due to give birth. A VAF1B Entry Clearance application was made on behalf of the applicant to grant the in-law entry clearance visas in order to enable them to come and see their daughter. The visit visa application was refused at first instance as a result of lack of evidence. The applicant was advised to make a new Entry Visa application for his parents-in-law with improved evidence. On appeal the original decision was withdrawn and entry clearance visas were issued.

Case Study 2

In this case an application was made on behalf of the client to allow him to sponsor his mother-in-law for a family visit. Initially the entry clearance visa was not allowed as the officer dealing with the case was not satisfied that the applicant met all the requirements of the Immigration rules. It was stated that the applicant did not provide evidence of their personal and financial circumstance and that they were not satisfied that the applicant's family member would leave the UK after the period of 6 months. An appeal was lodged to the Asylum and Immigration Tribunal to

reverse this decision. Whilst the appeal was conducted, the Immigration Tribunal informed the applicant that the ECO had made a mistake with their decision and 6 months visit visa was granted. As a result the appeal was withdrawn.

Case Study 3

As a result of the applicants wife's complications during her pregnancy the applicant wished to sponsor his mother-in-law to the UK. A VAF1B Entry Clearance application was made on behalf of the applicant to grant his mother-in-law for her visit to the UK. During her stay in the UK a FLR (O) application was made for an extension of her stay and the visa was approved and the mother-in-law was granted to stay in the UK for a further 6 months. This application was made to allow the family member to stay in the UK, under the VAF1B form. In order to be considered a family visitor, a couple of things the applicant should ensure that they have a valid travel document or passport. They should have a passport sized colour photograph which is not more than 6 months old. They should also have the appropriate fee with evidence to show how the stay is going to be funded.

Case Study 4

The applicant wished to sponsor his in-laws to visit the UK for six months. His spouse was due to give birth so he wanted his in-laws to visit the UK to assist with their daughter's delivery whilst also looking after their granddaughter. A VAF1 B Entry Clearance application was made on behalf of the applicant to grant the in-laws entry clearance visas in order to enable them to come and stay in the UK for 6 months. The application for family visit visas were accepted.

Business Visitor – Form VAF1C

For the purpose of the Immigration Rules a business visitor is someone who works abroad but who intends to visit the UK for short periods of time in order to transact business on their own or their employer's behalf. As well as meeting all the normal requirements for leave to enter as a visitor the immigration officer must be satisfied that the applicant

a) is based abroad and has no intention of transferring his base to the United Kingdom even temporarily.

b) will not receive his salary from a UK source, although we would allow a business visitor to receive reasonable expenses to cover the cost of his travel and subsistence.

c) is not involved in selling goods or services direct to members of the public.

Those included as Business Visitors are:

a) Academic Visitors

b) Doctors taking the Professional and Linguistic Assessment Board (PLAB)

c) Those seeking entry for Clinical Attachment/ Dental Observation

d) Visiting professors accompanying students undertaking study abroad programmes

e) Film crews (including Actors, Producers, Directors, and Technicians) on location shoots only, provided they are employed or paid by an overseas company

f) Some multinational companies will be administered from the UK, including the payment of worldwide salaries. In these circumstances entry as a business visitor may still be appropriate, provided the person is based abroad and intends to continue to be so.

g) Representatives of overseas news media provided they are employed or paid by an overseas company and are gathering information for an overseas publication or programme

h) Secondees from overseas companies

i) Religious workers undertaking some preaching or pastoral work during a business visit (e.g. to attend a conference), provided their base is abroad and they are not taking up an office, post or appointment

j) Advisers, consultants, trainers or trouble shooters

k) To undertake specific, one-off training in techniques and work practices used in the UK provided this is not on-the-job training.

l) Those who intend to carry out one or more of the 'Permissible Activities'

i) Those attending meetings, including interviews that have been arranged before coming to the UK or conferences.

ii) Those attending Trade Fairs provided this is restricted to promotional work and does not involve selling direct.

iii) Those arranging deals or negotiating or signing trade agreements or contracts, under taking fact finding missions

iv) Those conducting site visits
v) Those delivering goods and passengers from abroad such as lorry drivers and coach drivers provided they are genuinely working an international route;
vi) .Tour group couriers who are contracted to a firm whose Headquarters is outside the United Kingdom who are seeking entry to accompany a tour group and who intend to leave with that tour group, or another tour organised by the same company;
vii) Speaking at a conference where this is not run as a commercial concern (organisers not making a profit) and the conference is a "one-off".
viii) Representing computer software companies by coming to install, debug or enhance their products. Representatives of such companies may also be admitted as business visitors in order to be briefed as to the requirements of a United Kingdom customer but if they are to provide a service involving the use of their expertise to make a detailed assessment of a potential customer's requirements this should be regarded as consultancy work for which entry under the Points Based System would be required; Representing foreign manufacturers by coming to service or repair their company's products within their initial period of guarantee;
ix) Representing foreign machine manufacturers by coming to erect and install machinery too heavy to be delivered in one piece, as part of the contract of purchase and supply.
x) Interpreting or translating for visiting business persons provided the interpreter/ translator is employed by the overseas company and is coming solely to provide this service for the visiting company member.
xi) Monteurs (e.g. mechanics or serviceperson) - workers coming for up to six months to erect, dismantle, install, service, repair or advise on the development of foreign-made machinery.
xii) Board-level Directors attending board meetings in the United Kingdom provided they are not employed by a UK company, although they may be paid a fee for attending the meeting.

It is reasonable to expect those coming to the UK as Business Visitors (to attend meetings etc) to want to make use of their laptop/Blackberry whilst here. Provided this is solely to enable the Business Visitor to keep up to date with their own workload abroad, or to liaise with contacts in the UK, UKBA would not consider this as 'work' for the purposes of the Immigration Rules.

Student Visitor - Form VAF1D [if the applicant comes to the UK as a student visitor, he will not be able to extend his stay in the UK as a student visitor or as a student. Student visitor visas are issued for 6 months at a time. Student visas for 1, 2, 5, 10 years are available in other categories.]

A student visitor can come to the United Kingdom for up to six months

If you are coming to the United Kingdom as a student visitor, you must genuinely be seeking entry to study here for the limited period you tell us you require. This period must not exceed six months.

Additionally, you must have been accepted on a course of study that will be provided by an organisation which is:

a) the holder of a sponsor license for Tier 4 of the Points- Based system; or
b) accredited by an accreditation body approved by the UK Border Agency; or
c) an overseas higher education institution which offers only part of its programmes in the United Kingdom, holds its own national accreditation and offers programmes that are of an equivalent level to a United Kingdom degree.

You must also:

a) leave the United Kingdom at the end of the visit you told us about;
b) support and pay for accommodation for yourself and any dependants, without help from public funds; or
c) make sure that you and your dependants will be supported and accommodated by relatives or friends, and not take employment; and
d) be able to meet the cost of your return or onward journey.

You must not:

a) take employment in the United Kingdom;
b) engage in business, produce goods or provide services within the United Kingdom, including selling goods or services direct to members of the public;
c) study at a government-funded school;

d) be a child under the age of 18;
e) undertake part-time or full-time vacation employment;
f) undertake a work placement or internship (paid or unpaid) as part of your course of study; or
g) extend your stay in the United Kingdom.

If you wish to come here as a student visitor for a course of less than six months, you must meet the same entry clearance requirements as a general visitor.

You will not be able to extend your stay in the United Kingdom as a student visitor. There are no provisions in the student visitor rules for extensions to be granted. You can only obtain leave (permission to enter the United Kingdom) as a student visitor by applying for a student visitor visa at a British diplomatic post abroad or by seeking leave from an immigration officer when you arrive in the United Kingdom.

Academic Visitor - Form VAF1E

The following information sets out who is an academic visitor.
This route allows well qualified academics to visit the UK for a maximum of 12 months to undertake certain activities. They should be able to produce evidence that they have been working as an academic in an institution of higher education overseas, or in the field of their academic expertise immediately prior to seeking entry or entry clearance for entry in this category.

Academic visitors must be either:

a) A person on sabbatical leave from an overseas academic institution who wishes to make use of their leave to carry out research here (to do research for a book for example); or
b) Academics (including doctors) taking part in formal exchange arrangements with United Kingdom counterparts; or
c) Eminent senior doctors and dentists coming to take part in research, teaching or clinical practice.

Academic visitors must:

1. Not receive funding for their work from any United Kingdom source (payments of expenses or honoraria to cover their needs whilst in the UK may be disregarded, as may payments on an exchange basis)
2. Not intend to take employment or engage in any work other than the academic activity for which they are being admitted
3. Not be filling a normal post or a genuine vacancy
4. Not stay in the UK for more than 12 months
5. Intend to leave the UK at the end of their visit
6. Be able to maintain themselves and any dependants without having recourse to public funds (or be adequately maintained and accommodated by relatives or friends)
7. Be able to meet the cost of the return or onward journey from the UK.

Those who are unlikely to qualify under this category:
a) Recent graduates: Graduates, who have recently gained their degrees, either in the United Kingdom or overseas, would not normally qualify as it is unlikely they would have reached the level of expertise within their field that is expected of someone seeking entry under this category.
b) Postgraduate researchers entering the United Kingdom to study for an accredited United Kingdom academic qualification (rather than for the purpose of academic research work that does not lead to a UK academic qualification) should enter as students if they meet the relevant requirements of the Immigration Rules. If they do not meet the student rules but they are a named researcher undertaking research for which a grant has been made to a university or research institution for instance then they will need to meet the requirements of Tier 2 of the Points Based System.
c) Lecturers: A person who wishes to come to the United Kingdom solely to undertake a series of lectures for which they will receive a fee will normally be required to seek entry under Tier 2 of the Points Based System. Academics may, however, be eligible to enter as a mainstream business visitor for a maximum of 6 months if they are coming to participate in a conference or seminar where it is a single event, and the event is not a commercial venture (organisers are not making a profit).
d) Those who are on sabbatical leave from private research companies are not eligible for leave under the academic visitor provisions.

Marriage Visitor

Form VAF1F [if applying to come to the UK to get married or register for marriage]

Visa issuing Posts have the discretion to issue a multiple entry visa, valid for up to one year, in cases where there will be a delay between giving notice and the marriage or civil partnership taking place.

The couple must plan to enter into a marriage or civil partnership during the period for which they are granted leave (which will be for six months). Couples may get married or register a civil partnership in any location licensed for the purpose of marriage or civil partnerships.

.Once both partners are in the UK they will need to give official notice of their marriage or civil partnership at a designated register office. Those who are non-EEA or Swiss nationals will have to show their entry clearance or certificate of approval to do this.

In the case of those wishing to marry in an Anglican Church, where there are religious preliminaries, there is no requirement for a marriage visitor to show their entry clearance to a member of the clergy. However, both non-visa and visa nationals still require a marriage or civil partnership visit entry clearance before traveling to the UK.
You need to enter the initial and surname of the intended partner on the entry clearance.

Whilst there is no specific provision in the Immigration Rules, any application for leave to remain on the same basis, where the marriage has not taken place within the initial 6 months leave should be considered exceptionally, as a visitor seeking to remain beyond six months. If good cause can be shown for the delay and provided there is satisfactory evidence that the marriage will take place at an early stage and that he/she continues to meet the requirements of the Rules, then further leave to remain in the same category for a similar period may be granted.

For those already in the UK, a Certificate of Approval must be obtained from the Home Office instead. Certificates will only be issued to those who were granted more than six months valid leave to enter/remain and who have three months or more of that leave remaining. This means that persons who hold a visit visa, illegal entrants, overstayers and failed asylum seekers will not usually be able to get married or undertake a civil partnership in the United Kingdom.

Holders of entry clearance granted expressly for the purpose of marriage or civil partnership will not be required to apply for the certificate of approval.

Medical Visitor

Form VAF1G [if the main reason is to receive private medical treatment].

Those seeking entry to the United Kingdom for the sole purpose of receiving private medical treatment must meet the requirements of the Immigration Rules for visitors as well as meeting the specific requirements for Special Visitors.

Although all the requirements must be met, the main points on which the immigration officer needs to be satisfied are that

a) the passenger is genuinely seeking entry for - the purpose of receiving private medical treatment;
b) that the passenger does not intend to seek free treatment under the NHS;
c) that the passenger does not represent a danger to public health (as set out in 2.10.4); that the treatment is of finite duration; and
d) that sufficient funds are available to pay for the cost of treatment and all other expenses until the treatment ends.

Where a bona fide passenger returns to the United Kingdom to continue private medical treatment after a previous stay here for the same purpose, no account need be taken of the normal 6 month time limit for visitors.

A long period of treatment, although not precisely defined, may be acceptable, provided that there is a clear need for the patient to be here to receive that treatment and he has sufficient funds.

There is no provision in the Immigration Rules for the dependant of a person admitted for private medical treatment to be granted an extension of stay beyond the normal six months maximum as for a visitor.

In some cases for example, where the person undergoing treatment is having fertility treatment, it may be appropriate to allow the dependant to remain longer than six months. Providing the

dependant can be maintained and accommodated without working and without recourse to public funds, an extension in these circumstances is permitted.

Visitor in Transit - Form VAF1H

If you will be staying in the UK for up to 48 hours before you continue your journey, you will need a 'visitor in transit' visa. If you want to stay in the UK for longer than 48 hours, you will need to apply for a visit visa. An Immigration Officer may decide to let you pass through the UK on your way to another country without holding a visa. This is known as 'transit without visa' (TWOV). It allows you to catch a connecting flight within 24 hours or, if you are on-board a ship, to stay at a UK port for up to 24 hours.

Sports Visitor - Form VAF1J [if participating in a sporting event in the UK].

You should apply under the new sports visitor category if you are coming to the UK as a sportsperson for any of the following purposes:

- a specific event, tournament, or series of events as individual competitors or as members of an overseas team (e.g. for a tour). This includes charity events, exhibition matches etc;
- as an amateur coming to join an amateur team;
- personal appearances and promotions such as book signings, television interviews, negotiating contracts or to discuss sponsorship deals;
- a trial provided that the trial is not in front of an audience, either paying or non-paying;
- short periods of training, whether as an individual or as part of a team.

Entertainer Visitor - Form VAF1K
[if participating in a recognised entertainment event or festival].

Tier 5 - Creative and Sporting is for people in those sectors coming to the UK temporarily for up to 12 months.
Tier 2 - General is for entertainers who are coming for more than 12 months.

The Immigration Rules replace the previous concessions for entertainers, which allowed them to come here for a short time without a work permit to take part in certain major arts festivals, music competitions and charity events. The intention is to enable entertainers and their encourage coming to the United Kingdom for one of these purposes to do so outside the Points-Based System. Entertainers coming to base themselves here to work will need to qualify to do so under either Tier 2 or Tier 5.

"Entertainer visitor" includes:

a) Professional entertainers coming to take part in music competitions
b) Internationally famous people coming to the UK to take part in broadcasts or public appearances provided they are not performing or not being paid.
c) Those undertaking an audition provided this is not performed in front of an audience (either paying or non-paying).
d) Amateur entertainers seeking entry as an individual performer for a specific engagement;
e) Amateur entertainers seeking entry as part of a group, such as a choir or youth orchestra coming for a specific engagement; This may include conductors, choreographers, stage managers and other non-performing staff supporting the group
f) Professional entertainers taking part in a charity concert or show where the organisers are not making a profit and no fee is to be paid to the entertainer;
g) Amateur or professional entertainer taking part in a cultural event sponsored by a government or recognised international organisation or a major arts festival included in the Permit Free Festival list.
h) Members of the technical or support staff of amateurs or professionals who are attending the same event. Examples of such staff include make-up artists, personal bodyguards and press officers;
i) Officials attending the same event as the entertainer. Examples include choreographers, and stage managers.

Permit- Free Festivals

The United Kingdom Border Agency operates a longstanding list of cultural events and festivals (Permit Free Festival List) for which participants are not required to seek entry under the Points Based System. This means of entry for certain entertainers will remain in place for 2010/2011.

Those cultural events and festivals that wish to be considered for inclusion on the list for the year 1 May 2010 to 30 April 2011 must submit their applications on or before 1 February 2010.

Amateur: In the Immigration Rules an 'amateur' is defined, for the purpose of distinguishing him from a professional who is paid a salary for participation in a creative activity, as a person who engages in a creative activity solely for personal enjoyment and who is not intending to derive a living, either wholly or in part, from it.

For practical purposes both amateur and professional entertainers may enter as entertainer visitors in the circumstances set out above. Amateurs may not receive fees and sponsorship but may receive cash prizes as well as board, lodging and living expenses.

Note: if the applicant applying for any other reason described above then he has to apply in Form VAF1A.

Employment Visa - Form VAF2 :-

Since November 2008, employers have been able to apply for a license to allow them to employ Tier 1 and Tier 2 workers. Employers will then be able to issue a certificate of sponsorship to foreign workers they wish to employ. Employers can only do this once they have a sponsorship license. They must only issue a certificate of sponsorship once they are content the employee fulfils the immigration requirements as regards skills and labour market requirements. Once the certificate is issued, the immigration authorities will be able to check the application further before issuing permission to the employee to enter or remain in the UK. The main disadvantage under Tier 2 is that you need to have a job offer from a UK-based employer who is prepared to sponsor you and that sponsor has the relevant immigration licenses. You can then apply for permission to enter or stay in the UK.

Prospective Student Visa - Form VAF3A :-

You should complete this form if you wish to come to the UK as a student, or a prospective student. If you are coming to the UK as a dependent of a student you should complete VAF3B; if you are coming as a student visitor you should complete VAF1D; if you are coming as an Academic Visitor you should complete VAF1E.

<u>Case Study 5</u>

The applicant wished to study in the UK as a student. An application was made on his behalf for a student visa. Originally the application was refused despite the applicant's confirmation that he had been accepted on a course to study within the UK which was paid for by the applicant's uncle. The entry clearance officer stated that entry was refused on the basis that there was no evidence to show that the applicant's sponsor had committed to pay for his studies and pay for the related living costs. A new application was made where the applicant provided evidence to show that funds had been transferred to a local account to assist with the applicant's costs whilst studying in the UK. On this basis the application was allowed.

Student Dependant Visa - Form VAF3B:-

In the case of AS we represented the appellants and the sponsor who came for higher studies and applied for the dependants to join him in the UK. Entire evidence of relationship, financial and accommodation documents were submitted to the British High Commission. Apart from that the sponsor satisfied that he is a prospective student in the UK. We appealed the decision and the appeal was heard. The sponsor was the witness and the sponsor's brother-in-law appeared for support witness. The appeal was allowed under Para 57 of the immigration rules. The appellants rejoined with the main student in the UK.

You should complete this form if you are coming to the UK as a dependent wishing to accompany someone entering, or already in, the UK as a student.

Settlement Visa - Form VAF4A:-

You can apply for a settlement visa in a number of ways, for example by post, by courier, in person and online. If you are applying to join family members in the UK, you should make your application in the country of which you are a national or where you legally live.

<u>Case Study 6</u>

The applicant wished to reunite with her husband after he was told by the immigration tribunal to leave and go back to his native country. A request was made to consider the applicant's spouse's entry clearance application for settlement and issue him with Leave to enter/settlement visa. Originally an application for entry clearance was refused as it was thought that the parties would

not be able to maintain themselves and any dependants adequately without recourse to public funds. The applicant and her spouse were separated for 18 months in which time their son suffered from medical issues as a result of his separation with his father. The applicant's spouse also suffered from depression due to the separation and as a result of fear of the possibility of being unlawfully arrested by the Sri Lankan army and the police. On appeal, entry clearance was allowed.

Case Study 7

The applicant wished to make an application for a family reunion. The entry visa application for the family reunion was refused. He was advised that he had a right of appeal, whereby he decided that he wished to lodge an appeal to the Asylum and Immigration Tribunal and done so enclosing the proper forms and the notice of decision. The appeal required the applicant to gather evidence (such as photos, marriage certificate and birth certificate) as the entry clearance officer decided that the evidence initially provided was not sufficient to confirm that the applicant had lived with his spouse or to show that he was related to her as he had claimed. For the appeal the applicant provided evidence to show that he and his spouse had been married. Evidence such as wedding photographs and an English-translated marriage certificate was provided. The applicant also provided evidence to show that he and his spouse were a family unit as they had children together from their marriage. The applicant is awaiting the decision of the pending appeal.

Returning Resident Visa - Form VAF4B:-

A returning resident is someone who has left the UK and has been given permission to come back again to live in the UK, with no time limit. You will qualify if:

- you were settled in the UK when you last left
- you have not been away for more than two years and you are coming back to live here permanently, and
- you did not have help from public funds to leave the UK.

If you have been away from the UK for longer than two years, you may still qualify to return to the UK as a returning resident if, for example, you have strong family ties or have lived here most of your life.

You have been away from the UK for more than two years; you must apply for a visa at the nearest British mission overseas with a visa section.

If you are travelling on a new passport that does not contain a stamp confirming that you live permanently in the UK, you should also carry your old passport or other evidence to show that you have lived in the UK before.

Similarly, if you get a new passport after returning to the UK, you should send it to the UK Border Agency so that your permission to enter or remain can be transferred to the new passport.

EEA Family Permit Visa - Form VAF5:-

European Community law gives EEA nationals a right to live and work in the UK. This is called a right of residence.

You have an initial right of residence in the UK for three months if you are an EEA national. You would lose this right of residence if you or your family members became an unreasonable burden on the social assistance system of the UK.

If you are an EEA national and you want to live in the UK for more than three months, you must be a 'qualified person'. A qualified person means an EEA national who is in the UK as:

- a jobseeker
- a worker
- a self-employed person
- a self-sufficient person (someone who can support themselves financially) or
- a student.

You do not need a work permit to work in the UK but you may need to register as a worker under the Worker Registration Scheme.

As an EEA national you do not need a visa to enter the UK; when you arrive at major UK ports and airports you should use the separate channel market 'EEA/EU' where it is available. Immigration Officers will check your passport or national identity card to make sure that it is valid and that it belongs to the same person.

Case Study 8

Mr RN is an EEA dependant living as same household with the EEA national who is exercising treaty rights in the UK. The EEA dependant is our

client, wished to sponsor his Sri Lankan wife and child, who were in India.

Unfortunately, in this case, the British High Commission in Chennai refused to accept Mrs RN's application, without any reason given. Application was made on Form VAF5.

The matter was referred to us. The application was tendered again to the British High Commission, Chennai in India with our covering letter. The application for entry visa was refused by the ECO on the ground that 'failure to produce genuine documentary evidence as requested that the applicant is related as claimed'.

We submitted an appeal on Form AIT-2 to the Asylum and Immigration Tribunal.

The appeal was dismissed and stated that Mr R.N. was a dependant of an EEA national. The applicant's husband was not an EEA national in his own right, and did not have settled status. Accordingly, there was no provision under the Immigration (EEA) Regulations 2006 for a dependant of an EEA national to sponsor a family member, and therefore the applicant did not warrant a grant of leave under the EEA family permit.

There is a difference between extended family members and qualified persons. Mr. RN. was an extended family member who was a dependant relative of an EEA member and issued with a residence permit. He was not a qualified person on his own right. An extended family member has no right to sponsor his family.

Furthermore the applicant was not a dependant relative of the EEA national although she and her child were entirely supported by Mr R. N. Therefore, an EEA national cannot sponsor the applicant and the child as a dependant relative.

As a result of the refusal to grant an EEA family permit, a complaint to the European Commission was lodged. The complaint was based on the grounds that the family were being kept apart and as a result Article 8 rights were being violated. The complaint which was lodged is still being looked into and as of yet the decision to allow the applicant and the family to live together has not been made.

Our view: In this kind of application, the EEA national should sponsor the applicant directly as a dependant relative. But, the spouse who is in the UK as a dependant relative of an EEA national should show he is still a dependant of the EEA national. If the spouse is coming from another country the person in the UK should establish that he cannot go and stay in that country [India or Sri Lanka] for some strong reason.

Direct Airside Transit Visa - Form VAF6:-

DATV nationals are visa nationals who must have a visa to pass through the UK on their way to another country, even if they are not entering the UK or changing airports. Unless they qualify for exemption from the DATV requirement, they cannot transit without visa (TWOV). If you have a DATV, you will not be able to pass through UK Immigration Control, or collect any luggage on your journey through the UK. You will not usually be allowed to stay in the UK overnight to wait for a connection to continue your journey.

If you are a DATV national the Immigration Rules for DATV nationals apply to you and you will need a direct airside transit visa, unless you qualify for exemption.

You will be exempt from the DATV requirement and may be able to transit without visa if you hold one of the following.

- A valid visa for entry to Australia, Canada, New Zealand or the United States of America and a valid airline ticket for travel through the UK as part of a journey from another country or territory to the country for which you have the entry visa.
- A valid visa for entry to Australia, Canada, New Zealand or the United States of America and a valid airline ticket for travel through the UK as part of a journey from the country for which you have the visa to another country or territory.
- A valid airline ticket for travel through the UK as part of a journey from Australia, Canada, New Zealand or the United States of America to another country or territory, as long as you do not transit (pass through) the UK on a date more than six months after the date on which you last entered Australia, Canada, New Zealand or the United States of America with a valid visa for that country.

(continued on page 70)

மலர்ந்துள்ள 'விஹிர்தி' புதுவருடத்தை முன்னிட்டு

தமிழர் நலன்புரி சங்கம் (நியுஹாம்) ஐ.ரா. வழங்கும்

பல்கலை இரவு

East Ham Town Hall 15.05.2010

--: நிகழ்ச்சிகள் :--

★ **வாய்ப்பாட்டு:** TWAN நுண்கலைக்கூட கீழ்ப்பிரிவு மாணவர்கள்
தொகுத்து வழங்குபவர் **ஸ்ரீமதி சுகந்தி ஸ்ரீனேசா**
பிரிவு 1: மயூரா உதயகுமாரன், ஆர்த்தி உதயகுமாரன், கௌசிகா புஷ்பநாதன்
துஜிதா பிரேமதாசன், ஸ்ருதி செந்தூர்ச்செல்வன், மாளவிகா
கோபாலகிருஷ்ணன், அஞ்சிதா ஐங்கரலிங்கம்

★ **வயலின் இசை:** TWAN நுண்கலைக்கூட மாணவர்கள்
தொகுத்து வழங்குபவர் **கலைமாமணி நந்தினி முத்துக்குமாரசாமி, ஸ்ரீ விஜய் வெங்கட்.**
ஸ்வராத்மிகா ஜனார்த்தனன், கார்த்திகா செல்லப்பா, மயூரா உதயகுமாரன்,
தர்சிகா தங்கராஜ், சங்கீதா சங்கர்

★ **தாளவாத்திய இசை:** TWAN நுண்கலைக்கூட மாணவர்கள்.
தொகுத்து வழங்குபவர் **பிரம்ம ஸ்ரீ.அ. நா. சோமாஸ்கந்த சர்மா**
பிரிவு 1: மதுரன் கதிர்காமநாதன், ரவேந்தன் சிவதாஸ், ராகுலன் வெற்றிவேலாயுதம்,
செல்வதர்ஷன் திருச்செல்வம், கிருஷ்ணா சச்சிதானந்தம், பெனார்த்தன் பெனடிக்ற், ரிஷிகேஷ் கதாதரன்,
அருள்ராம் நடராஜலிங்கம், சிவஷான் விக்கினேஸ்வரன், தாருஜன் சிவதாஸ், தனுசன் சிவதாசன்.

★ **வீணை இசை:** TWAN நுண்கலைக்கூட மாணவர்கள்
தொகுத்து வழங்குபவர் **ஸ்ரீமதி சேய்மணி ஸ்ரீதரன்**
பிரிவு 1: காஞ்சனா கேதீஸ்வரன், தர்னேகா சண்முகராஜா, மாதினி தியாகராஜா, வேணுகா ரவீந்திரன்
பாடகர்கள்: பாரதியநேயன் ஸ்ரீதரன், சதுர்சன் தனேஸ்வரன்

பிரிவு 2: ராஜீவ் ரகுதாஸ், சாயினி ரவீந்திரன், அபிநயா ஞானவடிவேல்,
அபிராமி ஞானவடிவேல், பிரியந்தா பாஸ்கரதாசன்
பாடகர்கள்: சஞ்ஜிகா கங்கதேவன், கார்திகா மகேந்திரன்

★ **பரதநாட்டியம்:** TWAN நுண்கலைக்கூட மேற்பிரிவு மாணவர்கள்
தொகுத்துவழங்குபவர் **பரதநாட்டிய கலைமாமணி ஸ்ரீமதி.ரு சோமசுந்தரம்**

புஸ்பாஞ்சலி - தீபநடனம்: பார்கவி பவகரன், அக்ஷயா வசந்தகுமார், நிவாசினி கோபாலகிருஷ்ணன்
ஸ்ருதி கஜேந்திரா, ஆரபி மோகன், ஹரிணி சதீஸ்குமார், சாமினி ஜெயரங்கன், கவிஸ்னா சிறீஹரன்,
நித்யஸ்ரீ பாலகிருஷ்ணன், பானுஷா பவகரன், ஹிஷினி சின்னய்யா, டியந்தா சிவலிங்கம்,
எருஸ்னா ஈஸ்வரன் பவாஹரன், ஹிஷினி சின்னய்யா,
எருஸ்னா ஈஸ்வரன், பிரீத்திகா கணேஷபாலன், லதுஸ்னா சிவராஜ், ஜானிகா வசந்தகுமார்,

தோடைய மங்களம்: ஸ்வராத்மிகா ஜனார்த்தனன், சுபாங்கினி சந்திரகாந்தன்,
லக்ஷானி சுப்பிரமணியம், ஆயிஷா சனெல் ஹீக்கியங்கே, லக்ஷிகா ராஜநாயகம்

நடனம்: "சின்னஞ்சிறு கண்ணன்" லக்ஷனா நந்தகிரி, சாயித்தன்யா கோபாலகிருஷ்ணண்,
அவலின் றொபேட், அஸ்விதா பவானந்தன், றிஷாலி பாலதேவன், சாருஸா செல்வராஜா,
துஷிகா தர்மராஜா, பபிஷா பவகரன், அஸ்மேதா விக்கினேஸ்வரமூர்த்தி,
பாவிஷ்ஷா மகாதேவன், கரிஸ் ஜெயகணராஜா.

★ **கொலிவுட் நடனம்:** TWAN நுண்கலைக்கூட மாணவர்கள்
தொகுத்து வழங்குபவர் **திருமதி மசீடா உஸ்மான்**
சாகித்தியன் சிறிதரன், சாத்விகன் சிறிதரன், சனத் சுதாகரன், சானெல் சூரிய குமார், டியந்தா சிவலிங்கம்,
ஹம்சா செங்கதிர்ச்செல்வன், றோன பிரதீகரன், றொசெல் பிரதீகரன், ஹெண்ணா கொநேரு, ஹரினி
சிவகணேசன், பிரவீன், ஆர்த்தி சிவகுமார், பிறீ சிவகுமார், சஞ்சியா ராஜேந்திரன், ரவிகா விக்னேஸ்வரன்,
லக்ஷன் சர்வேஸ்வரன், சுஜேய் பாஸ்கரநாதன், மதீபன் பாஸ்கரநாதன், சிவகுமார் கபிலன்,
அஸ்சங்கன் அரவிந்தன், சஞ்ஜயன் அரவிந்தன்.

★ **"லிட்டில் லயன்" நடனக் குழு**

லிபி நாயர், நிலேஷ் நாயர், அகில் ஜோய், காயத்திரி ஜோய்,
கோபிகா ஜோய், நேகா நிகாஸ் ராவுத் அக்கேஸ் அசோக்குமார், அஞ்ஞலி
கமபாலன். ஸ்ரீகுற்றன் வேணு, ஷியோன் சாலிவ், ஷன்ரல் சாலிவ்,
ஹரிஷ் தயாபரன், அஸ்னிதா தயாபரன், ஹரிஸ்மா நாயர் சமீரா உஸ்மான்.

★ **வாய்ப்பாட்டு:** TWAN நுண்கலைக்கூட மாணவர்கள்
தொகுத்து வழங்குபவர் **ஸ்ரீமதி சுகந்தி ஸ்ரீனேசா**

பிரிவு 2 : ராகவி மோகன், ரம்யா ராஜலிங்கம், அஸ்மிதா தயாபரன், ஹரிஷ் தயாபரன், ஜபிதா பிரேமதாஸன், ராஜீவ் ரகுதாஸ், சங்கீதா சங்கர், அபிராமி ஞானவடிவேல், அபினயா ஞானவடிவேல், தணிகைக்குமரன் பாலகுமரன், சிவகாமி பாலகுமரன், பிரியங்கா இளங்கோ, கவிதா கார்த்திபநாதன்

★ **மிருதங்கம் இசை:** TWAN நுண்கலைக்கூட மாணவர்கள்
தொகுத்து வழங்குபவர் **ஸ்ரீ அ நா.சோமாஸ்கந்த சர்மா**

பிரிவு 2 : மிதுன் விஜயராஜா, அஸ்வின் கோநேரு, கிருபன் கமலராஜன், கீரன் கமலராஜன், மதீபென் பாஸ்கரநாதன், சீதாராம் சீதாமோகன், கபிலாஷ் திருச்செல்வம், தரன் திருச்செல்வம், நிலக்ஷன் சாந்தகுமாரன், ஹரிஷ் தயாபரன், லோஜன் சிவச்செல்வம்,
சயந்தன் குணநாதன், நிரேஷ் ஸ்ரீநேஷா.

★ **வீணை இசை:** TWANநுண்கலைக்கூட மாணவர்கள்-தொகுத்து வழங்குபவர் **ஸ்ரீமதி சேய்மணி ஸ்ரீதரன்**

பிரிவு 3: தூரிகா ரவீந்திரன், கலைவாணி பரமேஸ்வரன், நீர்த்திகா பரம்சோதி,
கீர்த்தனா விக்னேஸ்வரதாசன், மைதிராயி குருபரன்
பாடகர்கள்: சஞ்ஜிகா கங்கதேவன, கார்திகா மகேந்திரன்

★ **பரதநாட்டியம்:** TWAN நுண்கலைக்கூட மேற்பிரிவு மாணவர்கள்.
தொகுத்து வழங்குபவர் **பரதநாட்டிய கலைமாமணி ஸ்ரீமதி.ரு சோமசுந்தரம்**

கரகம்: ரம்யா ராஜலிங்கம், ஸ்ருதி செந்தூர்ச்செல்வன், ஹசிகா காசிநாதன்,
சுஸ்மிதா ஜெயபால், கவிதா கார்த்திபநாதன்,சௌம்யா சிவகுமார், யாதவி திருக்குமரன்,

கோலாட்டம்: துர்க்கா சுந்தரமூர்த்தி, தர்ஷிகா சுந்தரமூர்த்தி, கிரோஷிக் மோகன்,
சிவானிக்கா மோகன்,லக்மீகா றக்சாபரநம், ஓவனி சீருகம், அஞ்ஞலி துலிபாலா,
பிறீ சிவகுமார், சமியா சிவசுதன், ஆன் விவேகா பியோ, வாரண்யா வாரணச்சந்திரன்,
சரண்யா ஜெயகணராஜா, வைஸ்னா தனேஸ்வரன்,
தபானியா சிறிதரன், சாரங்கா மதியுகா, யதூஷா பீதாம்பரம்,அபிஷா ஜீவராஜன்

★ **கொலிவுட் நடனம்: "லெப்" நடனக் குழு** - தொகுத்து வழங்குபவர் **திருமதி மசீடா உஸ்மான்**

அலெக்சாந்திரா ஸ்ரனிஸ்லோஸ், வுளோறா ஸ்ரனிஸ்லோஸ்ச ஆஸில், அகமட்,
நிரோமிலா நடராஜன், பிரசன்னாவதனன் சிவரூபன், சிந்து சிறீதரன், மார்க் ஷீகரன் பிரபாகரன்,
பிரிஷாஹி பிரபாகரன், ஜெனிபர் பிரபாகரன், வெரின்டா வேணு, ஷின்னீரா உஸ்மான்,
பூர்ணிமா லெட்சுமணன், ஹீரன் நாயர், கிருஷ்ணராஜா செல்வராஜா, மனீஷா ஜெயபாலன்,
மாதங்கி சிவரூபன். ஏமி மிரன்டா,சுமயா மியா.

★ **தமிழர் நலன்புரிச் சங்க உறுப்பினர்கள்**

திருமதி திரிபுரசுந்தரி கணேசரத்தினம், திருமதி பத்மாதேவி கணேசலிங்கம், திருமதி சரஸ்வதி முருகேசு, செல்வி பிரேமதாசன், திருமதி சுந்தரி, செல்வி லக்ஷிகா ராஜநாயகம், செல்வி பென்ஜி பெனடிக்ற்,

கிட்டார்: TWAN நுண்கலைக்கூட மாணவர்கள். - தொகுத்து வழங்குபவர்: **ஸ்ரீ. தயாளன்**

கிட்டார்: ஸ்ரீபன் மகேபதேவன், குரு அமிர்தலிங்கம், ஹம்தேவ் அமிர்தலிங்கம், ஜதுர்ஷன் பகீரதன். பெனர்ாதத்ன் பெனடிக்ற், சாகித்யன்ஸ்ரீதரன் சம்யுக்தா சாகித்யன் சிறிதரன்

ரம்ஸ் வாத்திய இசை: ஸ்ரீபன் மகேபதேவன் ராபேல் டானியேல்.கெறகன் ரவிகரன்

★ **சினிமாரிக் நடனம்:** நடனம் **"லாப்"** குழு - தொகுத்து வழங்குபவர் **திருமதி மசீடா உஸ்மான்**

அலெக்சாந்திரா ஸ்ரனிஸ்லோஸ், வுளோறா ஸ்ரனிஸ்லோஸ்ச ஆஸில் அகமட், நிரோமிலா நடராஜன், பிரசன்னாவதனன் சிவரூபன், சிந்து சிறீதரன் மார்க் ஷீகரன் பிரபாகரன், பிரிஷாஹி பிரபாகரன், ஜெனிபர் பிரபாகரன்,வெரின்டா வேணு, ஷின்னீரா உஸ்மான், பூர்ணிமா லெட்சுமணன், ஹீரன் நாயர், கிருஷ்ணராஜா செல்வராஜா, மனீஷா ஜெயபாலன், சுமயா மியா. ஏமி மிரன்டா

Tamil Welfare Association (Newham) UK Presents
"Vihirthi" Tamil New Year

Cultural night

15.05.2010

Programme

★ **Vocal:** Junior Student of TWAN Fine Arts Academy
Presented by **Smt. Suganthy Srinesa**

Group 1: Mayura Uthayakumaran, Arthi uthayakumar , Gowsika Pushpanathan, Thugitha Premathasan, Surthi Senthurchelvan, Malaviga Gopalakrishna, Ainjita Aingaralingam

★ **Violin:** Student of TWAN Fine Arts Academy
Presented by **Kalaimamani Nandhini Muthuswamy and Sri Vijay Venkat**

Group1: Swarathmiha Janarthanan, Karthika Chellappa, Tharsiga Thanarajah, Mayura Uthayakumar, Sangeetha Shangar

★ **Miruthangam:** Student of TWAN Fine Arts Academy
Presented by **Sri. A. N. Somaskanda Sarma**

Group1: Mathuran Kathirgamanathan, Reveanthan Sivathas, Ragula Vettivelayutham, Celvatharsan Thiruchelvam, Kirishana Sachithanandasivam, Benarthan Benedict , Rishikesh Kathatharan, Arulram Nadarajalingam, Sivashan Vigneswaran Tharujan Sivarajah, Thanushan Sivathas.

★**Veena:** Student of TWAN Fine Arts Academy - Presented by **Smt. S. Sritharan**

Group1: Kajana Ketheeswaran, Tharneka Shamugarajah, Mathini Thiraviyarajah, Venuga Baveendran.
Singers: Bharathieneyan Sritharan, Sathursan Thaneswaran

Group :2 Rajeevi Raguthas , Shaiyini Ravindran, Apinaya Gnanavadivel, Apiramy Gnanavadivel, Preyanatha Pasgarathasan.
Singers: Sanjeeka Gangathevan , Karthika Mahendran

★ **Bharathanathiyam** Student of TWAN Fine Arts Academy
Presented by: **Barathanatyakalamamani Mrs.R. Somasundram**

PUSHPANCHALI DANCE: Bhargavi Bavaharan,Akshaya Vasanthakumar, Nivashini Gopalakrishan, Sruthy Kajenthira,Aarabhi Mathan , Harienee Satheeskumar,Sharmini Jayarangan, Kaveshina Srigaran,Nithyashree Balakrishnan, Banusha Bavaharan, Hisiny Sinnajya,Diantha Sivalingam,Erusana Easwaran,Preithica Ganeshabalan, Lathusana Sivaraja,Jaanikha Vasanthakumar,Haripran Raguthas.

THODAYA MANGALAM: Swarathmiha Janarthanan,Chuphangini Chandrakanthan, Ayeshashanel Geekiyanage,Luxshani Subramaniyam,Luxsika Rajanayagam

KANNAN DANCE

Lakshana Nanthagiri, Saithanya Gopalakrishanan, Evelyn Robert, Ashvitha Bhavananthan, Rishalee Baladevan, Sarujaa Selvarajah, Thusiga Tharmarajah, Babisha Bavaharan, Asmetha Vigneswaramoorthy, Bavisja Mahadevan,Gharish Jeyaganerajah

★ **Kollywood** Dance TWAN Fine Arts Academy - Choreographer-**Marshida Usman**
Saakithyan Sritharan,Saathviihan Sritharan,Shanath Suthakaran,Shannel Sooriyakumar, Diantha Sivalingam,Kamsha Sengathirselvan,Rohan Piratheekaran, Rochelle Piratheekaran, Hannah Koneru,Karene Sivaganeshan,Praveen, Athiree Sivakumar, Pree Sivakumar, Sunsciya Rajendran,Revika Vickneswaran, Lukshan Sharveswaran,Sujay Bhaskaranathan, Matheeban Bhaskaranathan, Sivakumar Kabilan, Ashandhan Aravinthan, Sanjayan Aravinthan

★ **Kollywood:** Dance Little Lions Dance Club - Choreographer-**Marshida Usman**
Libi Nair,Nilesh Nair,Akhil Joi,Gayathri Joi,Gopika Joi,Neha Nihas Rawther, Akshay Asok Kumar,Anjali Kamapalan,Sreekuttan Venu,Schion Saliv,Schantal Saliv,
Harish Thayaparan,Ashmitha Thayaparan.Karishma Nair,Kishore Nair, Zameera Usma.

★ **Vocal :** Junior Student of TWAN Fine Arts Academy
Presented by **Smt. Suganthy Srinesa**

Group 2: Raagavi Mohan, Ramiya Rajalingam, Ashmitha Thayaparan, Harish Thayaparan, Jabitha Premathasan, Rajeevi Raguthas, Shankeetha Shankar,Apiramy Gnanavadivel, Apinnaya Gnanavadivel, Thanikaikumaran Balakumaran, Sivahami Balakumaran, Preeyenha Elango, Kavitha Karthibanathan.

★ **Miruthangam:** Student of TWAN Fine Arts Academy
Presented by **Sri. A. N. Somaskanda Sarma**

Group2: Mithun Vijayarajah,Asvin Koneru, Kiruben Kamalarajan,Keeran Kamalarajan, Matheeben Baskaranathan,Seetharam Seethamohan,Kapilaash Thiruchelvam,Daran Thiruchelvam, Nilaksan Santhakumaran,Harish Thayaparan, Lojan Sivachelvam,Sayanthan Gunanathan,Niresh Srinesha.

★ **Veena:** Student of TWAN Fine Arts Academy - Presented by **Smt. S. Srithar**

Group:3 Dhurrika raveendran, Kalaivani Parameswaran,Nerthika Paramsothy,Keerthana Vigneswarathasan,Maithyrayi Kuruparan.

Singers: Sanjeeka Gangathevan , Karthika Mahendran

★ **Bharathanathiyam:** Student of TWAN Fine Arts Academy
Presented by: Barathanatyakalamamani **Mrs.R. Somasundram**

KARAGAM: Ramiya Rajalingam, Sruthy Senthurselvam,Kasika kasinathan, Sushmith Jayapal, Kavitha Karthibanathan, Souwmya sivakumar, Jathavi Thirukumaran, Luxshani Subramaniyam .

KOLADDAM: Tharuga Suntharamoothy,Darshiga Suntharamoorthy,Kirosik Mohan, Shiwanikaga Mohan,Lucmea Raxaparanan,Ovani Seerugum, Anjali Dhulipala, Pree Sivakumar, Samina Sivasuthan , Anne Viveka Peo, Varanaja Varnachandran, Saranya Jeyaganerajah, Vyshna Thaneswaran, Thapaniya Sritharan, Sharanga Mathiuyga, Jathusa Peethamparam., Abisha Jeevarajan.

★ **Kollywood Dance:** 'Lab Dance Club' - Choreographer - **Marshida Usman**
Alexandre Stanislaus,Flora Stanislaus,Aazil Ahmed,Niromila Nadarajan,Sinthu Sridharan, Marc Scheran Prabaharan,Prischahi Prabaharan,Jennifer Prabaharan, Vrindha Venu Zineerah Usman,Pooranima Letchumanan ,Kieran Nair, Kirusnaraja Selvaraja,Manishah Jayabalan ,Amy Miranda,Sumayya Miah.

TWAN DAY CENTRE ELDERS

Mrs. Thiripurasundary Ganesaratnam, Mrs. Pathmathevi Ganesalingam, Mrs Saraswathy Murugesu,Miss Luxsika Rajanayagam,Miss Benedict Banjy.

★ **Thabla and Guitar:** Student of TWAN Fine Arts Academy - Presented by: **Sri Thayalan**

Guitar Students : Stephen Mahebadevan, Guru-Nitheeshkumar Amirthalingam, Hemdev Nitheeshkumar Amirthalingam., Jathushan Baheerathan, Benarthan Benedict.

Drums Students : Stephen Mahebadevan, Peniel Rafants.Heiragan Ravikaran

★ **Cinematic** Dance Lab Club - Choreographer-**Marshida Usman**
Alexandre Stanislaus,Flora Stanislaus,Aazil Ahmed,Niromila Nadarajan, Sinthu Sridharan, Marc Scheran Prabaharan,Prischahi Prabaharan,Jennifer Prabaharan,Vrindha VenuZineerah Usman, Pooranima Letchumanan ,Kieran Nair,Kirusnaraja Selvaraja,Manishah Jayabalan, Sumayyamiah ,Amy Miranda

- A valid USA I-551 permanent resident card issued on or after 21 April 1998.
- A valid Canadian permanent resident card issued on or after 28 June 2002.
- A valid common format category D visa for entry to an EEA state - see our 'EEA and Swiss nationals' leaflet for a list of EEA states.
- A valid common format residence permit issued by an EEA state under Council Regulation (EC) number 1030/2002.
- A diplomatic or service passport issued by the People's Republic of China.
- A diplomatic or official passport issued by India.
- A diplomatic or official passport issued by Vietnam.

Right of Abode Visa - Form VAF7:-

The right of abode means that you are entirely free from United Kingdom Immigration Control. In other words, you do not need to get permission from an Immigration Officer to enter the UK and you can live and work in the UK without restriction. All British citizens have the right of abode in the UK, along with certain other Commonwealth citizens, and citizens of certain other countries.

You will have become a British citizen on 1 January 1983 (the date on which the British Nationality Act 1981 came into force) and so will have the right of abode in the UK if, immediately before that date, any of the following applied to you.

1. You were a citizen of the United Kingdom and Colonies and you have UK citizenship because you were born, adopted, naturalised or registered (with some exceptions) in the United Kingdom.
2. You were a citizen of the United Kingdom and Colonies and your parent (see note 3 below) was, at the time of your birth or legal adoption, a citizen of the United Kingdom and Colonies by being born, adopted, naturalised or registered in the United Kingdom.
3. You were a citizen of the United Kingdom and Colonies and your parent qualified for the right of abode under 2 above.
4. You were a citizen of the United Kingdom and Colonies at any time before 1 January 1983, and had been living in the UK for five continuous years or more without a break. During that period, you met all the terms of the immigration laws and, at the end of that period; you did not have any time limit on your stay.
5. You were a citizen of the United Kingdom and Colonies and were then, or had previously been, the wife of a man with the right of abode in the United Kingdom.

You will also be a British citizen if:

- you were born in the United Kingdom after 31 December 1982 and one of your parents was then a British citizen or legally settled in the United Kingdom
- you were born outside the United Kingdom after 31 December 1982 and at the time of your birth one parent was a British citizen other than by descent (for example, by naturalisation, registration or birth), or
- you were registered or naturalised as a British citizen after 31 December 1982. You will have the right of abode as a Commonwealth citizen if you have been a citizen of a Commonwealth country up to 1 January 1983 and, immediately before that date:
- you were a Commonwealth citizen with a parent who, at the time of your birth or legal adoption, was a citizen of the United Kingdom and Colonies and had their citizenship by being born in the United Kingdom, or
- you were a Commonwealth citizen and are, or were, the wife of a man with the right of abode in the United Kingdom.

Pakistan and South Africa were not part of the Commonwealth before 1 January 1983 and their citizens have no right of abode under this provision.

Points Based System

Due to the current immigration system being accused of not being manageable, the new points based system will bring a 'managed migration' programme, as it is alleged to be a simplification of the immigration system. The points based system does not apply to European Union (EU) or European Economic Area (EEA) nationals as they will continue to be regulated by existing immigration rules.

The points based system applies to anyone wishing to enter/remain in the United Kingdom, for the purposes of employment, training or for study.

There are currently 5 tiers of the point based system.

- Tier 1 - for highly skilled individuals, who can contribute to growth and productivity
- Tier 2 - for skilled workers with a job offer, to fill gaps in the United Kingdom workforce
- Tier 3 - for limited numbers of low-skilled workers needed to fill temporary labour shortages
- Tier 4 - for students
- Tier 5 - for temporary workers and young people covered by the Youth Mobility Scheme, who are allowed to work in the United Kingdom for a limited time to satisfy primarily non-economic objectives
  Under the system, to qualify under your selected tier you must score minimum points for that tier. If you can not meet the basic points you will not qualify. If the applicant scores points for each category in the tier for which they have applied for, they must provide evidence to substantiate their claim to the points.

Tier 1

Tier 1 is designed to attract people whose skills will contribute effectively to productivity in the economy, for instance entrepreneurs, innovators, scientists and self employed persons to set up a business in the United Kingdom. Under the old system which was called the 'High Skilled Migrant Programme' (HSMP) will now come under Tier 1 General - Highly skilled migrant instead. Tier 1 applicants will generally be expected to generate wealth for the United Kingdom because of their special skills and expertise. Tier 1 applicants do not need to show a secure job offer.

People who come into this category will have an opportunity to settle in the United Kingdom and also eventually have their dependant family members join them, for the purposes of settlement. Under the new system there will be only a one stage process for Highly Skilled Migrants, instead of the current two stage one. English language fluency is also a requirement for Tier 1 applications: however unlike the old system applicants can submit a range of evidence to support their claim to English fluency. Under the new rules the English Fluency must be equal to C1 of the Council of Europe's Common European Framework for language Learning.

Categories coming under tier 1:

- Highly skilled workers
- Tier 1 (general) migrant (i.e. retired person of independent means)
- Investor
- Entrepreneur
- Participant in the fresh talent: working in Scotland Scheme
- Participant in the International Graduate Scheme (or the pervious Science and Engineering Graduates Scheme, under the old rules)
- Post graduate Doctor or Dentist (emphasis on post-graduate)
- Student
- Student nurse
- Student re-sitting exams
- Student writing up a thesis
- Work permit holder

Case Study 9

(TWAN R171)

In this case the applicant wished to make an application under Tier 1. He believed he qualified under the criteria of the Highly Skilled Migrant scheme for the reason that he is an Administration and Finance Assistant working with the United Nations in Sri Lanka. The applicant is also a proprietor of an institution and his self-employed earnings are equivalent to just over £10,000. He also had a Masters degree which earned him 35 points. The application was refused as he scored a total of 50 points and therefore did not meet the terms of the Highly Skilled Migrant Programme (HSMP) qualifying criteria. In the old points based system the qualifying criteria are that individuals must provide the specified required evidence to demonstrate that they score 75 points in the HSMP scoring areas: and provide the specified required evidence to demonstrate appropriate English language ability. The Home Office stated that sufficient specified evidence was provided to show that the client meets the English Language ability requirement but failed to provide sufficient evidence to show that he scored 75 points. A Reconsideration application was lodged on behalf of the applicant to review the decision, as it was believed that the points given to past earnings were incorrect. Despite independent review by the Home Office the decision was upheld.

Tier 2:

Tier 2 will capture people who are coming to the UK to basically fill labour shortages; for instance, teachers, nurses and related occupations. Tier 2 incorporates applicants with work permits for occupations where there are no skilled shortages of labour in the United Kingdom economy. To qualify under this category, applicants must have a firm job offer in a listed shortage occupation and the employer must demonstrate that the vacancy could not be filled by a United Kingdom or EU national.

Similarly to Tier 1 applicants, people who come into this category will have an opportunity to settle in the United Kingdom. They may have an opportunity to have their families (dependants) settle in the United Kingdom with them.

If someone comes under the Tier 2 category and wishes to change employer s/he will need permission from the Home Office. If permission is granted then s/he can switch employers.

The work permit categories under the old system will be replaced by the new points based system. So work permits for Training and Work Experience Scheme (TWES), Sector Based Scheme (SBS), Student Internships, General Agreement on Trade in Services (GATS), Business and Commercial, and Sports and Entertainment will be absorbed under Tier 2.

Categories coming under tier 2:

- Skilled workers with a definite job offer in a shortage occupation
- Employer must be an approved sponsor
- Applicant will not be awarded points for skills or salary
- The Skills Advisory Board will draw up a list of shortage occupations
- There will be no requirement for employers to demonstrate that their recruitment process covered the United Kingdom or European Economic Area (EEA)

OR

- Skilled workers with a definite job offer; not in shortage occupation
- Employer must show that s/he attempted to recruit form within the United Kingdom or the European Economic Area (EEA) before looking overseas for staff
- Employer must be an approved sponsor
- Additionally the applicant has to demonstrate a range of factors, including skills

Case Study 10 (TWAN K215)

The main applicant arrived in the UK by renewing his visa under the Minister of Religion. He wished to sponsor his wife to come to the UK to stay with him as a spouse of Minister of Religion. The applicant needed to show that he would be able to accommodate his spouse and provide all financial support and other needs without recourse to public funds. Unfortunately, the applicant's spouse was refused an entry clearance visa.

Application was refused on the following grounds. The necessary documents were not included to prove what she said in her application, and she failed to demonstrate that her relationship was still subsisting. There was also a failure to prove that free accommodation was provided, and failure to prove spouse's income. The applicant lodged an appeal on the following grounds; the applicant provided evidence such as his passport photocopy which confirmed his arrival and departure of his visit to see his spouse in India. To show that their relationship is still subsisting, the applicant provided evidence of his contact. The evidence consisted of emails and a copy of a telephone log. To prove the spouse's income, bank statements were submitted and a letter from the sponsor's employer was provided to show that they were willing to provide accommodation for his spouse at no extra cost. The applicant withdrew the appeal as the Home Office later granted the Ministers' wife entry visa.

The application was based under the old points based system where the application was refused as the applicant's sponsorship license was refused so the client was unable to submit a sponsorship license. As a result the applicant's chance of success was less than 50%. The applicant was thus advised to make another application by providing sponsorship license form another sponsor. On this basis the Home Office granted the visa for fresh application accompanied by sponsorship licence.

Tier 3:

Tier 3 is designed to attract people who can step in and fill temporary labour shortages where low

skills are needed. Areas governed by Tier 3 include the agricultural industry and also the hospitality and hotelier areas. Under the old system employers could fill vacancies with foreign nationals.

Nationals falling under this category will generally be expected to return to their country of origin. They will not normally be allowed to settle in the United Kingdom and will not be permitted to switch over to other tiers. Employers will be expected to look to the United Kingdom labour market to fill any posts they have and then the EU. Only then will they be expected to look overseas. If nationals from abroad are absorbed into tier 3, then their country of origin must show an effective returns policy.

Tier 4:

Tier 4 speaks for itself: 'students', however, postgraduate students have been reclassified under the new system and will come under Tier 1. Under the old system if a student was intending to come to the United Kingdom for the purposes of study, the applicant had to show an offer from a bona fide educational establishment. Once in the United Kingdom the applicant could switch to another establishment. Under the new rules this may not be possible. Applicants under this tier will need to show a sponsorship certificate.

Tier 4 applicants will generally be expected to return to their country of origin. They will not normally be allowed to settle in the United Kingdom. However, their dependants will be able to join them. Students can continue to engage in employment as permitted under the old rules. Their dependants, however, may not engage in employment unless the student has completed 12 months in the United Kingdom.

Students will not generally be permitted to switch over to other tiers. However, the Government may absorb postgraduate students into the labour marketplace; therefore there may be scope for students to switch to other tiers.

In-country applications can be made where an applicant wishes to apply for an extension of leave. However, there will be no requirements to make a fresh application if the applicant wishes to switch courses within the sponsoring institution.

Categories coming under tier 4:

- Students generally
- Students under the age of 18
- Study through work placements

Case Study 11 (TWAN R190)

The applicant had enrolled on and studied MSc in Medical Physics Course at the University of Leeds, where he passed all his modules. He decided to continue studying so an application was made on behalf of the client to extend his student visa. The Home Office granted an extension to his student visa and the client was provided with an Identity Card for Foreign Nationals (ICFN). This card holds the client's biographic and biometric information and shows their immigration status and entitlements while he remains in the United Kingdom.

Case study 12 (TWAN N129)

The applicant came to the United Kingdom to study at the London City College. The applicant passed all her modules and wished to continue studying in the UK so a Tier 4 application to extend her student visa was made on her behalf. To extend her visa she had to provide a completed application form named Tier 4 two passport sized photographs of herself, her passport, a letter from her sponsor, with her sponsor's passport copy, payslips and Bank Statements. She had to provide a visa letter from her university, her bank statement and certificates from her university confirming she passed her modules. She must maintain £800.00 in her bank account in addition to her course fees. Her application was refused on the following basis: the Secretary of State was not satisfied that the applicant's closing balance met the required amount needed and one of the statements was not endorsed by the issuing bank. As a result the applicant was awarded 10 points out of a possible 40; consequently she was not gaining enough points to suggest maintenance. An appeal was lodged against the decision, whereby the following reasons were provided as reasons for the appeal: Firstly, the decision was contrary to the immigration rules HC 395 - Para 85-86 related prospective student visa extension requirements; secondly the decision breached the appellant's fundamental rights to have an education; and thirdly the decision was contrary to European Directive as removing the applicant would breach Article 8 of the ECHR, as it would

breach her right to have an education. The applicant's appeal was allowed.

Tier 5:

Tier 5 is an ad hoc category. It captures people who come to the United Kingdom generally for non economic reasons and for cultural purposes, for a fixed amount of time. Under this category you will find temporary workers and young people aged between 18 and 30 years.

Nationals under this category will be expected to return to their country of origin at the expiration of their leave. They will not be allowed to settle in the United Kingdom and will not be permitted to switch over to the other tiers. Emphasis is on cultural exchange, holiday making and tourism, and also covers temporary work.

This tier replaces an ad hoc list of categories found under the old rules including:

- Working holiday makers cultural exchange schemes
- Entertainers and musicians
- Ministers of religion
- Some work permit categories that came under the old system, for instance, the Training and Work Experience Scheme (TWES)
- Au Pairs (except for Romanians and Bulgarians)
- Gap year students
- Voluntary workers
- Domestic Workers in diplomatic households
- Graduate schemes (i.e. with China/Japan)

Categories under Tier 5:

- Voluntary i.e. charity and humanitarian related work, leave = 12 months
- Religious i.e. ministers who act as pastors, maximum duration of leave = 24 months
- Creative and Sporting, maximum duration of leave = 12 months
- International agreements i.e. includes diplomatic households, maximum duration of leave = 24 months

Fresh Claims and Human Rights Claims

Most of our clients were entitled to make fresh/ human rights (HR) claim after exhausting their right of appeal. The appeals were exhausted because of the various reasons. A fresh claim could be lodged due to the deteriorating country situation or due to individual's new fear of persecution.

Nature of Fresh Claims

One reason a fresh claim can be made is the emergence of new evidence that was not available to the Asylum Seeker at the time the claim for asylum was made and at his or her appeal stage. When the claimant is later able to obtain new evidence after he has been refused asylum, this evidence can be used as the basis for a fresh claim. The changes in submitting the fresh claim is given below and the people must submit the fresh claim according to the new rules and policy instructions. Cases handled under the New Asylum Model (NAM) are fast tracked meaning that decisions are made before the claimant has had the opportunity to get hold of evidence that may bolster their case. Their only remaining recourse is to submit a fresh claim once they have obtained new evidence.

After an asylum claim has been refused, there may well be change of circumstances in the country situation that makes it impossible for the claimant to return. Many people who have been refused asylum may find it impossible to return due to the deteriorating situation in the country of origin. If the situation would have been continued a decision has been made and deserves to have their position reassessed in light of this by way of a fresh claim.

Where an asylum claim has been refused and removal has not been implemented for administrative reasons, the delay will result in the failed Asylum Seeker accumulating more reasons to make a fresh claim. This is particularly true of Article 8 claims, as they are likely to form bonds of family and establish a home life whilst staying in the UK. Administrative complications also give rise to fresh claims where internal flight is concerned. There are a number of impracticalities involved with relocating failed Asylum Seekers from the North and East of Sri Lanka to Colombo where they face further hardships and are often obstructed by the State.

Recent changes in case law concerning fresh claims, such as the landmark decision in LP, have also led more people to lodge fresh claims.

Fresh Claims in the context of Sri Lanka

In recent years fresh claims have become more popular among the Sri Lankan Tamil community. There are various reasons for this such as the volatile nature of the country's situation as a result of the civil war. Asylum Seekers whose claims have failed may be unable to return to Sri Lanka due to a sudden change in circumstances in the country and will lodge a fresh claim to avoid returning to unendurable conditions. We could see an increase in the number of fresh claims after the escalation of the war at the beginning of 2009, the destruction of much of the North and the subsequent inhumane treatment of thousands of Tamils.

During the peace process between 2002 and 2006 Sri Lanka was placed on the Home Office's "White List" and asylum claims by Sri Lankan Tamils were subject to the fast track procedure and the clients were detained at Oakington reception centre. Claimants did not have sufficient time to gather evidence to support their claim and no right of appeal which led to a vast number of failed asylum claims. The Home Office could be said to have acted prematurely in determining the situation in Sri Lanka to be one that no longer posed a threat of persecution to Tamils. This presumption was eventually shown to be unfounded once the Home Office gave regard to relevant case law and documentary evidence detailing human rights violations against Tamils and Sri Lanka was subsequently removed from the White List in 2007. From January 2007 onwards there was a deluge of fresh claims brought by failed asylum seekers who had exhausted their appeal rights in the preceding years.

Another reason for the abundance of fresh claims brought by Tamils is the tendency of decision makers to rely too heavily on the Home Office country information reports when judging asylum claims. These often fail to reflect the true situation in Sri Lanka as they are compiled by researchers based in Colombo who have little concrete knowledge of conditions in the North and must themselves rely on second hand accounts of the situation in these areas. The reports are then sent to embassies and forwarded to the Home Office without much verification of the facts. The decision makers' dependence on these inaccurate documents leads to failed asylum claims and the need for more fresh claims to be lodged.

The decision making process in the UK is also flawed in itself in that it is not in line with European Human Rights law or the wider principles of International law as laid out in the UN Refugee Convention. This is evident from the large number of cases whose decisions have been overruled by the European Court of Human Rights.

The decision in LP

In the case of LP, an important decision was made concerning a failed Asylum Seeker who was refused asylum because of his former links with the LTTE and who was internally relocated to Colombo. In an appeal decision, made in August 2007, it was stated that Tamils in Colombo were not at risk per se of serious harm from the authorities but certain factors could increase the risk, including being a suspected or actual member of the LTTE, returning from London or another centre of LTTE fundraising, and making an asylum claim abroad. It was also remarked that although a person is unable to show that he is at real risk in his home area and therefore not a refugee, he may be able to claim humanitarian protection or succeed under Article 3 if he can show that he will be at risk in the part of the country to which he will be returned. This decision gives hope to many failed Asylum Seekers with similar stories that they may succeed when bringing fresh claims.

Relevant Immigration rules and the Home office Policy instructions in relation to fresh claim.

The legal test used to determine whether a fresh claim has been brought is set out in Paragraph 353 of the Immigration Rules. This state:

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

In order for it to be a fresh claim the new material must be "significantly different" to that which has previously been considered. It must therefore be material which:

1) Has not already been considered
2) Taken together with the previously considered material created a realistic prospect of success, notwithstanding its rejection

Making representations for a fresh claim

It will be appropriate to file a fresh claim in the following instances:

- Where there is new evidence of the risks to the client in their home country
- Where there is new evidence of errors in the initial decision
- Where there is new evidence regarding the client establishing a life in the UK
- Where the circumstances in the client's country of origin have changed
- Where there is greater knowledge or a reinterpretation of the situation in the country of origin
- Where the law has changed

When making an application for a fresh claim it must be kept in mind that the only challenge available to an unfavourable finding that there is no fresh claim is through Judicial Review. It is also necessary to set out the claim history, the procedure for making fresh claims and the relevant case law. If the preceding appeal threw up any negative credibility findings or other obstacles, these should be addressed at the earliest opportunity to ensure that they are not immediately used as reasons to dismiss the application. It is important to focus on the facts of the case in hand and not to make too many representations that do not relate to the client. Since the finding of a fresh claim hinges on the presence of new evidence it is imperative to set this out clearly in the representations and send any supporting evidence with explanations as to what it demonstrates. If representations are being made on an emergency basis and there are pieces of evidence that are not yet available, this should be pointed out and details given about when it will arrive.

The task of the Secretary of State

According to the decision in WM & AR v SSHD, upon receiving further submissions the Secretary of State must look at the new and old material in order to determine whether it amounts to a fresh claim and first ask if the new material is significantly different. If it is not then the claim will be rejected. If it is significantly different, then the Secretary of State must go on to decide whether the material creates a realistic prospect of success in any further claim and consider the new material with anxious scrutiny. If the Secretary of State finds that it does then a fresh claim has been brought and the claimant is entitled to a new immigration decision along with a fresh right of appeal. The new decision can be a refusal despite the Secretary of State's finding of a fresh claim. The starting point to look at the difference of old and new claim is the determination.

Challenging a finding of no fresh claim

If the Secretary of State finds that no fresh claim has been brought this decision is only challengeable by way of Judicial Review which will take into consideration whether the decision was reasonable. The court will first investigate whether the Secretary of State asked the correct question. The question is not whether he believes the claim should succeed but whether it has a realistic prospect of success. The court will then look at whether the requirement of anxious scrutiny has been satisfied.

Case Study 13

PR arrived in the UK in 1994 as an Asylum Seeker. His application for asylum was initially refused on a number of grounds, including that Tamils were not considered to be a persecuted group at the time, the LTTE could not be regarded as "agents of persecution" and the claimant had never been associated with any political or militant organisation and was therefore of no interest to the authorities. It was also stated that the situation in Sri Lanka had improved since 1989 and that the claimant should be able to return to Jaffna as he had no problems there.

PR appealed the decision claiming that the UK had not fulfilled its obligations under the 1951 Convention and that the facts about the situation in Sri Lanka upon which the Home Office had relied were inaccurate. On appeal PR argued that he had not disclosed his involvement with the LTTE at his initial interview because he was afraid he would be deported or arrested as a result. There was also evidence given to support the claim that the situation in Sri Lanka created many difficulties for Tamils in particular and that PR would be at risk if he returned to Colombo. The appeal was allowed in May 1997 as PR was shown to be at risk from persecution by the army in Colombo for his previous involvement with the LTTE and by the LTTE themselves as he had refused to fight for them and absconded from the LTTE controlled area.

The Secretary of State successfully appealed the decision and PR then filed a fresh claim in 1998. This claim was still pending until 2008. PR approached TWAN about his immigration matter and was advised that he was entitled to apply for indefinite leave to remain under the long residence rule in HC 395 paragraph 276B as he had been resident in the UK for 14 years continuously. TWAN made representations on PR's behalf relating to his strong connections in the UK, personal history, lack of criminal record and compassionate circumstances.

Whilst this application was pending a decision, PR's permission to work was withdrawn without explanation. TWAN made representations to the Home Office citing the decision in R(FH) & others v SSHD [2007] which stated that measures should be taken to minimise prejudice against anyone subject to a delay and that these people should therefore be allowed to continue to work. This ruling coupled with the fact that PR was still awaiting a decision about a human rights claim and an application for indefinite leave to remain under the long residence rule led TWAN to request a satisfactory explanation as to the decision to revoke PR's permission to work and to consider filing a claim for Judicial Review if no response was forthcoming.

PR's submissions were considered exceptionally and would therefore be considered out of turn. After submitting further documentary evidence as to his entitlement under the long residence rule, PR was finally granted indefinite leave to remain in the UK in October 2009.

Case study 14

PV entered the UK illegally in 1998 after fleeing Sri Lanka where he was detained and tortured by the Sri Lankan army. He applied for asylum and, whilst the decision was pending, was granted temporary admission as someone who was likely to be detained. As a result of the treatment he had received at the hands of the Sri Lankan army, PV suffered from mental health issues including Post Traumatic Stress Disorder and Schizoaffective Disorder. These conditions made him especially vulnerable if he were to be returned to Sri Lanka. In 2002 TWAN asked the Secretary of State to take these issues into consideration and use his discretionary powers to grant PV Exceptional Leave to Remain.

PV had still not received a decision in 2005 and his mental health was deteriorating. He had attempted to commit suicide several times and on one occasion was admitted to hospital with self-inflicted knife injuries. TWAN filed a human rights application on PV's behalf on the grounds that his mental health issues had led him to become suicidal and pose a risk to himself. Article 3 of the European Convention on Human Rights was also used as grounds on which PV should be given humanitarian protection as he was subjected to inhumane and degrading treatment by the Sri Lankan army. If he were removed from the UK and returned to Sri Lanka there was a real risk he would again attempt to kill himself. If this real risk was a foreseeable consequence of the removal decision then this would establish serious harm under Article 3.

In 2009 PV was exceptionally granted Indefinite Leave to Remain outside of the Immigration Rules on the basis of the length of his stay in the UK and on humanitarian grounds.

Case study 15

TN grew up in the Mullaitivu district under the control of the LTTE. He left the area to avoid enforced conscription by the LTTE and travelled to Vavuniya where he was later arrested due to his family's links with the LTTE. He was tortured whilst in detention and subsequently hospitalised. He escaped from the hospital and later arranged to travel to the UK where he arrived in 2000 seeking asylum.

TN's asylum application was refused initially, and again on appeal, on the grounds that he was unlikely to be of interest to the authorities and that the situation in Sri Lanka with regards to human rights abuses was improving. Furthermore, internal flight was possible as Colombo was a viable alternative to the north-east. A second appeal heard by the Special Adjudicator was also refused on similar grounds as was an appeal to the Immigration Appeal Tribunal in 2002.

A human rights claim was filed which stated that TN's educational pursuits and the presence of three of his sisters and his long-term partner in the UK meant his rights under Article 8 would be breached if he were removed from the country. This was also refused, however, and orders were made for TN's removal.

In 2006 TN was detained and arrangements for his removal were made. Despite an application for bail initially being refused, TWAN successfully secured TN's release on bail citing the client's compliance with the conditions of his Temporary Admission and the inaction on the part of the SSHD when fresh representations were made.

Soon afterwards TWAN filed a fresh human rights claim with new evidence to suggest that TN would face a risk of persecution if he returned to Sri Lanka in the form of a letter from a politician in the Vanni district. There were also certain medical issues that could have proved fatal. It was argued that the principles relating to fresh claims laid down in Ladd v Marshall [1954] and Ravichandran (1996) applied to the case in hand insofar as it satisfied the requirements that:

1. A new threat to life and liberty has arisen; and
2. The political violence and persecution against Tamils in Sri Lanka is on the increase.

TN married his partner, a German national, in 2006 also. With his newfound status as the family member of an EEA national as well as the new evidence put forward in the fresh claim, TN was allowed to remain in the UK

Case study 16

KS entered the UK clandestinely towards the end of 1998 and applied for asylum at the beginning of 1999. He left Sri Lanka after suffering at the hands of both the LTTE and the army. He was forced to cooperate with the LTTE and arrested for being involved with them. His family were later attacked by the PLOTE and the EPRLF and harassed by the LTTE in Mullaithivu. He fled to Vavuniya where he was arrested and ill-treated. His uncle paid for him to be released and he left Sri Lanka shortly afterwards.

KS's initial application for asylum was refused as it was believed that Tamils did not face any serious threat of persecution as the human rights situation in Sri Lanka had improved. It was also stated that the LTTE and the other groups who had tormented KS and his family were not "agents of persecution" within the 1951 Convention meaning.

An appeal was made in 2002 relating to the inaccuracy of the Secretary of State's findings about the situation in Sri Lanka. It was argued that human rights violations were still rife and the conditions were much worse than stated. KS would therefore face a real risk of persecution due to his previous involvement with the LTTE. The appeal was dismissed, however, due to the Adjudicator's findings of adverse credibility with regards to KS's account of his time in prison, his working for the LTTE and the attacks on his family. KS then appealed to the Immigration Appeals Tribunal who also dismissed the appeal.

In June 2002 TWAN filed a human rights claim requesting exceptional leave to remain as KS had been tortured in the past due to his political involvement and was likely to face a high risk of arrest, detention and ill-treatment if he was returned to Sri Lanka. The UK would therefore be in breach of its obligations under Article 3 if KS was removed. The human rights claim was dismissed as it was found that KS could return to Colombo where he would not be in danger of persecution.

In December 2002 a one-stop notice was filed stating that KS was at risk of torture and was entitled to remain in the UK under Article 3 and Article 8. In 2009 his case was finally resolved and KS was granted exceptional leave to remain due to his long residence and compassionate circumstances.

Changes to the procedure for making further submissions

As from 14th October 2009, further submissions must be made in person at the reporting centre in Liverpool. This applies to all asylum claims made on or before 5th March 2007. In the past, asylum seekers were allowed to make fresh representations by post to UKBA but this new system has created a number of hardships for those making fresh claims.

It is exceptionally difficult for many people who wish to make further submissions to travel to Liverpool. All appointments in Liverpool must be booked in advance by telephone and the number has therefore been very busy making it difficult for many people to get through. In addition, the telephone line is often merely an answering machine that takes bookings for the next ten days. As well as facing the physical hardship of travelling to Liverpool, asylum seekers must also bear the financial burden and pay for their own travel expenses as UKBA is refusing to pay.

The new system is seen by many as unlawful as it appears to have been introduced for the purpose of making the procedure for submitting further representations extremely difficult. As a result the new system may soon be subject to a judicial review application.

Case study 17

Our client KK arrived in the UK in 1999 and claimed asylum. His claim was refused as was a later appeal. Further leave to appeal was refused, and once his appeal rights were exhausted, TWAN filed a human rights claim on his behalf on the basis of Article 8. This was also dismissed in 2004.

In 2009 again KK approached TWAN about his immigration matter and was advised to make a fresh claim. Further representations dated 27th October 2009 were sent to UKBA by post and subsequently returned with the reason that the changes in the procedure meant that after 13th October 2009 further submissions must be made in person. KK therefore remained liable for removal until he made further representations in person at the Liverpool reporting centre.

KK visited the TWAN office several times over the next few weeks in order to make an appointment in Liverpool over the telephone. Caseworkers tried calling the designated telephone number (0151 237 0980) numerous times but it was busy on every attempt. On one occasion an alternative number was given but this proved equally problematic. The website (www.UKBAhomeofice.gov.uk) on which it was supposedly possible to make appointments was also inaccessible.

Finally, after two more weeks of calling the designated telephone number KK was able to make an appointment with UKBA's Further Submissions Unit for 26th January 2010.

Deportation and Removal Proceedings

At the beginning of this year the Sri Lankan government engaged in a war with the LTTE, treating those who were trapped in the LTTE-controlled area in a heavy handed manner which resulted in many NGOs and countries withdrawing aid and their officials from Sri Lanka. Due to this development in Sri Lanka many western countries reduced the number of failed asylum seekers being sent from their country to Sri Lanka. The Home Office made a policy on this issue but it was never transparent to legal representatives or the community until it was established through case law in November 2009. Despite this development, the enforcement unit of the Home Office continues to detain failed asylum seekers and revoke some of those who are granted leave to enter in the UK for various reasons. Most of these failed asylum seekers are threatened with detention and some of them have been served with orders to remove them to Sri Lanka while they are complying with their routine reporting conditions. In our view, if the government or Home Office are making any policies in this area they should be transparent and applicable to all failed asylum seekers from that particular country, regardless of any discrimination.

Case study 18

RY was an asylum seeker who arrived in the UK in 1998. His asylum claim was refused on the basis that there would be no discernible threat of persecution to him if he were to return to Negombo. His subsequent appeal was dismissed as was a further human rights claim made on the grounds of Articles 3 and 8.

In March 2009, RY was detained while he was at a reporting centre fulfilling the conditions of his temporary admission. He was released the following month while his application for Judicial Review was being considered, for which he was later refused permission.

On reporting in July 2009 RY was again detained and served with removal directions. His removal was scheduled for the same month. However, he was later released without explanation and is currently awaiting further removal directions.

TWAN feels that this practice of detaining failed asylum seekers without good reason is unnecessary and may amount to unlawful imprisonment. It also lacks transparency and makes it unclear as to what UKBA's policy is regarding the removal of Tamils to Sri Lanka.

Case study 19

TR was refused asylum after arriving in the UK in 1998. His appeal was also dismissed as were further representations on human rights grounds and an application for Discretionary Leave in 2008.

His wife was also refused asylum and her appeal rights were exhausted in 2003.

In April 2009 TR and his family were detained by the Immigration Officers after being visited at their home. Removal directions were then set for later in the same month. An application for judicial review was filed but refused in May 2009. TR and his family were finally released and awaiting further action.

This was another instance of unnecessary and unlawful detention made more serious as it involved with an entire family.

General procedure

Deportation is the process by which non-British citizens can be removed from the UK at the discretion of the Secretary of State. They will thereafter not be allowed to return unless the deportation order is revoked. An application can be made to revoke a deportation order after the deportee has been outside of the UK for three years.

If a person remains in the UK without leave to do so or if their leave has been curtailed, they may be ordered to leave and subject to administrative removal. They can then reapply for entry to the UK through the normal channels.

Administrative Removal - legal framework

Persons subject to administrative removal are those who have previously been granted leave to remain in the UK and fall into the following categories as specified in Section 10 of the Immigration and Asylum Act 1999:

- A person who has overstayed their leave
- A person who has breached a condition attached to their leave
- A person who has used deception to obtain leave to remain
- A person who is no longer a 'refugee' under the Nationality, Immigration and Asylum Act 2002 and has had their leave to remain revoked
- Family members of anyone who falls into any of the above categories

There is a right of appeal attached to a decision to remove someone from the UK under s.82 (g) Nationality, Immigration and Asylum Act 2002. This is only exercisable outside of the UK unless there are human rights or asylum considerations that constitute grounds for an in-country appeal.

The Home Office will take all relevant factors that are known to the Secretary of State into consideration before making a decision to remove someone. These are set out in Immigration Rule 395C and include:

- The person's age
- Their length of residence in the UK
- The strength of their connections with the UK
- Their personal history such as character, conduct and employment
- Their domestic circumstances
- The nature of any offence for which they have been convicted
- Their previous criminal record
- Compassionate circumstances
- Any representations made on their behalf

Rights of Appeal

Out of country appeal

There is an 'out of country' right of appeal on any decision to remove someone where the Home Office did not give proper consideration to the all the relevant factors outlined above. In this case the grounds of appeal will be that the decision was unlawful. The appeal will normally be allowed so that the Secretary of State can reach a new decision in accordance with the law.

If the decision was made lawfully, however, the appellant may still be able to show that the Secretary of State should have exercised their discretion in a different way. The appeal will be allowed if this can be demonstrated.

In-country appeal

An in-country right of appeal will arise on a decision to remove someone who has made an asylum claim or human rights claim while in the UK (s.92 (4) Nationality, Immigration and Asylum Act 2002).

Removal as an Illegal Entrant

If someone who has entered the country illegally, and was never given leave to enter or remain, is

then given an order for administrative removal they have a right of appeal outside of the UK. An in-country appeal right will arise if there has been an asylum or human rights claim made in the UK prior to the removal decision.

Deportation – legal framework

Non-British citizens may be subject to deportation orders for the following reasons:

- They have been convicted of a criminal offence and are recommended for deportation as part of their sentence
- Their presence in the UK is not 'conducive to the public good'
- They are the family members of someone who is being deported

Deportation is currently at the discretion of the Secretary of State if the person in question falls into one of the above categories.

Before making the decision to deport someone the Secretary of State must take into consideration the factors in paragraph 364 of the Immigration Rules. These are the same as apply to administrative removal (see above).

Certain groups of people are exempt from deportation. These are:

- British and Commonwealth citizens with the right of abode in the UK before 1983
- Diplomats and international functionaries
- Commonwealth and Irish citizens if resident at 1st January 1973 and five years prior to the decision or conviction.

Appeals against deportation

Deportation decisions carry a right of appeal within the UK in front of the Asylum and Immigration Tribunal under s.82(2)(j) of the Nationality, Immigration and Asylum Act 2002. Notice of appeal must be served within 10 working days of being notified of the decision. In the case of a recommendation for deportation the decision can be appealed in the relevant criminal court as an appeal against sentence.

A deportation order cannot be made or implemented against a person while an appeal may be brought or is pending under s.5(1) of the Immigration Act 1971.

Revocation of a deportation order

Once a deportation order has been issued and appeal rights have been exhausted revocation is the only remaining remedy. Applications for revocation can be made to the Home Office or the ECO usually after three years have elapsed from the date the order was signed. A right of appeal against refusal of an application to revoke is available under s. 82(2)(k) of the Nationality, Immigration and Asylum Act 2002. This is exercisable outside of the UK unless the person has made an asylum or human rights claim which is not certified as clearly unfounded by the Secretary of State. An in-country appeal is also possible under s. 92(4) of the Nationality Immigration and Asylum Act 2002 where the decision is in breach of the appellant's rights under the ECHR.

EEA Nationals and Deportation

EEA Nationals may also be deported in exceptional circumstances where they are removed on grounds of public policy, public security or public health. A decision to deport an EEA National must not be taken without sufficient regard to certain factors including their length of residence, age, health, family, economic situation, social and cultural integration and the strength of their links within the country. Deportation decisions should not be taken against those who have resided in the country for the previous ten years or against minors except on "imperative grounds of public security" (LG (Italy) v SSHD [2008] EWCA Civ 190).

Refugees and deportation

People who have been given refugee status may be subject to deportation too. If they commit a serious crime (one with a sentence of 2 years or more) and "constitute a danger to the community" they will lose protection and are liable to be deported (s. 72 Nationality Immigration and Asylum Act 2002, Article 33(2) Refugee Convention1951).

Family members and deportation

The Secretary of State has the discretionary power under s. 5 of the Immigration Act 1971 to deport the spouse, civil partner or child of a deportee. In the case of a spouse or civil partner, this will not usually take place where they have qualified for

settlement in their own right or have been living apart from the deportee. The Secretary of State will not normally deport a child of a deportee where:

- The child and his mother have been living apart from the deportee
- He has left home and established himself independently
- He married or formed a civil partnership before deportation became a prospect

The Secretary of State will take certain factors into consideration when deciding whether to require the spouse or child to leave with the deportee including:

- The ability for the spouse/civil partner to maintain him/herself as well as any children in the UK, or to be maintained by relatives without recourse to public funds for the foreseeable future
- The effect of removal on the education of a child of school age
- The practicality of a child's maintenance in the UK if one or both parents were deported
- Any representations made on their behalf

Effect of deportation

A deportation order serves to invalidate any leave to enter or remain in the UK granted before the order was made or while it was in force. It will come into force on the day it was signed rather than the day it is served.

Future entry clearance to the UK for anyone who has been deported will be refused for ten years. If the reason for deportation was a criminal conviction, the offender will be refused entry to the UK for 10 years or until the sentence has become spent under the Rehabilitation of Offenders Act 1974, whichever is longer. Where the conviction resulted in a custodial sentence of 30 months or more then the conviction will never become spent and under HC395 the deportation order can never be revoked, except where rights contained in the Human Rights Convention or the Refugee Convention have been engaged.

Automatic deportation

There are statutory powers under UK Borders Act 2007 by which the SSHD can call for the automatic deportation of certain foreign nationals. The mandatory duty to deport arises where a foreign national is otherwise liable to be deported, has been convicted of an offence in the UK and has been:

- Sentenced to at least 12 months in prison (s. 32(2) UKBA 2007), or
- Sentenced to prison for an offence specified in s. 72(4)(a) of the Nationality Immigration and Asylum Act 2002

The following are exceptions to this duty:

(a) Where the person benefits from the exemptions from deportation under s.7 or s.8 of the Immigration Act 1971 and one of the following exceptions apply:

(a) where deportation would breach either foreign criminals human rights or their rights under the Refugee Convention (s. 33(2) UKBA 2007)

(b) where the SSHD thinks that foreign criminal was under 18 on the date of conviction (s. 33(3) UKBA 2007)

(c) where removal of foreign criminals would breach their right under the Community t reaties (s.33(4) UKBA 2007)

(d) where foreign criminals are subject to extradition proceedings (s.33(5) UKBA 2007)

(e) where they are subject to certain provisions of mental health legislation specified in this exception (s.33(6) UKBA 2007)

Case study 20

JG was convicted of conspiracy to defraud in November 2008 for which he was still serving his 18 month sentence in September 2009 when he was notified that a Deportation Order would be issued against him. He was also being considered for automatic deportation under s. 32(5) of the UK Borders Act 2007 due to the serious nature of his crime. The detainee approached TWAN and we were able to provide him with advice on the various routes he could take in dealing with the deportation order such as using the exceptions in s. 33 of the UK Borders Act 2007. The case was then referred to a firm of solicitors with greater resources who were best placed to meet the specific needs of the client.

Changes to notice requirements

The UK Border Agency has recently introduced changes to its policy on the need to give notice to people facing removal. An additional chapter was published in its Enforcement Instructions and Guidance which creates new exceptional situations in which no notice or less than the standard minimum notice may be given to individuals and their legal representatives of removal. In cases involving an unaccompanied child or a person who is at risk of absconding, the requirements for at least 72 hours notice will not be observed. This will also be the case where the person subject to removal orders is in danger of harming themselves or others if they are in detention at the time. Concerns have been raised by several groups about the adverse effect this will have on the rights of those being removed to challenge decisions. The lack of notice will mean that those being removed and their legal representatives will have no time to file appeals against decisions. This is considered by many to be patently unlawful and may be the subject of judicial review in the future.

The effect of recent case law on the deportation of Tamils

A landmark decision was made in relation to the deportation of Tamils from the UK to Sri Lanka in the case of R(B) v. SSHD [2009] EWHC 2273. This case involved an Asylum Seeker who had arrived in the UK in 2000 who sought a declaration that his detention was unlawful. He had fled Sri Lanka after being imprisoned and tortured by members of the army because of his association with the LTTE. His uncle was able to secure his release after bribing the authorities and B then left the country using a false passport. He claimed asylum on the basis that he feared persecution by the army.

B's asylum claim was refused towards the end of 2000 and his appeal in 2004 was dismissed on the basis that his involvement with the LTTE was that of a low level supporter who would not be of significant interest to the authorities and who, therefore, would not be at risk of persecution upon his return. B's appeal rights became exhausted in 2005 and he continued to remain unlawfully in the UK.

B committed a number of offences including attempted robbery, assault and theft, for which he was sentenced to 8 months imprisonment. After becoming entitled to release in May 2006, he remained in detention under the powers conferred on the Secretary of State for the Home Department (SSHD) by Schedule 3, Paragraph 2(2) of the Immigration Act 1971 and notice of a Deportation Order was served in June 2006.

These powers of detention may only be exercised for the purpose for which the power exists and only for so long as is reasonably necessary for that purpose according to the judgment in R(A) v. SSHD [2007] EWCA Civ 804. It has also been decided that the powers must not be exercised or must cease to be exercised if it becomes apparent before the expiry of a reasonable period that deportation cannot be effected within a reasonable time (R(I) v. SSHD [2002] EWCA Civ 888).

The SSHD must consider certain factors when determining whether such detention is reasonable as described in R(I) v. SSHD. These factors are:

- the length of detention
- the nature of the obstacles to removal
- the diligence, speed and effectiveness of the steps taken to remove those obstacles
- the effect of detention on the detainee
- the likelihood of him absconding and/or offending if not detained.

In his judgment of B's case, Judge Pelling QC remarked that detention for a period in excess of 30 months will require the clearest justification if it is to be regarded as reasonable.

B made further submissions and these were rejected by the SSHD in January 2007 as they did not constitute a fresh claim. A Deportation Order was made in February 2007 and an appeal against it was subsequently dismissed. A fresh asylum claim was made in July 2007 and rejected the following month. Removal directions were set for October 2007 but were cancelled because the ECHR issued a Rule 39 Request asking that removal should cease.

In October 2008 B's application to the ECHR was withdrawn as the SSHD had agreed to reconsider all cases in light of the ruling in LP [2007] UKAIT 00076. The SSHD was also awaiting the decision in NA v. UK but when this was passed decided it did not prevent B's removal. B made further submissions which were treated as a request to revoke the deportation order and rejected. At the time of the judgment B's appeal was yet to be heard.

The UKBA's policy on removals to Sri Lanka at the time of B's case was under review following the end of the conflict. In the period prior to this it had encouraged voluntary returns and enforced returns where a failed asylum seeker was unwilling to leave the UK voluntarily. During its re-evaluation of the country situation, UKBA had not enforced returns but continued to make assisted voluntary returns. It was decided that this alteration in UKBA's practice must be due to its concern about possible human rights abuses against Tamils in the aftermath of the war rather than the end of the conflict itself.

When ruling on the reasonableness of B's detention Pelling QC took into consideration the fact that he had already been detained for 39 months, an objectively long period of time which required the clearest justification. He also referred to UKBA's time frame for its review process and observed that there was no completion date set. In addition, a hearing aimed at generating new country guidance on Sri Lanka concerning the risk to returnees was not due to be held until October 2009. These factors, combined with the fact that there was no prospect of repatriation until after B's appeal, led him to the conclusion that it would not be possible to remove B within a reasonable further period of time. His further detention would therefore be unlawful as was his detention since the time the SSHD became aware that there was no prospect of B being forcibly removed until after the completion of the review process and the outcome of country guidance hearing. B was released subject to certain conditions to prevent him from absconding or re-offending.

Case study 21 (R 204)

PR claimed asylum in September 2009. Her claim was refused and directions were made for her removal from the UK. She appealed to the AIT in November 2009. The judge in this instance accepted TWAN's argument that the removal was not in line with UKBA's Non Return Policy that was implemented in light of the judgment in B. It was submitted that UKBA had not been enforcing the return of Sri Lankan Tamils since the end of the conflict due to concerns about possible human rights abuses against the ethnic minority. UKBA had not properly considered the risk on return to PR by applying the Non Return Policy to her case. The judge allowed the appeal to the extent that UKBA should apply the Non Return Policy considerations to the appellant's case with reference to the risk on return.

Human Rights Claims and European Court of Human Rights

The European Court of Human Rights (ECtHR located in Strasbourg and hears any cases involving the breach of obligations under the European Convention on Human Rights (ECHR) by any state which is a party to it. Under Article 34 of the ECHR any individual, non-governmental organisation or group of individuals purporting to have had their rights under the Convention violated by any state party to the Convention is entitled to make an application to the ECtHR. In terms of immigration matters the ECtHR hears applications from failed asylum seekers who have exhausted all other available legal avenues including the judicial review process.

In 2008 the UK Government removed some of the Sri Lankan failed asylum seekers to Sri Lanka as their human rights claim being improperly considered or ignored by the Home Office. In some cases the Home Office attempted to give a different interpretation about the protection of Tamil failed asylum seekers. At the beginning of 2008, failed asylum seekers were deported in bulk on charter flights that had been arranged by the Home Office. Attempts to take out injunctions against these removals by the High Court or Judicial Review challenges were not accepted by the UK's higher courts. This situation prompted legal representatives to approach the ECtHR for their intervention in the removal of Tamil failed asylum seekers. During the latter part of that year, most removals were successfully stopped through the ECtHR interventions by using Rule 39 of the ECtHR. However, we strongly believe that Tamil failed asylum seekers are not only protected under the Rule 39 they are also protected by Rules 40, 41 and 54 of the ECtHR.

TWAN clients at the European Court of Human Rights

TWAN advised two of applicants in the first case involving Tamil failed asylum seekers to be heard in the ECtHR (Applications Nos. 13447/87 and 13448/87). This was a joint application in 1987 made by five applicants who claimed that the UK would be violating their rights to freedom from torture, inhuman or degrading treatment under Article 3 ECHR if they were returned to Sri Lanka. They also claimed that the UK was in breach of its

obligations under Article 13 ECHR as they had no effective remedy against this violation of their rights having exhausted all available remedies under domestic law.

The Government contended that the applications were manifestly ill-founded as there was insufficient evidence to support their claims that they would personally face persecution in Sri Lanka. It also argued that an effective remedy was available to the applicants in the form of judicial review.

The applications were found to be admissible on the basis that they raised complex issues of law and fact in relation to the situation in Sri Lanka and the reality faced by Tamil failed asylum seekers upon return. The Court also found that judicial review in the case of failed asylum seekers may not be an effective remedy against the breach of Article 3 right. This is because it provides only for the examination of the way in which a decision was made rather than the merits of the decision itself. It therefore fails to take into account the human rights considerations involved in asylum cases and may not provide adequate safeguards against further human rights violations.

Case study 22

LJ claimed asylum after arriving in the UK in March 2008. She had been a victim of torture and was afraid of being persecuted by the Sri Lankan army on her return due to her history of involvement with the LTTE.

Whilst living in Batticaloa at the age of thirteen LJ had met her husband and began an affair with him. He was a member of the LTTE and fought in the battlefield, going on to lead a group of 300 fighters. Due to her affair with her husband, LJ was suspected of being a member of the LTTE and was taken to the camp in Batticaloa after being arrested by the army in February 1994. Whilst in detention she was tortured and raped, sustaining several injuries as a result including a broken leg after being beaten with a gun. Her mother eventually managed to negotiate her release by paying army officers three lakhs.

LJ was in hospital in Batticaloa for one week and was transferred to Colombo for a week for surgery on her leg. She was sent back to Batticaloa where she remained in hospital for a further week before going to stay with a friend of her mother. She took bed rest for three months before going to Kokkatticholai to live with her husband. It was at this time in 1994 that she joined the LTTE, although she did not do so deliberately. Whilst living with her husband inside an LTTE camp she was implied to be supporting them by cooking for large numbers of the camp's residents and assisting with family matters.

In 2004, when the Karuna faction split from the LTTE, LJ's husband joined the group as Batticaloa was included in the faction. He was a high ranking officer of the Karuna group and was put in charge of the Mattu-Ampara district. The Karuna group, however, started to experience infighting in 2007 and a group of about 150 people led by Pillaiyan split from them in April 2007. LJ's husband was among them.

One day in May 2007, LJ's husband told her he was going to meet with the officer in charge of one of Karuna's regions after being asked to do so. A few days after he had gone to meet with the officer, LJ's husband had still not returned. Eventually, word reached her through two boys who came to her house that he had been shot dead and buried.

LJ went to the place where her husband was buried along with her mother and father in law. They identified the body which was not fully buried and it was later exhumed along with four others that were found in the same place. LJ went to the police to make a statement saying that she suspected the Karuna group of killing her husband. Later a group of people came to her house and threatened to "do anything" if she did not retract her statement. On the same day, her father-in-law was killed in his home by people LJ believed to be members of the Karuna faction. LJ went into hiding with friends and family.

Some months later in November 2007 LJ's house was destroyed by the Sri Lankan army who had been interested in her whereabouts since Karuna began cooperating with them. LJ had been staying with a friend who became scared for her safety after hearing that the army were looking for LJ. LJ had no choice but to travel to a central camp to stay with her mother. After a couple of days she then went to stay with her mother's friend at Natpattimunia. When the army came to tell her mother to bring LJ to the camp, she decided to leave the country.

LJ's parents paid an agent to help her and she left Sri Lanka in March 2008. She came to the UK via Uganda later that month and claimed asylum on the grounds that she feared that she would be arrested, detained, abducted or killed if she was returned to Sri Lanka.

The claim for asylum was refused in November 2008 along with the request for Humanitarian Protection or Discretionary Leave. This was due to the Home Office's findings of adverse credibility based on the discrepancies in dates of certain events given during LJ's screening interview as well as their non-acceptance of some of the details about her past, such as the apparent ease with which her mother secured her release from detention in 1994 and the fact that the police did not destroy her house until some months after her husband's death. It was determined that she could not, therefore, have been of any interest to the authorities.

In assisting LJ with her appeal to the AIT TWAN requested an adjournment to allow sufficient time to obtain a medical report from the Medical Foundation for Victims of Torture. This was refused and the hearing went ahead in January 2009. On appeal, the SSHD found, similarly to the asylum claim, that LJ's account of events contained discrepancies and that certain events were unsubstantiated and therefore not credible. She was again found to be of not interest to the army or the Karuna group since she was not herself an active member of the LTTE.

TWAN lodged an application for reconsideration of the Tribunal's decision on the basis that the judge had erred in law, firstly by failing to adjourn the hearing despite there being medical evidence that was not yet available, and secondly by making findings of adverse credibility without giving sufficient regard to facts that were critical to LJ's case. These included her husband's dealings with the LTTE, the Karuna faction and the Pillaiyan group and his subsequent death at the hands of the Karuna group. This application was refused along with an appeal to the High Court and the medical evidence was once again ignored.

An application was made to the ECtHR and is currently under consideration.

The Rules of the European Court of Human Rights

Rule 39 - Interim measures

This allows for the Chamber to give directions to the parties to adopt any interim measures it considers appropriate to serve the interests of the parties or the conduct of the proceedings. These directions can be given at the request of a party or any other person concerned or on the Chamber own initiative.

Rule 40 - Urgent notification of an application

In urgent cases, the Registrar is permitted to inform a contracting party who is involved in an application about the application and provide a summary of its aims.

Rule 41 - Order of dealing with cases

The Court will determine in what order cases should be dealt with by assessing the importance and urgency of the issues involved using a set of fixed criteria. The Chamber or its President may, however, decide to give priority to a particular application and derogate from the agreed criteria in order to do so.
If an application is made at the last minute it may not be possible for the Court to give it sufficient attention.

Rule 54 - Procedure before a Chamber

The Chamber can declare an application inadmissible or strike it out of the Court's list of cases.
Alternatively, the President can:

(a) ask the parties to submit additional factual information, documents or other material considered relevant

(b) notify the respondent contracting party of the application and ask them to submit written observations and ask the applicant to submit written observations in response

(c) invite the parties to submit further written observations. Before deciding if the application is admissible, the Chamber may see fit to hold a hearing if it is required to do so under its Convention obligations. This can be at the request of a party or of its own accord. The parties will be invited to address the issues arising in relation to the merits of

the application unless the Chamber decides otherwise.

Procedure before the Court

Before approaching the ECtHR, an applicant must have exhausted all remedies available to them through their domestic legal system according to Article 35 of the ECHR. This prevents Member States from having to explain their actions before they have been given the opportunity to rectify the matter in the national courts.

There are essentially two stages involved in taking a case to the ECtHR. The Court will first decide if the case is 'admissible' before it can proceed to the next stage where it is judged on its 'merits'.

In order for a case to be heard by the ECtHR, an application must be submitted within six months of the final decision of the domestic court (Article 35 ECHR) using an application form provided by the Court. This must include all relevant information including:

- the applicant's name, age, address and occupation,
- the respondent country
- a statement of the facts of the case,
- the relevant domestic law
- the Convention articles that the applicant is relying on and relevant case law,
- the object of the application,
- the orders the applicant would like the Court to make,
- any judgments, decisions or documents relating to the application.

The application will then be registered. The parties concerned may be asked to provide more information about the application and a committee of three judges will then make a decision as to the 'admissibility' of the application.

Admissibility criteria

A case must comply with the criteria set out in Article 35 of the ECHR in order for it to be considered admissible. As well as emphasising the need for all domestic remedies to have been exhausted and the time limit in which to file an application, Article 35 states that:

2. The Court shall not deal with any application submitted under Article 34 that is:

1. Anonymous; or
2. Is substantially the same as a matter that has already been examined by the Court or has already been submitted to another procedure of international investigation or settlement and contains no relevant new information
3. The Court shall declare inadmissible any individual application submitted under Article 34 which it considers incompatible with the provisions of the Convention or the protocols thereto, manifestly ill-founded, or an abuse of the right of application.
4. The Court shall reject any application which it considers inadmissible under this Article. It may do so at any stage of the proceedings.

If the case is declared admissible at this first stage, the respondent government will be notified and observations will be submitted by both parties. Next, a 'Chamber' of seven judges will decide if the application is admissible, sometimes by holding a hearing. Admissible applications will proceed to the next stage and may then be settled in negotiations between the parties. If no settlement can be reached, the application will go before the Chamber who will make a decision on its merits. In rare cases where the interpretation of the ECHR is called into question, an application will go before the Grand Chamber and be decided by 17 judges.

In the case of NA v. the UK Application 25904/07 the application was found to be admissible despite the Government's submissions that the applicant had not exhausted all domestic legal remedies. The ECtHR took into account prior case law where it had been stated that an applicant may be able to prove he has exhausted all available remedies if he can show, by providing relevant case law or other evidence, that an available remedy he had not used was bound to fail (Kleyn and Others v. the Netherlands). The Court decided that NA's failure to seek permission to apply for judicial review before making an application to the ECtHR was due to the urgency of his situation and the deterioration of security conditions in Sri Lanka. Despite these developments, failed asylum seekers in a similar position to the applicant continued to be refused permission to apply for Judicial Review. Faced with removal to Sri Lanka, NA could not reasonably be expected to file an application himself since this would not have had any reasonable prospects of success. However, the Court also stated that where an application for permission to seek judicial review acted as a bar

to removal it would be considered an effective remedy which all applicants must exhaust before applying to the ECtHR or requesting interim measures under Rule 39.

Interim measures

The rationale behind Rule 39 is to ensure that the status quo is maintained while a case is under consideration so that any decision taken by the Court is not rendered futile or merely academic. In practical terms, however, Rule 39 requests for interim measures have proven extremely beneficial to failed asylum seekers who are at risk of removal.

This provision applies where an applicant is subject to or is about to be subject to action by the state that breaches his human rights. In this instance, the Chamber or its President can indicate any interim measures it considers appropriate while the outcome of an application is pending. It is most commonly used in deportation or extradition cases to prevent the removal of an applicant before the case has been heard by the Court, but may be applied to any case where there is an 'apparent real and imminent risk of irreparable harm'. Rule 39 requests are usually made on the grounds of the right to life (Article 2), the right not to be subjected to torture, inhuman or degrading treatment (Article 3) or the right to respect for private and family life (Article 8).

Rule 39 was applied in NA v. UK along with a number of cases involving Tamils threatened with deportation to Sri Lanka. This following a policy laid down by the ECtHR in October 2007 when a representative from the ECtHR remarked on the increasing amount of Rule 39 requests in a letter to the Foreign Office. He observed that the rule had been applied in every instance that interim measures had been requested due to the security situation in Sri Lanka. The ECtHR representative explained that processing Rule 39 requests was placing the Court's administrative and judicial resources under considerable strain and taking up a lot of its time. As a result, he advised that the Court would continue to apply Rule 39 pending an appropriate judgment and asked that the Government refrain from issuing removal directions to Tamils who claimed they would be subject to violation of their human rights if returned to Sri Lanka. However, following the ruling in NA v. UK, the government adopted a new procedure when dealing with cases subject to Rule 39. Applicants must show that their case involves risk factors other than mere Tamil ethnicity and UKBA would consider further representations relating to these cases. The government asked that the Court lift the effect of Rule 39 in these cases in order that they may be dealt with appropriately. In cases where Tamil ethnicity was the only challenge to removal and basis for a Rule 39 request, the government asked for Rule 39 to be lifted and the cases to be disposed of by the Court as necessary. This would allow for domestic re-examination of such cases and exhaustion of all available remedies including judicial review before Rule 39 could be applied.

Case study 23

The applicant SS was granted entry to the UK as a visitor in 1997. He later applied for asylum in 1998 claiming he would be persecuted upon return to Sri Lanka because of his suspected involvement with a bombing at a station. This was refused and his leave to remain was curtailed. His wife later joined him in the UK as his dependant in 2002 and also claimed asylum. An appeal in 2005 was refused too, despite the worsening security conditions in Sri Lanka, on the grounds that the applicant would not be at personal risk of persecution. A fresh asylum and human rights claim on the basis of Article 3 and 8 was submitted in 2007 with new information about the deterioration of the situation in Sri Lanka and the clients' poor health but this was also refused. On a home visit in November 2007, SS and his wife were taken into detention and issued with removal directions for the same month.

TWAN submitted an application to the ECtHR on behalf of SS on the grounds of Articles 3 and 8. We also requested that the Court apply Rule 39 to the applicant's case and defer removal to prevent violation of their human rights. In doing so, TWAN drew attention to the fact that the applicants were above the age of 65 and remarked that the Home Office was acting contrary to their policy of not removing those over 65. Their age would create further hardships for them if they were returned to Sri Lanka, especially since they had no close relatives there and their daughter and granddaughter both resided in the UK. A Rule 39 indication was given by the ECtHR in November 2007 stating that the applicants should not be deported until further notice. This was in line with its policy of applying Rule 39 in all cases of Tamil

failed asylum seekers. SS and his wife were shortly afterwards released into temporary admission.

The application was adjourned pending the outcome of the case of NA v. UK which would provide a lead judgment in circumstances similar to those of SS. Following the judgment in NA, the Home Office adopted a new procedure regarding such cases in August 2008. The ECtHR wrote to SS in October 2008 informing him that he would be subject to this procedure since there were considerations other than Tamil ethnicity involved in the challenge to his removal.

TWAN therefore submitted further representations to the Home Office on behalf of SS and his wife in January 2009 on the grounds of their age, the length of their stay, their health conditions and the deterioration of the situation in Sri Lanka. They were consequently granted Indefinite Leave to Remain exceptionally, due to the strength of their connections in the UK, their length of residence and compassionate circumstances.

Case study 24

TA arrived in the UK in 2001 and claimed asylum as he had been detained and tortured by the authorities in Sri Lanka because of his involvement with the LTTE. His claim was refused and appeals dismissed due to findings of adverse credibility. His appeal rights became exhausted and in 2007 he instructed TWAN to file a fresh human rights claim on his behalf.

When his human rights claim failed, an application was made to the ECtHR along with a Rule 39 request to defer removal. The matter is currently under consideration by the Court.

Asylum Claims

TWAN organisation formed in 1986 originally for the Tamil refugees, who came to the UK in 1985 and were held in detention centres with the threat of removal and who were later released on temporary admission by the intervention of some of the MPs in the UK. The group of refugees settled in East London decided to form our organisation to overcome their problems and to enable them to share information among themselves. This pattern of arrival of Tamil refugees has not changed over the last twenty-five years despite the government's effort to narrow down the interpretation of UN Refugee Convention in order to shirk their obligations under it. By conveniently naming them illegal immigrants, bogus refugees, asylum shoppers, and economic migrants, the government has succeeded in preventing the arrival of refugees into this country so that they brought new legislation that tightens up border controls.

The plight of refugees is a global problem that must be solved by the world's governments and international bodies. A holistic approach must be taken to address the issues that cause refugees to flee their countries, such as war or human rights abuses. Refugees are also in need of a global solution that enables them to receive the support they require from whichever country they arrive in. In situations where they flee to a neighbouring country, there may be factors that make it unsafe for them to stay or the country may not have the economic resources to give them the protection they require. The UN may need to give aid to these countries or to the asylum seekers independently so that they can support themselves until they are able to return to their home country. Legitimate refugees who arrive in one country before entering another are currently under threat of being handed back and forth between the two countries as they are each reluctant to take responsibility for those seeking asylum. This trend of non-cooperation and passing the buck only protects the interests of the safe countries themselves and entirely fails to provide a sufficient solution to people in genuine need of support. Common action needs to be taken by all countries who are signatories under the Convention to combat human rights abuses and the other factors that force people to flee their countries.

Sri Lanka is one example of the lack of a global solution to the problems facing refugees. At the beginning of 2009 when the war between the Sri Lankan government and the LTTE was at its peak, the UN and the international community did little to prevent the massacre of thousands of innocent civilians trapped in the war zone. Many international politicians made statements condemning the actions of the authorities in committing terrible atrocities against Tamils in the North of Sri Lanka that may well have amounted to genocide and the conflict received a great deal of media attention. Little real action was taken on their part or that of the UN, however, and the Sri Lankan government continued to show a flagrant disregard for the safety of its citizens with absolute impunity. Even after the war ended, the government's actions remained unchecked by the

UN and there is still yet to be an independent investigation into the allegations of war crimes.

The UN's failure to act in such situations has resulted in a loss of faith in their effectiveness in times of crisis. Its role has become unclear to those in developing countries who suffer at the hands of state perpetrators of horrific human rights violations when the organisation appears to do nothing to stop such acts being committed. The UN exists surely for this very reason, but it seems that it will only intervene where there is some economic benefit to the countries involved rather than mere human rights considerations.

Regardless of the many hardships facing Tamils in Sri Lanka, the UKBA is still reluctant to grant asylum to those who flee the country and continue to refuse applications, detain and deport them claiming there is no risk of persecution to them. This remains the policy of the UKBA despite the Foreign Secretary voicing his concern about the ongoing problem in Sri Lanka and the media coverage of the situation. The UKBA and its enforcement units have failed to take these new reports of ill treatment of Tamils into account and refuse asylum on the basis of generic country information. They have also neglected to consider humanitarian protection as an alternative to asylum. Exceptional leave is an important facet of the asylum procedure but it is too often not properly implemented.

Tamil refugees continue to flee to neighbouring countries such as India, Singapore, Malaysia and Thailand. Fewer make their way to Europe and an even smaller percentage travel to the UK to claim asylum. The few who do arrive in the UK are unfairly treated in our opinion. They are not seen as victims but are instead criminalised on arrival and accused of using false documents or entering the UK for a reason other than asylum. Port applicants in particular are threatened with immediate detention for entering using the wrong visa or a different identity. They may then be charged under criminal law. By engaging in these practices, we believe that the UK is acting contrary to its obligations under the Refugee Convention which states that asylum must be claimed inside the country in which the person is seeking refuge. The system does not allow for out of country asylum applications. Refugees are by definition unsafe in their country of origin and fleeing persecution. Where this threat emanates from state actors, as is often the case, the refugee may need to leave the country clandestinely using false documents to secure their safety. The UKBA frequently flouts Convention guidelines by labelling this type of occurrence criminal behaviour and refugees in such cases may be convicted and sentenced for up to six months imprisonment. After serving three to four months they may be released and only then are they able to claim asylum. Once they do, however, they are again liable to be detained by the asylum system and their cases may be refused without proper consideration resulting in their being deported.

The UKBA has been known to fail to notify port applicants of their right to legal representation before their screening interview. The information recorded at the screening interview is then used to assess the asylum claim and can have an adverse effect on its outcome. The majority of applicants are therefore keen to apply in country to avoid detention and to have the opportunity to seek legal advice before having their asylum claim assessed.

Legal framework for Asylum

A person will be entitled to claim asylum if they fall under the definition of a refugee as described in the 1951 Convention Relating to the Status of Refugees. The definition can be found in Article 1 (A) (2) of the Convention which states that a refugee is a person who can demonstrate:

- That he has a fear of persecution
- That the fear is well founded
- That the persecution is for a Convention reason
- That the authorities in the country from whichthey have fled are unable or unwilling to offer him sufficient protection

Real risk

In order to claim asylum, the person seeking it must be able to establish that there is a 'real risk' they will suffer serious harm if returned to their home country (Sivakumaran v SSHD [1988] Imm AR 147). Serious harm may include torture, detention, long term discrimination or differential treatment. The decision in LP [2007] is used to determine whether there is a real risk of persecution for failed asylum seekers upon return to Sri Lanka.

Well founded fear

A fear of persecution will only be well-founded if it satisfies both a subjective test, based on the claimant's own experiences, and an objective test that takes all available factual evidence about the country of origin into account.

Convention reasons

The reasons for claiming asylum which are stated in the Convention are known as Convention reasons:

- Race
- Religion
- Nationality
- Membership of a particular social group
- Actual or imputed political opinion

Absence of protection from the state

This may be established if the claimant is being persecuted by state actors and is therefore unable to seek protection from the state. The threat of persecution may also emanate from parties or organisations controlling the state or a substantial part of it, or from non-state actors if the former two groups of people are unable or unwilling to provide protection from persecution.

Internal flight

This option may be available to some asylum seekers who are fleeing persecution in a particular area of their home country but may be safe from the risk of persecution in a different area of the same country. If relocation in another part of the country is a possibility then the claim for asylum will most likely be unsuccessful.

Claiming asylum

A person can claim asylum either on arrival at the port or later in country. Under the Asylum and Immigration (Treatment of Claimants etc) Act 2004 a person seeking asylum must do so at the earliest opportunity. In cases where an asylum seeker has waited before claiming asylum without a reasonable cause for doing so, they will have an adverse inference drawn against their credibility. Port applicants will not be subject to this and will also be automatically entitled to receive NASS support.

However, there is doubt as to whether port applicants' claims are dealt with as rigorously as they should be. The number of port applicants is also a bone of contention as the UKBA does not allow for independent verification of these people. They will also not have time to seek legal representation and are therefore at a disadvantage since they may not be aware of their rights. Port applicants are more likely to be detained due to any credibility issues arising from their documents. They will also be detained if their case has been fast-tracked while it is being processed. It has been alleged that some of these asylum seekers may not have their applications processed properly and are instead sent to a safe third country on the basis that they did not have a proper visa to enter the UK. If they are from a country on the Secretary of State's White List then they are more likely to be deported, either because they have been fast tracked or have not had access to adequate legal advice or other assistance.

In country applicants must claim asylum in Croydon (this change of policy instructions came into force on 14/10/2009). They will have the benefit of legal advice before attending their interview and may even have representation available to them at the interview itself. In order to limit the effect of adverse inferences being drawn against them they must claim asylum at the earliest possible opportunity and provide a reasonable explanation as to why they waited before claiming. Although they are likely to be better informed of their rights, these applicants are at risk of being excluded from receiving NASS support as a result of their delay in claiming asylum.

The current system seems to deter asylum seekers from making port applications due to the likelihood of detention and lack of access to independent legal advice. The UKBA will need to look for ways to reform the process regarding port applicants in order to increase the number of people making port applications.

If an asylum seeker's claim is accepted under the 1951 UN Convention they will be granted refugee states which is now five years leave to remain in the UK and the people who recognised as refugees are entitled to apply for Travel Document to the Home Office. If they are refused asylum they will be given a letter detailing all the reasons for refusal with the notice of decision to remove to his/ her country of origin. These may include adverse

findings of credibility, implausibility and the possibility of internal relocation.

Case study 25

RM was an asylum seeker who arrived in the UK in October 2008. He had travelled to the UK because the Sri Lankan authorities suspected him of being a member of the LTTE. An agent facilitated his departure from Sri Lanka by giving him a passport in someone else's name. He used this to leave the country and travel to the Maldives. While in transit, the agent took back the passport he had given to RM and exchanged it for a different one telling RM not to look inside it. When RM arrived in Heathrow Airport, the document was found to be invalid and he was arrested for immigration offences. He was taken to Heathrow police station and convicted for the offence of entering the UK with no travel documents. The duty solicitor advised him to plead guilty as there was no tenable defence and RM was sentenced to three months imprisonment.

After serving the prison sentence, RM was released into Temporary Admission and allowed to officially claim asylum in April 2009. This was refused and TWAN is now assisting with his appeal.

Standard Reasons for refusal by the SSHD

Refusal letters from UKBA provide detailed explanations of how the caseworker came to their conclusion. Caseworkers must carefully consider both the subjective evidence provided by the claimant and the objective evidence about the country of origin available to them. In the cases of Sri Lankan asylum seekers, the reasons given for refusal of asylum claims are often very similar and involve many of the following points.

Subjective evidence

- **Adverse credibility findings**

1) Inconsistencies in dates and times

Caseworkers often rely on the discrepancies that can be found in claimants' accounts of the events that led them to seek asylum to demonstrate adverse credibility. They may refer to inconsistencies between the facts given at the screening interview and the asylum interview using these as a reason to make a finding of damaged credibility. In particular, discrepancies between dates cause the SSHD to question credibility, as well as the omission of certain events in the first interview that are recalled at a later date. These are cited as being damaging to credibility especially when they involve life threatening events or times when the claimant was fleeing from danger. The SSHD often states that if these accounts are true then the claimant would be more certain of the dates.

This completely fails to take into account the fact that there may be a great deal of panic surrounding these events and in such traumatic circumstances it is not always reasonable to expect the claimant to be sure of all the details. Additionally, the average displaced person will not pay much attention to specific dates of events as their main concern is surviving another day. It is also common practice in Sri Lanka to remember dates according to their proximity to certain festivals rather than the western calendar.

2) Unsubstantiated subjective assertions

Although caseworkers are required to give asylum seekers the benefit of the doubt, this is not always the case. They often look at accounts of events from an overly-subjective perspective and make unsubstantiated assertions which fail to take into consideration the reality of the situation. For example, in one case the claimant had stated that he had escaped while a soldier who was guarding did not accompany him when he went to the toilet because of the smell. The caseworker argued that this was not credible since the soldier on guard would not have let the claimant go to the toilet alone on this one occasion or allowed him to escape and risked his livelihood in the process. This does not take into account the soldier in question's personal priorities or his potential incompetence and presumes that security officers in Sri Lanka would behave in a similar way to those in the UK.

3) Lack of knowledge about the activities of the LTTE

It is sometimes cited as damaging to credibility if people who claim to have been involved with the LTTE do not know a great deal about their aims or the way the organisation operates. Despite being an LTTE supporter or someone who has

worked for them in the past, the claimant may not always be able to give very much information beyond their overall objectives, especially if they were not involved with the organisational aspects of the LTTE.

4) Time elapsed between LTTE involvement and state persecution

In many cases there may be a substantial period of time that has passed between the claimant working for the LTTE and being arrested by the army. Caseworkers may refuse asylum if they feel that the claimant could not have been of any interest to the authorities if the claimant was only found and arrested such a long time after their involvement with the LTTE.

5) Returning to a place where the claimant knows there is a risk of persecution

If at some point the client has fled or returned to a place where they know there is a chance they will be found by the authorities and persecuted, the SSHD is likely to see this as being implausible and damaging to credibility. This does not allow for the fact that claimants may have no other choice but to go to such a place as they may be looking for family who they believe to be in danger or simply unsure of where else to go.

6) ID and checkpoints

Claimants often state that they travelled long distances, particularly from the North to the South of Sri Lanka, and were not apprehended by the authorities during their journey. The SSHD argues that this would not be possible since there are several military checkpoints en route to Colombo and that the claimant would have had difficulty getting through these if they did not have any ID. Alternatively, if they did have identification they would not be allowed through the checkpoints if they were of any adverse interest to the authorities.

7) Reporting threats

If the claimant cannot say exactly who has been threatening them their credibility will probably be called into question. This will also be the case where the claimant says they reported the threat to the authorities despite the threat emanating from some organ of the state itself. If there is a delay between the date the threat to place and the claimant reporting it, there will be some doubt as to whether the threat really did occur.

The SSHD does not pay regard to the fact that there are many different groups who could be persecuting the claimant and it is not always easy to identify which group someone is aligned with. The claimant may not know where else to go or naively assume that the state will offer protection. They could also be afraid of reporting the threat as it may result in further danger.

8) Securing release from detention

Asylum seekers may claim that they were able to secure their release from detention by bribing an officer or some other form of bargaining. The SSHD counters that it is not credible that the authorities would release people so easily if they were of any real interest, especially when the Emergency Regulations allow for suspects to be detained for 90 days without charge. Police and army officers are often open to bribery and corruption so it is more than likely a claimant or their family would be able to negotiate their release by these means.

- **Section 8 of the Asylum and Immigration (Treatment of Claimants) Act 2004**

This section states that a deciding authority shall take into account, as damaging the claimant's credibility, any behaviour to which the section applies. Under s.8(2), this includes any behaviour that is:

(a) designed or likely to conceal information,
(b) designed or likely to mislead, or
(c) designed or likely to obstruct or delay the handling or resolution of the claim or the taking of a decision in relation to the claimant.

The use of false passports or other forged documents, lack of proper documentation or delay in making a claim for asylum without reasonable explanation will therefore be taken into consideration and can damage the claimant's credibility.

The majority of asylum seekers are forced to use false documents to leave their country of origin because of the dangers they face there. This goes hand in hand with the very nature of being an asylum seeker as they fear being discovered by

the authorities. It is therefore unreasonable to base refusal of an asylum claim on lack of proper documentation.

On the other hand, if a claimant uses a legitimate passport the SSHD contradicts itself by arguing that the claimant's credibility has been damaged as it would not be possible for someone who was of adverse interest to the authorities to leave their country of origin using their own passport without being apprehended by the authorities. This creates a 'Catch 22' situation.

In the case of HK vs SSHD [2006] EWCA Civ 1037 the Court of Appeal cautioned against making decisions on the basis of implausibility or inherent unlikeliness, noting that much of the evidence will be referable to societies with customs and circumstances which are very different from those of which decision makers have any experience. On the other hand the decision makers may, as part of giving the benefit of the doubt to a person seeking asylum have to accept risks without corroborative evidence. Also there is no requirement of affirmative evidence to establish the likelihood that intelligence service of repressive regimes with bad human rights records monitor the internet and demonstrations in the UK for information about oppositionist groups.

- **Risk to the Asylum seekers upon return to Sri Lanka**

The Home Office uses the risk factors set out in the decision of LP [2007] UKAIT 00076 CG to determine whether the claimant will face a real risk of persecution upon return to Sri Lanka. The factors that will affect the caseworker's decision are:

(i) Tamil ethnicity
(ii) Previous record as a suspected or actual LTTE member or supporter
(iii) Previous criminal record and/or outstanding arrest warrant
(iv) Bail jumping and/or escaping from custody
(v) Having signed a confession or similar document
(vi) Having been asked by the security forces to become an informer
(vii) The presence of scarring
(viii) Returned from London or other centre of LTTE activity or fundraising
(ix) Illegal departure from Sri Lanka
(x) Lack of ID card or other documentation
(xi) Having made an asylum claim abroad
(xii) Having relatives in the LTTE

These do not constitute a comprehensive checklist but should be used as a guideline for caseworkers. Asylum claims are often refused on the basis that the claimant only satisfies a few of these criteria and these are not enough to establish a real risk of persecution upon return. Some of the risk factors are usually rebutted using the following arguments:

(i) Tamil ethnicity alone is not seen as enough for the claimant to qualify for asylum
(ii) Low level members of the LTTE will not be at risk of serious harm
(iii) Both Tamil and Sinhalese bail jumpers face the same penalty
(vii) Medical evidence must be provided to show that the scarring was the result of torture
(viii) The claimant must be known to the Sri Lankan embassy in London or the place they are returning from and, in turn, to the authorities in Sri Lanka
(ix) A valid emergency travel document would have been issued to them in the UK
(x) In this instance too a valid emergency travel document would be provided
(xi) The Sri Lankan embassy and authorities would need to know of the asylum claim for it to give rise to a real risk of persecution
(xii) Any relatives in the LTTE must still be living

- **Human rights considerations**

Articles 2 and 3

As an alternative to asylum a claimant may ask for Humanitarian Protection if they fear that their rights under the ECHR Article 2 or 3 will be violated upon return. They must show that there is a near certainty of death to succeed under Article 2. If their asylum claim is refused, however, on the grounds that they are not of any interest to the authorities, there will usually be no grant of humanitarian protection.

Article 8

Discretionary leave may be granted if the claimant can establish that their removal would be a violation of his rights to private family life. This will not be granted if the claimant has no family in the UK or if they are an adult child whose parent or sibling resides in the UK. For this kind of claim

to succeed, the claimant must show that "something more exists than normal emotional ties". They must be dependent on their family or vice versa as "neither blood ties nor the concern and affection that ordinarily go with them" are enough to constitute family life under Article 8 (Kugathas [2003] EWCA Civ 31).

Objective Evidence

- **Country situation and case law**

Refusal letters often cite various sources when stating that the country situation in Sri Lanka has improved to a degree where it is no longer dangerous for Tamils to return to the country. These often include COIS Reports which claim that the Sri Lankan government have taken steps to address the country's poor human rights record or that Tamil people are no longer at risk because security restrictions are not as tight since the end of the armed conflict.

Caseworkers also argue that internal relocation to Colombo is a viable option to those who face persecution in their home town but would not in another part of the country. The decision in LP [2007] states that "Despite evidence of some forms of discrimination, the evidence does not show that they face hardship because they are Tamils". It goes on to say that:

"it cannot be argued that, even if he faces serious harm in his home area, as a general presumption it is unduly harsh to expect a Tamil to relocate to Colombo or that it would be a breach of Article 3 to expect him to do so, or that it would put him or her at real risk of serious harm entitling them to humanitarian protection" (para 234)

The SSHD also uses the decision in AN & SS [2008] UKAIT 00063 (Sri Lanka) CG to demonstrate that relocation to Colombo is not unduly harsh for Tamil people who are not at risk there since any Tamil who is stopped and questioned is usually released shortly afterwards. There is also assistance available from the International Organisation for Migration which offers accommodation and other support to voluntary returnees for five years.

Despite these claims that failed asylum seekers will not face hardships upon return to Sri Lanka, it has been noted by several organisations that there are continuing circumstances affecting Tamil returnees that give rise to concerns about their welfare.

- **UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Sri Lanka**

A UNHCR report compiled in April 2009 gave a detailed analysis of the country situation following the escalation of fighting in the North. The report confirmed that human rights abuses including abductions, disappearances and extra-judicial killings continued to be committed with impunity and recommended that all asylum claims from Sri Lankan individuals should be considered in light of the emerging security and human rights situation in certain regions. It also stated that although there was no longer any fighting in the East, people living in this region were still at risk of indiscriminate harm due to the ongoing human rights abuses carried out by the State and other actors. Applications for international protection from these individuals should therefore be given full consideration.

There were reports of government forces ramping up security and anti-insurgency measures in the North leading to Tamils and those suspected of having links with the LTTE being subjected to frequent searches, arrests and detentions as well as harassment, intimidation, torture, abduction or even killing. It was also suggested by one Government official that, as a result of the enforced registration exercises in Colombo, there were at one point as many as five to ten Tamil people being arrested everyday including the immediate arrest of anyone carrying an identity card bearing an address from an LTTE controlled area.

The UNHCR report referred specifically to Tamils from the North or East as one of the major groups who were at risk of targeted human rights violations in Sri Lanka. It said that these individuals were not only at risk in their own regions but also in other parts of the country. Their persecutors could be Government actors, the TMVP, or other pro-Government para-military groups as well as the LTTE. Furthermore, it highlighted certain groups of people who may be at significant risk of suffering serious human rights violations. These included:

- Young Tamil males, in particular those who are not able to establish their affiliation with the TMVP, or one of the other pro-Government Tamil groups
- Tamils, male or female, who were trained by the LTTE, in particular those who have served with the LTTE fighting forces
- Tamils who are not in possession of proper civil documentation, such as National Identity Cards
- Tamils who have had contacts with the political offices that the LTTE opened in several areas of the North and the East after the signing of the Cease Fire Agreement of 2002
- Tamils who were born in the North or the East who are outside of the region, in particular those who reside in or seek to enter Colombo.

The report also said that security measures were being implemented in a discriminatory manner that subjected Tamils to undue hardship. Measures such as security checks, raids, interrogation, personal and property searches, and restrictions on freedom of movement were being inordinately directed at Tamils. This could amount to persecution in the context of the 1951 Convention.

If an individual is unable to avail himself of State protection because of a Convention ground, this may qualify him for asylum. Linking this to Sri Lanka, the UNHCR report said that people of Tamil ethnicity with certain actual or imputed political opinion who are being persecuted by non-State actors may find it harder to obtain protection from the State.

The report considered the internal flight option to be unrealistic for all those who flee violence or targeted human rights violations in the North and East of Sri Lanka as they would be at risk of persecution in all parts of the country. This includes the Central Highlands as Tamils from the North and East would be easily distinguished from the Tamils in this area due to their linguistic and cultural differences.

- **Failed asylum seekers returning to Sri Lanka**

There is a great deal of evidence available to dispute the Home Office's claims that there is no risk upon return to certain asylum seekers. Various sources demonstrate that those returning from abroad who have had trouble with the authorities in the past may be at risk of being arrested by the police upon arrival at the airport. This is more likely if the person has previously been questioned or detained as the National Intelligence Bureau keeps records of people dating back ten years and now maintains a computerised database. Tamil asylum seekers with scars are particularly at risk of detention and possible ill treatment by security forces as are those who have been previously affiliated with the LTTE.

- **Human Rights Commission**

The Human Rights Commission (HRC) was formed with a view to making the State answerable to the people with regards to human rights abuses. However, the HRC's powers of investigation and monitoring capabilities have been undermined by its lack of independence from the State, insufficient support from the government and the security forces' unwillingness to cooperate. This has rendered it far less effective than intended.

- **Implementation of International Humanitarian Law in Sri Lanka**

There have been some worrying developments in the law in Sri Lanka that have had a devastating impact on the human rights of Tamil citizens in particular. One notable decision was a Supreme Court ruling in the case of Singarasa. The defendant was arrested and forced to sign a confession written in Sinhala that he did not understand stating that he had fought for the LTTE, caused the death of army soldiers and attempted to overthrow the Government. In 1995 he was convicted in the High Court and sentenced to fifty years imprisonment. The conviction was upheld in the Court of Appeal although the sentence was reduced. He was refused leave to appeal in the Supreme Court and appealed to the UN Human Rights Committee. The Committee concluded that Singarasa had not been given a fair trial and was denied his right to have the decision reviewed. His rights under the International Covenant on Civil and Political Rights had therefore been infringed. The Committee found that Sri Lanka was under an obligation to provide an effective remedy against this in the form of release or retrial and compensation. Singarasa applied to the Supreme Court for a revision of the

1995 conviction and sentence. The Supreme Court decided his case in 2006.

The Supreme Court ruled that judicial power in Sri Lanka could only be exercised by courts that had been established under the Sri Lankan Constitution. The UN Human Rights Committee's findings could not, therefore, bind the Supreme Court. Moreover, the State had no authority under the Constitution to demand the release or retrial of a convict once his conviction had been confirmed by the Supreme Court as it is the highest appellate court in the country.

There was also a ruling as to the President's accession to the Optional Protocol which the Court found to have three basic components of legal significance. It conferred rights on individuals in Sri Lanka to bring to the attention of the Human Rights Committee any violation of their rights under the Covenant and recognised the power of the Committee to receive and consider such communications. The Court found, however, that the President had acted in excess of his powers by acceding to the Optional Protocol without making use of the Parliamentary legislative procedures necessary to implement such a treaty under the Constitution. It said that since sovereignty rests with the people, the president alone could not accede to the Optional Protocol as it was inconsistent with the Constitution. Therefore, the Optional Protocol did not bind Sri Lanka.

This judgment had the effect of nullifying Sri Lanka's obligations under international law except those that have been incorporated into domestic law. As a result, Sri Lanka would not be able to protect or promote human rights under the laws or institutions of the UN.

Asylum Appeals

As with any immigration decision, there are certain grounds of appeal available to an asylum seeker whose claim was refused. These are set out in s. 84(1) of the NIAA 2002:

a) that the decision is not in accordance with immigration rules;
b) that the decision is unlawful by virtue of section 19B of the Race Relations Act 1976 (c.74) (discrimination by public authorities);
c) that the decision is unlawful under section 6 of the Human Rights Act 1998 (c.42) (public authority not to act contrary to Human Rights Convention) as being incompatible with an appellant's Convention Rights;
d) that the appellant is an EEA national or a member of the family of an EEA national and the decision breaches the appellant's rights under the Community Treaties in respect of entry to or residence in the United Kingdom;
e) that the decision is otherwise not in accordance with the law;
f) that the person taking the decision should have exercised differently a discretion conferred by immigration rules;
g) that removal of the appellant from the United Kingdom in consequence of the immigration decision would breach the United Kingdom's obligations under the Human Rights Act 1998 as being incompatible with the appellant's Convention rights.

Certified cases

There is an in-country right of appeal attached to a decision on refusal of asylum unless it has been certified as 'clearly unfounded' or as a case where there is a safe third country option. In these cases there is no in-country right of appeal afforded to a failed asylum seeker and their claim will be fast tracked resulting in their speedy deportation. These are also called 'non-suspensive appeals' (NSA) because they will not suspend removal, unlike appeals against other immigration decisions.

'Clearly unfounded' cases were defined in R (Thangarasa) v SSHD and must fulfil the following criteria:

- The Secretary of State must be reasonably and conscientiously satisfied that the allegation must clearly fail
- The allegation must be so clearly without substance that it would be bound to fail
- It must be plain that there is nothing of substance in the allegation

Denying the claimant a right of appeal is a grave step which should only be taken in the most extreme circumstances. The decision is therefore subject to 'rigorous examination' in Judicial Review proceedings where the Court will look at the evidence that was available to the Home Office in the first instance.

Case study 26 (K221)

In November 2006, MK applied for asylum in the UK after leaving Sri Lanka where she was in danger of persecution due to her involvement with the LTTE. Her affiliation with the LTTE began as only on low level, mainly due to her brothers being members. In 2000, however, she was arrested in relation to a bomb plot that she was not involved with. Whilst in detention, MK was questioned about her knowledge of the incident and was severely beaten and raped when she could not give the authorities any information. She was finally released due to her family's pleas. A few years after her arrest, she decided to become a fully fledged member of the LTTE as she felt this was the only way to secure justice and bring an end to the kind of appalling treatment she had received whilst in prison. She began a marital relationship with a member of the PLOTE and became pregnant. She had no choice apart from fleeing the country. After hiding she travelled through the jungle and finally she was able to leave Sri Lanka and arrived in the UK in 2006.

TWAN submitted a numerous evidence to support MK's claim for asylum and believed that it had strong prospects of success due to the seriously ill treatment MK received whilst in detention, the fact that she was being persecuted by several different groups, including the State, and the deteriorating security situation in Sri Lanka. Despite this abundance of evidence, the Home Office considered the case to be one that did not qualify for asylum. Furthermore, a decision was taken to certify the case as being 'clearly unfounded' under s. 94(3) NIAA 2002. The caseworker in this instance used out-of-date information and failed to take into consideration several salient issues when making his decision to certify the case. At the time of the refusal, the security situation in Sri Lanka had deteriorated to such an extent that it was removed from the designated list of countries subject to non-suspensive appeals shortly afterwards. The caseworker failed to acknowledge this, despite writing at great length about the country situation, and had clearly used sources that were not up to date.

As no in-country right of appeal was permitted because of the certification, TWAN requested that the Home Office reconsider its decision to certify MK's case. The Home Office maintained its position that, although it had removed Sri Lanka from the designated list, it would consider each case on its individual merits and uphold both the refusal of asylum and the certification.

TWAN sought Judicial Review of the decision in 2007 and complied with pre-action protocol by sending letter to the Home Office of its intention to do so. The Home Office responded saying it was prepared to reconsider the decision (although it did not concede that it had acted unreasonably or unlawfully) if judicial review proceedings were withdrawn. TWAN agreed to withdraw proceedings upon receiving confirmation that the certification would be reconsidered. As of August 2009, we are yet to receive confirmation that the certification of MK's case will be reconsidered. Undue delay by the Home Office in responding the exceptional cases, arise more problems and inconvenience to the Legal Services Commission and to the client.

Appeals process

When a claim for asylum has been refused, the claimant is entitled to a right of appeal against the accompanying immigration decision (unless their case has been certified). The immigration decisions that may accompany refusal of asylum are:

- Refusal of leave to enter
- Refusal to vary leave
- Variation of leave resulting in no leave
- A decision to remove the person for being an overstayer, breaching conditions of leave or obtaining leave to remain by deception
- A decision to make a deportation order
- Refusal to revoke a deportation order.

An asylum seeker cannot be removed whilst an appeal is pending. He must file the appeal within ten days of receiving the refusal letter. The Asylum and Immigration Tribunal will either dismiss or allow the appeal. The Tribunal may allow the appeal in which case the decision will be reviewed.

Appeals allowed

Case study 27 (K282)

The client PK arrived in the UK from Sri Lanka in November 2008. He claimed asylum as he was being persecuted by the authorities for being involved with the LTTE despite the fact he had never been an LTTE member or helped them in any way.

PK was a young Tamil fisherman in Puttulam who owned a prawn farm with his uncle. He began to meet with difficulties in 2007 when he was arrested for failing to comply with the curfew for fishermen to return to land by 9.00am. He was questioned and beaten while in custody about having dealings with the LTTE which he denied. He was later released without charge.

He was arrested again in December 2007 when some weapons were found near a church. He was one of a group of fifty people who were rounded up and taken to the police station. He was released after the head of the village intervened on his behalf.

In May 2008 PK was arrested for a third time along with his uncle after army officers found weapons buried on their prawn farm. During their six-week detention, PK and his uncle were beaten and suffered ill-treatment. After having their fingerprints, photographs and personal details taken, they were questioned by a judge in Chillaw Court but released on bail charge with the help of the regional headman.

To avoid abduction when reporting for bail, PK and his uncle both went into hiding after being released from prison. In July 2008, a group of armed men in a white van came looking for PK but shot his brother dead instead. PK decided to leave the country and made arrangements through his uncle with an agent. His uncle was also shot dead by men in a white van shortly afterwards. PK managed to travel to Galle by hiding in the boot of a vehicle. From here he travelled by sea, eventually arriving in the UK.

The caseworker refused the claim for asylum on the grounds that PK was not of any interest to the authorities due to his political affiliation as he was never involved with the LTTE. They also refused to believe that a village headman was able to intervene and secure his release from prison. The caseworker did not accept that PK did not report for bail because he feared abduction and, bizarrely, found that the deaths of PK's brother and uncle were implausible as white vans were only known to be involved in abductions rather than killings. They also argued there was no evidence that white vans had been used in Puttulam. Several other aspects of the account were also not accepted, including PK's journey to Galle in the boot of a vehicle as he would have been discovered by officers at security checkpoints.

On appeal to the AIT held in April 2009 the Immigration Judge looked again at the available facts and considered the credibility of PK's claim. He found several aspects of the account that were previously rejected by the caseworker to be perfectly plausible, such as the ability of the village headman to intervene with the police. He also commented on the tenuousness of the caseworker's assertion that white vans were only used in abductions and that there was no objective evidence to show they were used in PK's part of the country. He gave full consideration to the risk factors in LP and found that PK would be at risk on return to Sri Lanka because he fulfilled all but three of the twelve factors. Internal relocation to Colombo was not a possibility for PK for these reasons.

The Immigration Judge allowed the appeal on both asylum and human rights grounds as Articles 2 and 3 would also be engaged if PK was returned to Sri Lanka.

<u>**Case study 28**</u> (S481)

The appellant SS had claimed asylum in February 2008 and his claim was refused in August 2009. He had fled Sri Lanka because he feared persecution by the Sri Lankan Army due to his family connections with high ranking LTTE members. He had been arrested in 1997 as a suspect in the shooting of two police officers by the LTTE. He was tortured whilst in detention at the camp in Mannar and suffered from scarring and Post-Traumatic Stress Disorder. He was released after eight days when a priest intervened by approaching the bishop for help.

SS began working for the LTTE in 2006 carrying out remedial tasks for them such as transporting food and identifying army informants to the LTTE. His cousin was shot by the army in 2007 and he feared they would come looking for him. He fled the area and, after hearing that army officers had broken into his house, decided to leave the country.

The claim was refused due to discrepancies in his account of events and the fact that it had been ten years since he was arrested and tortured in 1997. No evidence was produced for the death of his cousin so it was not accepted. The risk factors in LP did not apply to his case as his credibility had been damaged.

TWAN appealed on behalf of SS to the AIT on the grounds that the discrepancies in the asylum interview were due to a difference in dialect between SS and his interpreter. It was also argued that since SS had nephews who were high ranking officers in the LTTE he would be at great risk if he were to return to Sri Lanka. Additionally, we submitted that the death of his cousin could still have happened despite there being no objective evidence available. The decision to refuse asylum was in breach of his rights under Articles 2 and 3 of the ECHR.

On appeal the immigration judge found again that the length of time between the initial arrest and SS's decision to leave Sri Lanka cast doubt on the legitimacy of his claim as the events that took place ten years ago could have no bearing on his asylum claim. He also found that the evidence produced about SS's injuries in the form of a medical report added little weight to the claim. He too found that SS would not be at risk if returned to Sri Lanka as his involvement with the LTTE was that of a low level member. The judge dismissed the appeal.

An order for reconsideration was granted on the grounds that the judge had neglected to make any findings in respect of the appellant's claim that he was related to high ranking members of the LTTE. He had also failed to give adequate reasons for the findings that were made.

<u>**Case study 29**</u> (S522)

JS was refused asylum in January 2009 after fleeing Sri Lanka fearing persecution by security forces due to her involvement with the LTTE. Her sister fought for the LTTE as Sea Tiger and was killed in the Elephant Pass attack. JS herself began supporting the LTTE in 2002 and became a teacher at a nursery school run by the LTTE. She left when her mother became scared that the army would arrest her for supporting LTTE activities. She left her home village in 2008 when she thought the army was looking for her. When she came back to visit her mother in May 2008, the army came and arrested her and beat her brother-in-law who later died of a heart attack. She was detained at Uruleu camp for 42 days where she was beaten by female soldiers. She was subsequently released on bail after a lawyer appointed by her mother intervened.

She did not report for bail as she had heard that people who did were shot. In August 2008 her mother was shot by army officers who came to her house looking for JS. When she heard about her mother's death, JS decided to leave the country and arrived in the UK in September 2008, claiming asylum in November 2008.

Her asylum claim was refused due to adverse credibility findings concerning discrepancies in dates and events, her low level involvement with the LTTE and lack of knowledge about their objectives, the apparent ease with which she secured her release from detention and the fact that she was able leave the country on her own passport without attracting the interest of the authorities.

On appeal in February 2009, the Immigration Judge found the events leading up to JS's arrest, and therefore the arrest itself, to be less than credible. This led the decision maker to doubt the assertion that JS was not in any personal interest to the authorities. The judge also questioned the credibility of JS's marriage to a man who she met in the UK. He considered the risk factors in LP and decided that they did not apply to the extent that they warranted granting her asylum. He dismissed the appeal.

An application for reconsideration of the decision was also refused. TWAN filed a fresh claim for asylum and human rights in July 2009.

Applications for reconsideration of AIT decision

If the Immigration Judge dismisses the appeal, the appellant could apply for reconsideration of the Tribunal Decision under s.103A NIAA 2002.

<u>**Case study 30**</u>

SJ was an asylum seeker who had worked as a court clerk in Vavuniya. He had never been a member of the LTTE but was threatened by them and forced to disclose confidential information about cases in the High Court such as the names of police officers and witnesses. They had also pressed him to stop a case involving several LTTE members but he was not able to do this. Instead he agreed to procure a motorbike for them and borrowed one from a friend. He was not told what the purpose of the motorbike would be but later discovered that it had been used to plant a bomb that killed a number of policemen.

The claim for asylum was refused in the first instance due to the caseworker's non-acceptance of certain facts and findings of adverse credibility. These were based on minor discrepancies.

On appeal to the AIT in 2007, the refusal of the claim for asylum was upheld as SJ was found to be excluded from international protection under Article 1F(a) and/or (c) of the 1951 Refugee Convention as well as paragraph 339D of the Immigration Rules. This provision stipulates that:

"the provisions of the 1951 Convention shall not apply to any person with respect to whom there are serious reasons for considering that he [or she]

(a) has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
(b) has committed a serious non-political crime outside the country of refuge prior to his [or her] admission to that country as a refugee;
(c) has been guilty of acts contrary to the purposes and principles of the UNHCR"

In the case of SJ, it was found that he could not be afforded Refugee status because of his indirect involvement with the bomb plot and his role as an "agent of the LTTE" in diverting information whilst working for a government agency. The Immigration Judge decided that this complicity in terrorist activity fell within the meaning of Article 1F and therefore excluded SJ from refugee recognition. He also found, however, that SJ qualified for humanitarian protection under Article 3 ECHR as he would be at risk of serious harm at the hands of the police, the army or intelligence agencies if he were to return to Sri Lanka because of the offence for which he was wanted.

The Home Office challenged by way of reconsideration and the Tribunal president granted funding order the SSHD. The IJ found that since the appellant's story had been accepted apart from a few minor discrepancies, the judge had made no error of law in allowing the appeal on human rights grounds. TWAN made a cross-application for reconsideration of the decision to dismiss the appeal on asylum grounds. The IJ therefore reconsidered for a stage 2 hearing before a different judge. This would concern solely the question of whether providing the motorbike to the LTTE should exclude SJ from protection under the Refugee Convention.

At the second reconsideration hearing the IJ found that the SSHD had not established that SJ was aware that the motorbike would be used for the purposes of a bombing. Therefore it had not been shown that there were serious reasons for considering that SJ had committed a war crime or an act contrary to the purposes and principles of the UNHCR. The appeal was allowed on asylum grounds.

Case study 31

The client, NP was farming coconut in Chilaw and was working as a shop Manager. His work involved delivering goods as a retailer. He was used as an agent by the LTTE to supply and transport bomb making equipment under duress. He was arrested for his connection to these activities and detained for forty days, whilst being beaten, and denied food and water by the Sri Lankan armed forces. A lawyer secured his release on bail. He continued to comply with the bail conditions every month, even though he was beaten each time when reporting. He attempted to leave the country and sought the assistance of an agent to help him obtaining a visa although his application was rejected. Meanwhile he carried on with his business and employed a lorry driver. On one occasion medicine and bomb making equipment were found in the lorry by police and the driver was arrested. He then thought it was necessary to leave the country and came to the UK on a forged passport.

His claim was refused due to adverse credibility findings. These were upheld on appeal and the judge found that he had fabricated certain parts of his story, such as the lorry incident, to bolster his claim for asylum.

At the hearing of the reconsideration of the AIT decision, the IJ again found the appellant's account to be affected by adverse credibility findings and dismissed the appeal on both asylum and human rights grounds.

Court of Appeal

If the Tribunal dismisses the appeal, the claimant can seek leave to appeal to the Court of Appeal and must apply to the AIT within ten days of being served notice. If leave to appeal is refused then

the claimant can apply directly to the Court of Appeal and request an oral hearing.

Case study 32

The appellant TB was a refugee who had been refused asylum in the first instance and on appeal to the AIT it was dismissed by the Immigration Judge. He had been detained on three occasions by the army as a suspected LTTE member who was involved in bombings. On the third arrest by the army and the EPDP, he was released on bail but feared that if he signed on for bail he would be detained again, beaten or abducted by the EPDP, or even killed. He decided to jump bail and flee the country. He arrived in the UK in July 2008.

At the AIT in March 2009, the Designated Immigration Judge dismissed the appeal on the basis that since TB was on informal bail there would be no official record of him beyond the army camp and he would not, therefore, be of any interest to the authorities. TWAN challenged these findings and filed for a reconsideration of the decision. The case was reviewed by a Senior Immigration Judge who again dismissed the appeal. TWAN then requested leave to appeal to the Court of Appeal but this was refused by the AIT.

TB wished to appeal against the decision to refuse leave to appeal and TWAN accordingly filed an application for an oral hearing in the Civil Appeals Office in May 2009. This case is currently under consideration by the Court and awaiting an outcome.

When all appeal rights have been exhausted, the claimant can apply for Judicial Review. If this too fails they will have the rights to apply to the ECtHR.

Case study 33

LJ came to the UK as an asylum seeker in March 2008 fearing persecution by the authorities. She came to the attention of the authorities after she began affair with a LTTE member who was in the level of a high ranking fighter. As a result of their relationship she was also suspected of being a member and was arrested. She was tortured whilst in detention and sustained a broken leg. Her mother secured her release and, after a period in hospital, she went to live with her husband. She later became a member of the LTTE because she was living with her husband. In 2004 when the Karuna group split from the main LTTE group, LJ's husband joined them. He later broke away from this too to become a member of the Pillaiyan faction. Her husband was shot the Karuna faction.

When her husband was killed by members of the Karuna group, LJ reported the death to the police saying she suspected Karuna's followers. Her father-in-law was also killed by the same group and she went into hiding. The authorities came looking for her and destroyed her house when they realised she was no longer there. She was forced to go to her mother's house in central camp where she left her children before fleeing the country with the help of an agent.

Her claim for asylum was refused in November 2008 as the caseworker did not accept her account of events, specifically the circumstances surrounding the death of her husband which formed the crux of her asylum claim. Her high level associations with the LTTE and the persecution by the authorities, as well as the Karuna group that followed, were of significant importance to her claim and gave substantial cause for international protection. TWAN considered the denial of certain facts, for which LJ had provided material evidence a huge oversight on the part of UKBA.

An appeal to the AIT was set for January 2009. TWAN requested an adjournment to allow time for the appellant to be assessed by the Medical Foundation with whom an appointment had been made. This was refused and the hearing went ahead without a Medico-legal report. The Immigration Judge dismissed the appeal. An application for reconsideration of the appeal was also refused.

TWAN made complaint to the ECtHR on the basis of breach of Article 3 and submitted that if LJ were to return to Sri Lanka she will definitely be facing inhuman and degrading treatment as she would be persecuted by the authorities and para-military groups. The Tribunal judge's refusal to adjourn the hearing to allow time to obtain further evidence of her torture also prejudiced LJ's case. This procedural impropriety would inevitable lead to an infringement of LJ's human rights under the Convention.

The application is currently under review by the ECtHR.

Asylum claims by unaccompanied minors

Minors may bring claims for asylum if they have a well founded fear of persecution within the meaning of the 1951 Refugee Convention. The procedure for claiming asylum is slightly different for a minor as it involves a few extra steps. The Policy Instructions related to unaccompanied minors and the Immigration rules are explanatory. On applying for asylum the minor will attend a Screening Interview and be allocated with a case owner from Children Asylum Team. He will also be given a Statement of Evidence Form (SEF) to be completed within 20 days unless the minor becomes as a disputed minor. The case owner will refer the child to legal representatives and the relevant local authority and will make contact with a social worker. The child will then meet with the case owner at the First Reporting Event where the case owner will explain their role and the process of interviewing the applicants as well as the possible outcomes and the time limit. They will also check that the child has legal representation before the substantive interview and issue the claimant with a letter of invitation for interview. After the completed SEF has been returned a substantive interview may take place. The claimant must attend the interview with legal representation and a guardian. The case owner will allow five days after the interview for the claimant to make further representations. This gives the claimant the opportunity to correct any discrepancies that may occur between the information given in the SEF and the interview. The claimant will then be informed of the decision at the Decision Service Event. If they are refused asylum they will have a right of appeal. If the case owner decides to exclude the applicant from the 1951 UN Convention, the applicant has to be given limited leave to remain until the age of 17 and a half. This is called Discretionary Leave. Most of our service receivers were granted Discretionary Leave before the age of 17 and a half.

Case study 34 (T190)

The claimant TT was a minor aged 15 years. He arrived in the UK in November 2008 and claimed asylum. He had left Sri Lanka because he feared persecution by the Sri Lankan security forces.
In 2008 his family home was searched by the Army. They found LTTE related leaflets in his room that had previously belonged to his uncle who had hidden them. His uncle had been abducted in 2006 a few weeks after TT's grandmother's sister and her son were killed. Following the search, TT was arrested as he was the only Tamil male in the house at the time. He was beaten whilst in custody and badly treated. His family secured his release with the help of his headmaster and the Grama Sevaka. He was released on the condition that he would report weekly to the army camp and sign in. He complied with this requirement even though he was repeatedly assaulted whilst doing so. When one of his classmates was killed whilst signing on in a similar manner, TT's family decided they could not continue to put his life at risk and arranged for him to leave the country with the help of an agent. He went to Trincomalee with his family and then travelled to Colombo where he was kept hidden. He then left Sri Lanka and travelled to Malaysia before arriving in the UK in November 2008.

TWAN assisted TT with his claim for asylum by preparing his statement to be included in the SEF and made further representations on his behalf after the interview. A representative from TWAN also accompanied TT to the interview.
TT's claim for asylum was successful and he was granted Refugee status at a Decision Service Event in January 2009.

Case study 35 (T189)

TS was a minor aged 17 who claimed asylum in November 2008. He had not been actively involved with the LTTE but had helped put up posters for them during peacetime. He feared the authorities after he was suspected of being involved in a claymore mine attack and arrested at his home. He was taken into custody and badly beaten but was released on bail after 12 days. TS was released on conditional bail. TS had heard about people who were signing on for bail going missing and being found dead near his tuition centre and around his home. He stopped going to some of his tuition classes as he feared being subjected to similar treatment. At one class the whole class was threatened and he was struck in the face while his father was tied around the neck and beaten. TS decided to leave Sri Lanka as he feared further inhuman treatment. He travelled to Trincomalee, then to Colombo and left the country by plane. He arrived in the UK in November 2008.

TWAN filed TS's asylum claim and made further representations on his behalf after the substantive interview. Despite the facts of this case being very similar to those in the case of TT above, TS was refused asylum on the grounds that his account was not credible. The Home Office relied on some inconsistencies between the different interviews and put forward mostly subjective arguments about the credibility of TS's account when rejecting his claim.

TS was not given Refugee status but was instead granted Discretionary Leave in line with the Home Office Asylum Policy Instruction on Discretionary Leave as TS was an unaccompanied child for whom there were not adequate reception arrangements available in his own country. Discretionary Leave was granted for six months and TS is currently applying for an extension of his leave.

Legacy cases

Case study 36

NK applied for asylum upon arrival in the UK in January 2001 and was given Temporary Admission until his claim could be assessed. In 2003 he was still yet to hear anything from the Home Office about his claim and on requesting a report on the progress of his application, was told that a decision had not yet been reached. In the meantime, TWAN contacted the Medical Foundation in order to confirm NK's account of the torture he was subjected to by the army.

In December 2005 NK was asked to report to the Sri Lankan High Commission to apply for a travel document in order that removal proceedings could be carried out. At this stage a decision still had not been made on his asylum application despite several enquiries by TWAN about its status.

In order to address the unacceptable delay in processing NK's application, TWAN notified the Home Office of our intention to begin judicial review proceedings if the matter was not resolved as quickly as possible. NK's case had been in a backlog for nearly nine years and this was proving not only inconvenient but distressing also. We received a reply from the Legacy Case Resolution Team stating their intention to resolve all pending cases by the summer of 2011.

After submitting further information establishing NK's long residence in the UK and strength of connections in the country, he was eventually granted Indefinite Leave to Remain exceptionally due to the length of his residence in the UK.

New Asylum Model (NAM)

The New Asylum Model was introduced in April 2007. Each claimant will be allocated a designated Case Owner who will be responsible for dealing with the claim from the initial interview stage until the eventual outcome, whether the claimant is granted leave to remain or removed from the UK. The new system is designed to reduce delays and speed up the process so that the current substantial backlog of cases that exists can be cleared efficiently.

In some instances, case owners have been known to interview claimants for a Native Document Application before carrying out the Asylum interview. This is an application for a passport in the claimant's country of origin and will facilitate a speedier removal if the asylum claim is unsuccessful, thereby reducing the time limits for statutory review. After this interview the case owner will ask the claimant to sign the document but the claimant is entitled to refuse to do so. Any refusal will be recorded under s. 35 of the Treatment of Claimants Act 2004 but prosecutions under this section are rare.

European Community Law

European Community Law now has a place in the UK immigration system thanking to the enactment of the Immigration (European Economic Area) Regulations 2006 (SI 2006/1003) ("the Regulations"). These have had an enormous impact on Tamils in the UK as they have ensured that EEA nationals and their families can freely exercise Treaty rights in accordance with domestic law.

For Tamils in the UK, European Community law has been incredibly beneficial in providing a right to freedom of movement throughout Europe. The pieces of legislation governing this right are the Citizens Directive 2004/38 and the Immigration (EEA) Regulations 2006 which came into force in April 2006. These allow freedom of movement throughout Europe for all citizens of Member States and the possibility of obtaining full citizenship rights to any country within Europe

in which they choose to live. This not only encourages EEA nationals to move freely around the EU but also enables economic growth by providing more opportunities for competition. It also enables family members to join EEA nationals who are exercising their Treaty rights to free movement in another Member State.

The Home Office's policy in relation to people outside the UK who would like to reunite with members of their family who are exercising their Treaty rights within the UK conflicts with the corresponding EC law. All EEA nationals and their family members who seek to reunite with them in the UK are given an initial right of residence of three months and must then apply to extend this.

EEA nationals and their family members can now obtain permanent residence without the need to provide more documentation to prove residence. A registration certificate may be issued which is effective immediately and unlimited in duration. This will give the recipient the right to reside permanently in the UK as well as allow easy access to their family members. It also provides for partners an EEA national in the UK as long as they can prove a durable relationship.

The Immigration (EEA) Regulations 2006

The Regulations serve as the instrument by which the rights to freedom of movement conferred under EC law, namely in the Free Movement Regulation 1612/68/EC and the Citizens Directive 2004/38/EC, are enacted in domestic law. They set out the kind of rights that are available and the individuals who may benefit from them.

EEA Nationals and Family Members

Under the Regulations, an EEA national is any national of a member state of the European Union, not including the UK. They also use the phrase "qualified person" which means an EEA national who is in the UK as a jobseeker, worker, self-employed person, self-sufficient person and/or student. The EEA national will be the principal.

According to Regulation 7 family members of the principal include:

- spouse or civil partner
- direct descendant of the principal or their spouse or civil partner who is under 21 or dependent on the principal or their spouse or civil partner
- direct dependent ancestor of the principal or their spouse or civil partner
- extended family member with a valid EEA family permit, registration certificate or residence card

Extended family members are defined in Regulation 8 and include:

- a partner who can prove a durable relationship with the principal
- a relative who is dependent on the principal or a member of their household from the same member state and who
- is accompanying or wishes to join the principal in the UK or
- has joined the principal in the UK and continues to be dependent on them or a member of their household
- a relative who requires the personal care of the principal or their spouse on serious health grounds
- a relative who would meet the requirements for indefinite leave to remain as a dependent relative if the principal were present and settled in the UK

Rights of residence

The Regulations provide for an initial right of residence of 3 months for anyone who falls into the categories above (Regulation 13). Certain individuals will be able to extend their right of residence if they wish to remain in the UK (Regulation 14). The extended right of residence is available to:

- qualified persons
- family members of qualified persons or EEA nationals with permanent residence
- family members with retained right of residence

A retained right of residence is available under Regulation 10 and applies to:

- Family members of qualified persons who have died if they resided in the UK for at least one year before the principal's death and if they are not an EEA national themselves but are workers, self-employed or self-sufficient or the family member of someone of this nature.

- Direct descendants of a qualified person who has died or ceased to reside in the UK if they are attending an educational course and continue to attend the course and where the principal was in actual custody of them.
- Spouses or civil partners of qualified persons who have terminated the marriage or civil partnership and who are not EEA nationals themselves but are workers, self-employed or self-sufficient or the family member of someone of this nature, but only if

(a) the marriage or civil partnership lasted for three years of which at least one year was spent living in the UK;
(b) they have custody of the child of a qualified person;
(c) they have the right of access to a child of a qualified person and such access must take place in the UK; or
(d) there are particularly difficult circumstances warranting a continued right of residence (eg. They suffered domestic violence)

A permanent right of residence (Regulation 15) will be available to:

- EEA nationals who have resided in the UK for 5 years continuously and their family members if they have also resided in the UK for 5 years
- EEA nationals who are workers or self-employed and have "ceased activity" and their family members
- Family members of deceased workers/self-employed persons if the deceased person had been living in the UK for 2 years before their death or the death was a result of an industrial accident or occupational disease, and they had been living together immediately before the death
- Family members who have been living in the UK for 5 years continuously and who have retained the right of residence.

ECJ judgments relating to family members

There have been a number of landmark cases concerning EU law and the rights of family members to reside in Member states. The rulings in these cases have had a substantial impact on cases involving Sri Lankan Tamils.

Metock and others (2008)

This case concerned the rights of a non-EEA national family member to reside with an EEA national in a member state where the family member had not previously been living in an EEA member state with the EEA national. The case involved a female national of Cameroon who had been granted refugee status in the UK and subsequently citizenship. She moved to Ireland in 2006. She was in a marital relationship with Metock since 1994 before coming to the UK. Metock arrived in Ireland in June 2006 and applied for asylum but his claim was refused. The couple married later that year and Metock applied for residence in Ireland as the spouse of an EEA national working and residing in Ireland. This application was refused on the basis that he had not provided evidence to show that he had resided in an EU member state with his wife before arriving in Ireland. The High Court referred a number of questions to the ECJ to determine whether Irish implementation of the Citizens Directive was lawful.

Article 2 of the Citizens Directive states that "family members" includes spouses, partners, direct descendants and dependent direct relatives in the ascendant line. It does not require these family members to have lived in a member state prior to joining their EEA national family member.

The ECJ found that:

- It was unlawful to make the rights of a spouse of an EEA national to residence in a member state conditional on prior residence in another member state
- The non-EEA national's right to reside with their EEA national spouse in a member state should be granted irrespective of when or where the marriage took place

Jia (2007)

This case that was heard in the ECJ established that a family member of a Union Citizen was entitled to reside with them in a member state despite their having arrived from a third country and never having resided in a member state. This applies to family members who fall under the definition in Article 2 of the Citizens Directive.

MRAX v Belgium (2002)

The spouse of a Belgian national who arrived from a third country was denied entry to Belgium as she did not have a valid Belgium visa. This was referred to the ECJ as it was thought to be

incompatible with the Union citizen's right to freedom of movement. The ECJ decided that the right to entry was derived from the relationship itself. The member state could not refuse entry on the basis of absence of a valid visa if the applicant could otherwise prove his or her status as the spouse of an EEA national.

Court of Appeal decision in AK v SSHD

TWAN represented the appellant AK in this case in the Court of Appeal. The client was the cousin of a French citizen who moved to the UK to exercise treaty rights. AK had come to the UK from Sri Lanka and claimed asylum in 2001 but his claim was unsuccessful. When his cousin came to the UK in 2005, AK applied for a Residence Card as the family member of an EEA national residing in the UK.

The Court of Appeal looked at the cases mentioned above when deciding AK's case. As he was not a family member under Article 2 of the Citizens Directive, he sought to apply for residence under the provision in Article 3(2) which states that:

"any other family members, irrespective of their nationality, not falling under the definition in point 2 of Article 2 who, in the country from which they have come, are dependants or members of the household of the Union Citizen having the primary right of residence"

The Court, however, considered that the Directive required the appellant to have accompanied or joined the EEA national in the UK. As he was already resident here as a failed asylum seeker before his cousin's arrival, AK could not be seen to have accompanied her to or joined her in the UK. It was also declared that as there was a requirement for the appellant to have been a dependant of the EEA national in "the country from which they have come", this country must have been a member state and not a third country.

The appeal was dismissed.

Following this case, TWAN has withdrawn a number of cases where the facts are similar to those in AK and KG. Instead, we are applying to the European Commission directly in order to clarify the ECJ's position in this area and determine whether the national legislation is incompatible with European law.

Case study 37 (K204)

The facts of this case are similar to those of KG and AK. The client SK had arrived in the UK and applied for asylum but was refused. His brother-in-law later moved to the UK from France where he had obtained citizenship. SK applied for residence card as his brother-in-law's dependant family member but this was also refused as he had not resided in an EEA state prior to arriving in the UK.

On the facts of his case, if the judgment in KG and AK was correct then SK did not fall within Article 3(2). If it was not, then the appellant could come under Article 3(2) and should be afforded the right of residence of a family member. TWAN's argument is that although the appellant cannot be said to have lived with his brother-in-law in a member state, he does have the right to have his claim extensively examined with reference to his personal circumstances and to have the Secretary of State exercise her discretion. Any refusal of the claim must also be justified. It is also TWAN's submission that the Court in KG and AK failed to take the decision in Metock sufficiently into consideration. In Metock, the ECJ held that the time at which the application was made bore no material relevance to the establishment of a familial relationship. The provision in Article 3(2) does not specify the timing of the circumstances of dependency and should be interpreted broadly. The ECJ has not yet made a ruling on the rights of extended family members and it is therefore necessary to refer this question for clarification by the ECJ.

Case study 38 (N81)

TWAN is proceeding with one of the cases in respect of which we had applied to the Court of Appeal. Although this case concerns several of the same issues as KG and AK, certain facts make it appropriate for hearing in the Court of Appeal.

The client TN applied for asylum in the UK but was refused. His brother fled to Denmark and was granted citizenship there. He came to the UK in 2005 to exercise his treaty rights. TN then applied for residence as his brother's dependant family member but this too was refused.

TN had been dependent on his brother the entire time he had been in the UK and had lived in the same household since 2005. He was also suffering

from mental health difficulties for which he was in his brother's day-to-day care. The remainder of his family were also in the UK.

On appeal it was submitted that TN satisfied the requirement in Regulation 8(3) due to his mental health condition. This states that a family member will qualify for residence if he requires the personal care of the EEA national on serious health grounds. TWAN also argued that TN also fell under Regulation 8(4) and his claim should have been considered under Regulation 17(4) which requires the Secretary of State to exercise her discretion. The final submission was that Regulation 8(2) did not correctly transcribe the provisions of Article 3(2) into UK law and the requirement for prior residence in an EEA state was unlawful.

TWAN accepts that the appeal is bound to fail on the third ground in light of recent judgments. However, the IJ wrongly dismissed the case on the first two grounds. He also wrongly applied Regulation 12 to the appellant's case which relates to family permits and did not pay sufficient regard to Regulation 17. The case is therefore scheduled to be heard in the Court of Appeal shortly.

Family permit - VAF5-
(Before entry to the UK)

This document proves the holder's entitlement to enter the UK. Regulation 12 provides for a family member of an EEA national to be issued with a family permit if the principal is residing in the UK under the Regulations, the applicant is resident in an EEA state or the applicant would meet the requirements under the immigration rules to enter as the family member of a person present and settled in the UK. Issue of a family permit is mandatory in these circumstances.

If the applicant is an extended family member the issue of the family permit will be discretionary but it may be granted if the principal resides in the UK and the ECO decides it is appropriate having conducted an "extensive examination of all the personal circumstances of the applicant".

Registration certificate - EEA1
(In country applications)

An EEA national may apply for a registration certificate under Regulation 16 to prove his entitlement to reside in the UK. It is mandatory to issue this document if the applicant is:

- A qualified person
- An EEA national who is a family member of a qualified person
- An EEA national with a permanent right of residence
- An EEA national who is a family member with retained rights of residence

It may be issued on a discretionary basis to an EEA national who is an extended family member of a qualified person or an EEA national with a permanent right of residence and if the Secretary of State thinks it appropriate after investigating the personal circumstances of the applicant.

<u>Case study 39</u> (K291)

The applicant, KS, along with his wife and three sons all possessed passports from the Netherlands. They each applied for a Registrations Certificate by submitting EEA1 applications. As KS was an EEA national and a worker who was residing in the UK he was a qualified person. The issue of a Registration Certificate to KS was therefore mandatory under Regulation 16 as well as to his family as they were EEA nationals who were family members of a qualified person.

Residence card - EEA2

Under Regulation 17 a Residence Card will serve as proof that a non-EEA national is entitled to reside in the UK. It will be valid for a period of 5 years, or less if it has been issued to the family member of a qualified person who intends to stay in the UK for less than 5 years.

Issue of a residence card is mandatory if the applicant is a non-EEA national who is the immediate family member of a qualified person or an EEA national with a permanent right of residence, or a non-EEA national who is a family member with retained rights of residence. The Secretary of State may issue a residence card at his discretion if the applicant is an extended family member of a qualified person or an EEA national with a permanent right of residence and he thinks it appropriate after examining the applicant's personal circumstances.

<u>Case Study 40</u>

SV had naturalised as a German citizen in May 2004. She had been exercising treaty rights in the UK as a worker since entering the UK with her

husband and two sons in October 2007. Her husband had gained entry to the UK as a non-EEA national family member of an EEA national whilst both her sons were German citizens.

SV and her sons submitted an EEA1 application for Registration Certificates as EEA nationals residing in the UK whilst her husband made an EEA2 application for a Residence card. These were submitted in February 2009 along with the necessary documentary evidence, including the family's passports and SV's wages slips, and the Home Office acknowledged receipt of the applications in April 2009. However, the clients were yet to receive a decision about their applications despite TWAN's requests for further information and the local MP for East Ham looking into the matter.

In November 2009 the Home Office finally replied asking for further evidence to support the application, namely proof that SV was a worker such as wages slips and valid passports for the two children. These documents had been sent with the original application. The wages slips were resubmitted but the renewal date for the passports had lapsed whilst they were in the possession of the Home Office which caused further difficulty.

The Home Office refused the applications in December 2009 stating that they had not received the requested documents. TWAN lodged an appeal on the grounds that the documents had been submitted in the first instance and that there was sufficient proof that SV was a worker, that she and her children were German citizens and therefore that her husband was entitled to a Residence card.

In March 2010 the Tribunal allowed the appeal.

<u>Case study 41</u>

The client AB was a French citizen exercising treaty rights in the UK as a worker. She was issued with a Registration Certificate in August 207. In December 2008 she wished to bring her mother, who was residing in France as a refugee, to the UK to stay with her as a non-EEA national family member of an EEA national. TWAN submitted an EEA2 application on her mother's behalf. This was refused in November 2009 as there was lack of documentation. The Home Office claimed that they had not received the applicant's passport or evidence of the relationship between AB and her mother. The applicant was not given right of appeal as the home office limit right of appeal for family members of EEA nationals against an immigration decision if no valid identity document has been produced.

TWAN submitted the requested documents in November 2009 and the Residence Card was granted in January 2010.

TWAN acted for the same client in relation to her husband's immigration matters. He had previously gained entry clearance to the UK as the AB's family member and was in the UK on a 6 month visa. He then wished to extend his stay and apply for a Residence Card. He submitted an EEA2 application and was issued with a Residence Card in October 2009.

<u>Case study 42</u>

The client HK was a Norwegian citizen who was exercising treaty rights in the UK since 2006 with her husband and two children. In June 2007 her brother, who had been in the UK since 2000 as a failed asylum seeker, came to live with her and her family as her dependant. HK made an EEA1 application for a Registration Certificate in November 2007 and her brother made a concurrent EEA2 application for a Residence Card.

HK was issued with a Registration Certificate in April 2008 as a result of her application but her brother was refused a Residence Card as an extended family member of an EEA national residing in the UK in August 2009. The refusal was on the grounds that he had not provided enough evidence to show that he fulfilled the criteria for an extended family member under Regulation 8. These require the applicant to show that he had been financially dependent on his sister and had lived as part of the same household as her prior to arriving in the UK. He must also continue to be dependent on her and to be a member of her household upon arriving in the UK.

TWAN appealed on the grounds that HK had supported her brother financially whilst he was living in Sri Lanka, and that he was a genuine member of her household to whom her children were very close. There were also human rights grounds under Articles 3 and 8 to be considered as HK's brother was a failed asylum seeker who would be at risk upon return to Sri Lanka and who

had close family ties in the UK. The appellant submitted evidence that his sister had transferred large sums of money to him when he lived in Sri Lanka to prove his financial dependence on her.

In November 2009 the Immigration Judge dismissed the appeal as he found that the appellant had never been a dependant of HK or a member of her household in Norway from where she had most recently moved and that denying him the right to remain with her would not impact upon her treaty rights. The IJ also found that they had only a relationship of close affection and not one of real dependency.

An application for reconsideration of the decision was lodged in December 2009 on the grounds that the IJ had failed to take into consideration the detrimental impact of refusing HK's brother a Residence Card upon HK's right to freedom of residence. It was argued that the IJ should have looked to the decision in Metock where the ECJ stated that the right to freedom of residence and freedom of movement should be given equal effect. The case is currently under consideration.

Case Study 43

The client MM made an NTLTOC (No Time Limit or Transfer of Conditions) application to have her Residence Card transferred to her new passport as her husband was an EEA national. After submitting the relevant documents - her husband's German passport, Registration certificate and wages slips - the application was accepted. There was, however, a significant delay in processing the application on the part of the Home Office and MM received her documents a full year after she made the application.

Permanent Residence of EEA nationals

Regulation 18 allows for EEA nationals and their non-EEA national family members to prove their entitlement to permanent residence in the UK. EEA nationals will need to submit an EEA3 application and will be issued with a document certifying permanent residence as soon as possible after the Secretary of State receives the necessary documentary evidence. Non-EEA national family members of EEA nationals residing in the UK must complete an EEA4 application form for a permanent residence card. This will be issued within 6 months and will be valid for 10 years after which it can be renewed upon application.

Case study 44

The applicant SN was a 69 year old female German citizen who had been residing in the UK since 2002 with her dependant granddaughter. She applied for permanent residence under Regulation 15 and submitted an EEA3 application. Her granddaughter made an EEA4 application as she was a non-EEA national.

The EEA3 application was refused in March 2009 on the grounds that SN had not provided a valid identity document, that she was not a "qualified person" as she had not provided sufficient evidence of her employment over the past five years.

On appeal, it was argued that there was no need to provide evidence of all of her previous employment as she had successfully applied for a Residence Card and had been working as a carer since she arrived in the UK in 2002. Her five year residence permit alone should have been enough to satisfy the Home Office that SN was resident in the UK for five years continuously. It was unnecessary and unfair to demand that she produce further evidence of her employment. She had stopped working due to her health problems but this did not disqualify her from being entitled to permanent residence under the Regulations, as she was a "worker" or "self-employed" person who had ceased activity. The term "worker" should also be construed broadly to include job seekers, those between jobs, the involuntarily unemployed and sick, injured and retired workers.

The Immigration Judge at the AIT found the appellant's argument to be compelling enough to allow the appeal. The Respondent subsequently applied for reconsideration of the decision but this was dismissed. SN and her granddaughter were entitled to permanent residence.

Case study 45

SK was the brother-in-law of a German citizen exercising treaty rights in the UK. He applied in March 2006 for a Residence Card submitting an EEA2 application stating that he was the dependant family member of an EEA national residing in the UK. The application was refused as SK had not lived with his brother-in-law in Germany prior to arriving in the UK and was required to do so under Regulation 8 relating to extended family members.

On appeal, TWAN argued that although the appellant did not fall under the definition of an extended family member in Regulation 8(2) as he had not lived with the EEA national in the EEA state, he should still be granted residence in the UK under Article 3(2) of the Citizens Directive. This states that a Member State should facilitate entry and residence in accordance with its national legislation.

"any other family members, irrespective of their nationality, not falling under the definition in point 2 of Article 2 who, in the country from which they have come, are dependants or members of the household of the Union Citizen having the primary right of residence"

The IJ did not accept this argument, however, and considered the judgment in AP and FP (Citizens Directive Article 3(2); discretion; dependence) India [2007] UKAIT 00048. He found that the issuing of a Residence Card must still be governed by national legislation which requires the applicant to comply with Regulation 8(2). As SK did not fall into this category, he could not be issued with a Residence Card. An application for reconsideration was made but subsequently refused.

British Citizenship

Depending on your current citizenship or nationality, you may be able to apply for British citizenship in several ways.

What is a British Citizenship?

British citizenship is one of the six different forms of British nationality. The forms of nationality are:

- British citizenship;
- British overseas citizenship;
- British overseas territories citizenship;
- British national (overseas);
- British protected person; and
- British subject.

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.

(iv) Acquisition by Naturalisation

If you are over 18 and have been living in the United Kingdom for the last five years (or three years if you are married to or a civil partner of a British citizen) you may be able to apply for naturalisation as a British citizen. You may also be able to apply for naturalisation if you or your husband, wife or civil partner is in crown or designated service outside the United Kingdom. Applications for naturalisation are made using application form AN.

There are seven requirements you need to meet before you apply:

- you are aged 18 or over; and
- you are of sound mind; and
- you intend to continue to live in the United Kingdom, or to continue in crown service, the service of an international organisation of which the United Kingdom is a member, or the service of a company or association established in the United Kingdom; and
- you can communicate in English, Welsh or Scottish Gaelic to an acceptable degree; and
- you have sufficient knowledge of life in the United Kingdom; and

- you are of good character; and
- you meet the residential requirements (these are detailed in full below)

Good Character Requirement

The good character requirements provide that in order to apply for British nationality unless:

- they are under 10 years old when making the application; or
- are stateless and are applying on application form S1, S2 or S3; or
- they are a British overseas citizen, a British subject or a British protected person and are applying on application form B(OS).

We consider you to be of good character if you show respect for the rights and freedom of the United Kingdom, have observed its laws and fulfilled your duties and obligations as a resident. We will check with the police and may contact other government departments as part of our character check. By signing the application form you are giving your consent for us to contact these organizations to obtain information about you.

Changes to Good character policy

On 5 December 2007 the Home Secretary announced changes to the way that an applicant's good character will be assessed for the purposes of naturalisation and registration as a British citizen.

The changes took effect as from 1 January 2008. This page has been updated to include the changes. Applications made on and after that date will normally be refused if the applicant has been convicted of a criminal offence and the conviction has not yet become 'spent' in accordance with the provisions of the Rehabilitation of Offenders Act 1974.

Financial background

We will check that you pay income tax and National Insurance contributions. We may ask HM Revenue & Customs for confirmation of this. If you do not pay income tax through Pay As You Earn (PAYE) you should send a Self Assessment Statement of Account with your application.

If you have been declared bankrupt at any time you should give details of the bankruptcy proceedings. Your application is unlikely to succeed if you are an undischarged bankrupt.

Criminal record

We will carry out criminal record checks on all applications from people aged 10 and over.

You must also provide details of all civil proceedings which have resulted in a court order being made against you.

You must give details of all unspent criminal convictions. This includes road traffic offences but not fixed penalty notices (such as speeding or parking tickets) unless they were given in court. You must include all drink-driving offences. An explanation of unspent convictions is given below. If you have an unspent conviction, your application for citizenship is unlikely to be successful. You should wait until the end of your rehabilitation period before applying.

What is an unspent conviction?

If a person convicted of a criminal offence he/she must declare unspent convictions but do not need to declare ones that are spent. A conviction becomes spent after a certain period of time has passed (we call this the rehabilitation period). The length of time it takes for a conviction to become spent will depend on the sentence. It starts from the date on which the person convicted. The period may be shorter if she/he were aged under 18 at the time of conviction.

If sentenced more than 30 months in prison for a single offence, this can never become spent. Then the application for citizenship is therefore unlikely to be successful.

If a person convicted of a criminal offence but the rehabilitation period has passed by the time when making the application then he/ she do not need to provide details of the conviction on the application form. If convicted of a further offence during the rehabilitation period of the original conviction, the rehabilitation period for the original conviction may be extended.

If a person convicted of a criminal offence and the spent period has not passed then he/ she must include details of the conviction on the application form. If the conviction is unspent at the time of the application, it is unlikely that your application will be successful.

Offences for which the applicant may go to court or are awaiting a hearing in court

Clients must provide details of any offence for which you may go to court for or are awaiting a hearing in court. This includes any offences for

which you have been arrested and are waiting to hear if you will be formally charged.

If you are living in Scotland you must provide details of any recent civil penalties.

If are arrested or charged with an offence after you have made your application you must let us know. Other things the Secretary of State consider.

You must tell us if you have ever had any involvement in terrorism. If you do not regard something as an act of terrorism but others do or might, you must mention it when making your application.

You must also tell us if you have been involved in any crimes in the course of armed conflict including crimes against humanity, war crimes or genocide.

Sound mind requirement

You will be considered to be of sound mind if you have the ability to make your own decisions. You should understand the step you are taking in applying for British nationality. The sound mind requirement is sometimes referred to as the full capacity requirement.

In some circumstances we can use discretion when deciding if an applicant must demonstrate that they are of sound mind. If you are applying for naturalisation on behalf of someone who is not of sound mind and for whom you are responsible, you should complete the form as fully as possible. You should highlight any areas that cannot be completed and should use page 13 to explain why it would be in the applicant's best interest to be naturalised. As part of the application you should provide us with evidence of the applicant's medical condition and the fact that they are in your care. This should include documentation proving the care arrangements.

Residential requirements

To demonstrate the residential requirements for naturalisation you need to:

- have been resident in the United Kingdom for at least five years (this is known as the residential qualifying period); and
- have been present in the United Kingdom five years before the date of your application; and
- have not spent more than 450 days outside the United Kingdom during the five year period; and
- have not spend more than 90 days outside the United Kingdom in the last 12 months of the five-year period; and
- have not been in breach of the immigration rules at any stage during the five-year period.

Start of the residential qualifying period

The residential qualifying period will be worked out from the day we receive the application. Most unsuccessful applications fail because the applicant was not present in the United Kingdom at the beginning of the residential qualifying period. Client must make sure that this requirement has been met before making the application. For example, if we received the application on 25 November 2005, the client would have to show that she/he was in the United Kingdom on 26 November 2000.

Client cannot count time which was spent in the United Kingdom while exempt from immigration control as part of the residential qualifying period. If residing in the United Kingdom as a diplomat or as a member of visiting armed forces or if he/ she is in any place of detention, then it would be considered as exempt from immigration control. This time would be treated as absence from the United Kingdom.

Immigration time restrictions

Applicant must be free from immigration time restrictions when making the naturalisation application. Unless he/ she is married to or the civil partner of a British citizen, he/ she should have been free from immigration time restrictions during the last 12 months of the residential qualifying period.

If the applicant is free from immigration time restrictions then there is usually a stamp or sticker in the passport saying that the person was granted indefinite leave to enter or remain or no time limit in the United Kingdom. Also the person will have a letter from the Home Office saying that he/ she is free from immigration control.

There is discretion to allow applications from people who do not meet this requirement. For details of how we apply discretion, applicant should read the page on discretion to regard immigration time restrictions during the last 12 months.

European Economic Area nationals and Swiss nationals naturalising as a British Citizen

If the person is a European Economic Area (EEA) national or a Swiss national or the family member of such a person will automatically have permanent residence status if exercised EEA free-movement rights in the United Kingdom for a continuous five-year period ending on or after 30 April 2006. The person does not have to apply for leave to remain. The applicant should have held permanent residence status for 12 months before applying for naturalisation.

If the applicant was outside the United Kingdom for six months or more in any one of the five years of the residence period then the five years continuous residence requirement is waived by the applicant. This does not apply if:

- the absence was due to military service; or
- All absences were for less than 12 months and were for important reasons such as pregnancy, childcare, serious illness, study, vocational training or an overseas posting.

If a person is away from the United Kingdom for a continuous period of two years or more then he/ she will lose the permanent residence status.
If you have indefinite leave to remain (ILR) in the United Kingdom you will be considered settled providing the person was not been away for two years or more since received ILR.

Breach of immigration laws during residential qualifying period

Applicant must have been in the United Kingdom legally throughout the residential qualifying period. The Secretary of State may refuse the naturalisation application if breached the immigration laws during the residential qualifying period.

Absences from the United Kingdom during the residential qualifying period

During the residential qualifying period person must not have been absent from the United Kingdom for more than 450 days. Applicant must not have been absent for more than 90 days in the last 12 months.
There is discretion to allow absences above the normal limits. For details of how the Home Office applies discretion, an applicant should read the page on discretion when considering absences from the United Kingdom during the residential qualifying period.

Crown Service

If a person is applying on the grounds of his/ her own crown service rather than his/ her residence in the United Kingdom he/ she must show that he/ she is:

- serving overseas is crown service on the date the application is received; and
- has been the holder of a responsible post overseas; and
- has given outstanding service, normally over a substantial period; and
- hasa close connection with the United Kingdom.

Crown service is an alternative only to the residence requirements for naturalisation. the applicant must still meet the other requirements for naturalisation.

What if I am under 18?Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Irish Republic, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, United Kingdom. Iceland, Liechtenstein and Norway are not members of the European Union (EU) but citizens of these countries have the same rights to enter, live in and work in the United Kingdom as EU citizens.Close connection (with a country) may be by birth, adoption, descent, marriage, registration or naturalisation.Leave to remain is permission to stay in the United Kingdom, either temporarily (limited leave to remain) or permanently (indefinite leave to remain). Working in the direct employment by the United Kingdom Government, the Northern Ireland Government, the Scottish Administration, the Welsh Assembly Government (from 6 November 2009) or, on or after 21 May 2002, the governments of the qualifying territories. (See Qualifying territory.) This does not include someone who is subcontracted on government projects or in the service of Crown servants, such as Royal Navy laundrymen or teachers working in schools on British bases. This means we can consider the particular circu-mstances and in special cases grant an appli-cation.You meet the requirements to apply.

Persons who are aged under the age of 18 can register as a British citizen using application form MN1.

To be able to register as a British citizen using application form MN1 the child must be under 18 on the day the Home Office receives the application. Once the child turns 18 he or she will need to apply for registration or naturalisation as an adult. Children who have automatically become British citizens do not need to register.

There are several ways that a child can meet the requirements to register as a British citizen. Depending on the child's circumstances, they will be able to apply for registration as a British citizen by entitlement or discretion. These terms are explained below.

If the child has a right under British nationality law to apply and be registered as a British citizen this is an entitlement.

If the child does not have a right under British nationality law to apply and be registered as a British citizen, registration will be at our discretion. In these cases we will consider the circumstances of the child's case and whether it is reasonable for them to be registered as a British citizen. If the child is applying for registration at our discretion you should provide as much evidence as possible to support the case.

It is possible that some families include some children with an entitlement to register and others without. If an application is made from families in these circumstances you are asked to indicate on the form if you still wish to register the children who have an entitlement to British citizenship if other applications are unsuccessful. If you do so, the children will have different nationalities.

For all registrations, the child must:

- be under 18 on the date we receive the application; and
- be of good character if they are 10 years or over on the date of application.

The child must also meet the requirements of certain sections of the British Nationality Act 1981.

Can I be citizen of two countries?

You do not need to give up your present citizenship or nationality to become a British citizen.

Many countries will not let you have two nationalities (dual nationality). If you become a British citizen and are a national of a country which does not allow dual nationality, the authorities of that country may either regard you as having lost that nationality or may refuse to recognize your new nationality. Before you apply for British citizenship you may wish to check what your position would be with the authorities of the country of which you are a citizen.

Case study 46

In this case the applicant wished to apply for citizenship. The applicant was under the age of 18 so a MN1 application was made on his behalf. The applicant's father was a British Citizen. All the required documents were sent with the application, however, there was a delay in the process of the application. The Home Office required the applicant's mother's passport to prove that she had indefinite leave to remain or indefinite leave to enter the UK. The Home office refused the applicant's citizenship request, as they were not satisfied with the documents which supported the applicant's application.

Case Study 47

The applicant wished to make a citizenship application. As he was above the age of 18, an AN application was made on his behalf. The applicant came to this country as a refugee and claimed asylum. He was granted refugee status, thus wanted to naturalise as a British Citizen as he had been living in this country for more than 8 years. It was particularly important for the applicant to show original evidence to demonstrate to the Secretary of State that he met the residency requirements for naturalisation. The applicant was unable to provide a copy of his travel document as he had lost it, so he provided alternative documents in support of his nationality application. As he had lost his travel document, he provided a police report to confirm this was the case. The alternative evidence which he provided to confirm his residency was not sufficient, and therefore citizenship application was refused. The applicant was unable to gather evidence of residency to fully cover the period of residency. The Home Office advised that he should make a fresh claim when he has gathered all the relevant documents which are required. A fresh application has since been made and the applicant is waiting for a decision to be made by the Home Office.

Case Study 48

The applicant was granted Indefinite Leave to remain in the UK and has been living in this

country for more than 5 years; therefore wished to apply for British Naturalisation. The applicant's application was refused as he had been linked with the LTTE. The Home Office believed that **as a** result of his active membership with this organisation he had not fulfilled the good character requirement under the 1981 Act. The applicant appealed against the decision, stating that he had not been involved with the LTTE during his life in the UK. The applicant contends that the decision taken by the Home Office was not in accordance with Article 34 of the Refugee Convention which requires that the applicants' naturalisation be facilitated. Refusing to naturalise the applicant by reference to his behaviour in his country of nationality, where that behaviour is directly connected, the circumstances that made him a refugee would appear to be contrary to Article 34. Despite judicial review application, the decision to refuse application for naturalisation was upheld.

UK Government passed The Borders, Citizenship and Immigration Act 2009, made provision for those born in the UK or in a qualifying territory, after the appointed day serving numbers of the armed forces to be British by birth.

LEAVE TO REMAIN AFTER ENTRY

This is the most common area of work members of the community require from this organisation and is a very popular area of work because many migrants coming here with limited leave must extend their visa after arrival before the visa expires. The regulation of extension and requirements of types of forms are regularly updated by the U.K Border Agency and their scrutiny of individual application creates a large workload for the Immigration Practitioners.

To apply for Leave to remain the person must be legally in the UK subject to immigration control, who has been granted limited leave to enter can apply to remain for longer either in the same or a different category. If no such application is made, the person must either leave the UK or will become an overstayer, which is a criminal offence and then has implications on their future immigration status. Applications must be made before a person's current leave to remain expires. Sometimes the person must return home and apply for an entry clearance to return rather than apply for an extension of stay.

An application to stay for longer once already present in the UK is described as an 'extension of leave' and if successful 'leave to remain' will be granted. Leave to remain is usually obtained from immigration caseworkers working at the UK Border Agency, based at Croydon, Liverpool or another office. An extension of leave is often referred to an extension of leave in the same immigration category. An example is a student will often be granted one year of leave to enter initially and then have to apply for further periods of leave to remain if on a course of longer than one year's duration. An application for an extension of leave in a different immigration category is referred as a variation application or as 'switching' eg. a student might get married and want to apply for leave to remain as a spouse.

An application for Leave to Remain must be made on one of the mandatory application forms which are available on the Home Office website and fees are payable for making most applications. The current fees are set out on the forms. There are different forms depending on the type of Leave To Remain 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.

The primary forms are:

1. FLR (M) - This form is an application for an extension of stay in the UK as the spouse or civil partner of a person present and settled in the UK, unmarried or same-sex partner of a person present and settled in the UK and for a biometric immigration document (identity card for foreign nationals) or for persons who do not meet the language competency test. In accordance with paragraph 34 of the Immigration Rules, this form is a specified form for the purpose of the Immigration Rules as of 6 April 2010 and must be used for all applications on or after that date. There are also relevant guidance documents which should be read before making the application. The forms change periodically and it is important to check that the version is still in use which must be used prior to making the application. Applications may be made by post or in person at one of the Public Enquiry Offices. To apply in person, an appointment must be made prior to visiting the Home Office. For applications made by post the fee is £475 for a single person with no dependants,

or £730 for applications made in person at the Public Enquiry Office. For applications with dependants an additional fee of £92 and £118 respectively for each dependant must be paid. Unless the correct fee is paid the application will be rejected. Children under the age of 18 are dependants and those aged over 18 must apply individually and pay the specified fee in each case. There are sections of the form which are mandatory as the application will be invalid if those information is incomplete. An application must be attached with two identical photographs of the applicant and dependants. Originals of all the relevant documents must be sent with the application form, such as the original passport or travel document, or identity card for foreign nationals; police registration certificate if applicable; a full birth certificate for each child under 18; evidence of finances such as bank statements, building society savings book, pay slips of at least the last three months; marriage certificate or civil partnership certificate; three utility bills for proof of address. The application must be duly signed and dated.

Case study 49

A.K approached us in February 2009 as she wished to apply for extension with her spouse Mr S.S. who is settled in the UK. She originally came to the UK in December 2000 and claimed asylum. Later she had been granted a right to reside in the UK in March 2005 with her brother who was an EEA national and exercising a right in the UK under the EEA Regulations. She was given permission to take employment or engage in business or profession while her brother continued to exercise a Treaty right. At that time her only claim to remain in the UK was as the family member of an EEA national who is residing here. If she decides to stay without the EEA national she would have to qualify to remain in the UK in her own right. She had to inform the Home Office in the event her brother left the UK or ceased to be an EEA national. In the meantime Miss A.K. got married on 28 May 2005 and had two children. In March 2010 we made an application on FLR (M) prior to her right to reside in the UK as a family member of an EEA national expired and she was now the spouse of a settled person. An FLR (M) application was sent on 1 March 2010 with the correct fee that was applicable at the time the application was made together with the supporting evidence requested in the FLR (M) and her husband's proof of finances. Home Office acknowledged our application by their letters dated 3 and 10 March 2010 (twice). Our clients FLR (M) application was then returned to us as invalid on 25 March 2010. One of the reason given was that the application was made using the incorrect form and should have been applied using the new version application form which came into force from 6 April 2010 and that the new increased fees must have been paid with the FLR (M) received by the Home Office in March 2010 as mentioned above. It is pointed out that although we submitted the correct application form and fee, within time our application was returned. This has caused our client to pay the new increased fee, which was unreasonable and additional work for us in completing the new form. We have now resubmitted the application with the new additional fee.

Case study 50

The applicant J.P. came to us in December 2008 and said that she came to the UK in December 2006 with her daughter, as spouse of Mr. S.J. and her visa was expiring in December 2008. Her husband was supporting and accommodating them in the UK as she had no recourse to public funds. An FLR (M) application was prepared on behalf of our client and her daughter as a dependant and sent to UK Border Agency together with supporting evidence and fee. She was taking the Life in the UK test, but had failed the test once, and until she passed, she wanted to renew her visa. The Border Agency in January 2009 said to our client, she and her daughter were required to provide the biometrics for the purpose of obtaining the Identity Card for Foreign Nationals within a specified time (this is a residence permit which holds the persons biographic and biometric information and shows their immigration status and entitlements while they remain in the UK). Our client was then requested to send a photograph of her spouse. In April 2009 Mrs. J.P. and her dependant daughter were issued with the Identity Card (ICFN) and Leave to Remain was granted for two years until April 2011 and after this period they will become eligible to apply for Indefinite Leave to Remain prior to the expiry of their existing leave. Although since 2 April 2007 applicants for settlement have been required to show they have passed the life in the UK test we were successful in this case.

2. SET(M) – Settelment application on the basis of a spouse of a settled spouse

This is an application for indefinite leave to remain in the UK as the spouse or civil partner of a person present and settled in the UK. The spouse or civil partner of a person must have completed a two year period of marriage life. In accordance with paragraph 34 of the Immigration Rules, this form is the specified form and must be used for all applications made on or after 7 April 2010 by applicants of this category. The forms change periodically and it is important to check that the version is still in use prior to making the application. Applications may be made by post or in person at one of the public enquiry offices. For applications made by post the fee is £840 for a single person with no dependants, or £1095 for applications made in person at the public enquiry office. For dependants an additional fee of £129 for each dependant must be paid. It is mandatory to provide the relevant photographs as specified in the form. The applicant must provide two identical passport size photographs, one photograph of the partner and two photographs of each dependant child under 18. Some sections of the form are mandatory and must be fully completed as otherwise the form will be invalid and will be rejected. To qualify for indefinite leave to remain under this category an applicant aged 18-64 must comply with the requirement that they have sufficient knowledge of language and life in the UK. Originals of the passport or travel document or the identity card of the foreign nationals, a full birth certificate for each child under 18, bank statements building society savings book pay slips of at least the last three months, six letters and /or other documents addressed to the applicant and their partner at the same address as evidence that they have been living together during the past two years, Civil partnership documents and three documents for proof of address must be sent with the application. The application must be duly signed and dated.

Case study 51

Mr. M.J. instructed us to act for him in August 2005 in connection with his application for an extension to Exceptional Leave Remain. He had arrived in the UK seeking asylum as a refugee and was granted ELR status in August 2001 for a period of four years.. We advised him that he should also apply for ILR as he had completed four years ELR in the U.K. We made an application for indefinite leave to remain and the Home Office informed us that such cases were taking an average of ten months to reply. Mr. M.J. was granted ILR and we advised her to apply for a Sri Lankan passport so that the visa can be endorsed on her passport. We then sent an NTL application and his new passport was duly endorsed with indefinite leave to remain.

Mr. M. J came to us again in November 2008 seeking our assistance with his naturalization application. Form AN was applied with supporting documents. His application for British citizenship was successful. We assisted our client with the procedures in attending the citizenship ceremony.

Our client again instructed us to act for him regarding his wife V.J's SET (M) application. Her immigration documents revealed that she was married to Mr. M.J. in January 2007 and came to the U.K. in January 2008 with a visa to join spouse and no recourse to public funds. V.J. now wished to apply for visa extension as a spouse of a person who is settled in the U.K. Mrs. V.J had successfully satisfied the language requirements and produced evidence to that effect. A SET (M) application was made with all the required documents on her behalf in October 2009 requesting the grant of Indefinite Leave to Remain in the U.K. Our application was successful and in January 2010 Mrs. V.J. was granted settlement visa with Indefinite Leave to Remain in the U.K. We have advised her on the requirements to make the citizenship application.

3. SET(DV)- Settlement application on the basis of Domestic violence from the settled spouse

This is for an application for indefinite leave to remain in the UK as a victim of domestic violence. In accordance with paragraph 34 of the Immigration Rules this form is valid only for applications made on or after 6 April 2010. The forms change periodically and it is important to check that the version is still in use prior to making the application. Applications must be made by post only and cannot be made in person. The fee for postal application is £840 for a single applicant with no dependants. For dependants an additional fee of £129 for each dependant must be paid. The fee does not need to be paid if the applicant is destitute at the time of making the application. The applicant must provide two recent passport-size photographs of the applicant and two recent photographs of each child under 18 . Some sections of the form are mandatory and must be fully completed as otherwise the form will be invalid

and will be rejected. The applicant must send the original passport or travel document, identity card if they are foreign nationals, together with the dependant's passport. To apply under this category, satisfactory information and documentary evidence that the applicant is a victim of domestic violence must be provided. The evidence must be from independent and objective sources and must relate to violence committed by the partner or his/her family. Acceptable evidence includes a medical report, an undertaking given to court that the person who committed the violence will not approach the applicant, a police report, a letter from social services department, a report or document from a support organisation of domestic violence and evidence from a multi-agency risk assessment conference. A letter must also be given confirming whether the applicant is living with the partner or not and if there is a relationship breakdown whether domestic violence was the cause. For dependants under 18 their original birth certificate must be sent. The application must be duly signed and dated.

4. NTL - No time limit stamping on the passport

This is an application for an indefinite leave - No Time Limit- stamp to be fixed on a passport or on a travel document, normally a new/replacement passport. The applicant must already have indefinite leave to remain in the UK and may apply at any time while the applicant has indefinite leave to remain. In accordance with paragraph 34 of the Immigration Rules, this form is valid only for applications made on or after 6 April 2010. The forms change periodically and it is important to check that it is still the version which must be used prior to making the application. The fee for postal application is £169 and if the application is made in person at a public enquiry office £578. The applicant may include their spouse, civil partner, and children under the age of 18 as dependants. Fee is payable if they apply as dependants are £16 by post and £57 in person. If they apply separately, they must pay the specified fee. Children aged 18 or over must apply individually and pay the specified fee. The applicant must provide two recent identical passport size photographs of the applicant and for each of the dependants. The sections of the form that are mandatory must be fully completed as otherwise the form will be invalid and will be rejected. The documents enclosed with the application must be originals and must include documents such as the current passport or other document of the applicant and dependants; a police report if the passport is lost; Home Office letter showing of the grant of indefinite leave to enter or remain in the UK; proof of identity and proof of address as evidence of continuous residence in the UK. The application must be duly signed and dated.

Case study 52

Our client K.S. B. came to us in April 2009 for a visa endorsement on NTL. He had been granted leave to remain in the UK IN July 2008 and he wanted us to act for him in the visa endorsement on his new passport. Our perusal of his past documents relating to his immigration history revealed that he had been granted Humanitarian Protection in the UK which is a discretionary grant of leave to remain in the UK for a reason not covered by Immigration Rules. We then made a NTLTOC application in April 2009 with a fee of £160 and all the supporting documents. Under the earlier Immigration Rules one form was used for both NTL and TOC applications. Our application was returned by the Home Office mentioning that although a payment was sent with the application it was not the specified fee and that the correct fee of £165 must be paid when making a fresh application and that if an applicant does not pay the specified fee, the application is invalid. Now A fresh application with the full amount was resubmitted again in May 2009. In such an event the Home Office policy of retuning an application causes additional work for us and their officials and inconvenience to the clients. The reason being that the Home Office does not notify the changes they make to the fee structure to its users of their service or give an advance notice, but make changes to their system and simply reject the applications. In this case it would have saved time and expense if they had requested for the extra sum of £5 and completed the application on receipt of the additional money. Finally, our client's passport was duly stamped with leave to remain and also was issued with an Identity Card for Foreign Nationals (ICFN) which is residence permit holding the client's biographic and biometric information.

5. TOC - Stamping limited leave to remain in the Sri Lankan Passport

This is an application for a Transfer Of Conditions and a Biometric Immigration Document by an a person who has limited leave to remain in the UK. The application is made for a limited leave stamp to be fixed on another passport or document. For postal applications the fee is £169 and for applications made in person at the Public Enquiry office is £578 In accordance with paragraph 34 of

the Immigration Rules, this form is valid only for applications made on or after 6 April 2010. The forms change periodically and it is important to check that it is still the version which must be used prior to making the application. The applicant may include their spouse, civil partner and children under the age of 18 years. An additional fee is payable if they are applying as dependants and the fee of £16 for postal application and £57 for personal application. Children over 18 cannot be included and they must apply individually and pay the specified fee. The applicant must provide two recent identical passport size photograph of the applicant and for each dependant. The sections of the form that are mandatory must be fully completed as otherwise the form will be invalid and will be rejected. Original documents of the applicant's and dependant's passport or other document, a police report if the passport is lost, Home Office letter showing the grant of limited leave to remain in the UK, proof of identity and proof of address must be sent with the application. The application must be duly signed and dated.

Case Study 53

Client R. J. R. was an EEA dependant with limited leave to remain in the UK.
She came to us regarding the endorsement of the visa on her new passport and
She wanted us to represent her. Her immigration history showed us that she had arrived in the UK in September 2005 and her visa endorsement was in her old
Passport and she was now eligible to make a TOC application. We sent a TOC
Application together with the supporting documents in October 2009. The entire application was retuned by the UK Border Agency requesting additional supporting documents and to re-submit it along with the additional information.

Ms. R.J.R had been issued with a residence card six months ago but she was required to submit all the necessary documentation once again.

6. COA - Certificate Of Approval

This is an application for approval for a marriage or civil partnership in the UK. This form must be used for applications made on or after 9 April 2010. The forms change periodically and it is important to check that it is still the version which must be used prior to making the application. Currently there is no fee payable with this application as the fee is suspended. Applications on this form must be made by post only. The application must include two recent identical passport size photographs of the applicant and of the fiancé(e) or proposed civil partner. All documents sent with the application must be originals and must include the applicant's and the proposed partner's current passport, or other travel document; identity card for foreign nationals; where the fiancé(e) or the civil partner is a British citizen or EEA national and has to travel outside the UK at the time the application is made, a notarised copy of their passport/travel document; a full birth certificate of the proposed partner if he/she is a British citizen and does not hold a British passport. If the applicant and the proposed partner were previously married or were in a civil partnership before, evidence must be provided showing that they are free to marry or enter into a civil partnership. The application must be signed by the applicant and by the fiancé(e) in the specified boxes.

7. TIER 2 - Application for a grant of leave for Ministers of Religion.

Applicants includes those who are already in the UK and making an initial application or a main applicant seeking a change of employment or to extend their leave for a further period within their existing category or to extend the stay under their work permit arrangements. In accordance with paragraph 34 of the Immigration Rules, this form is specified for applications made on or after 6 April 2010. Applications may be made by post or courier. There is a standard fee of £475 payable, and for application made in person the fee is £730. Nationals of countries that have ratified the 1961 Council of Europe Social Charter pay a reduced fee of £434 for applications made by post or courier or £669 for applications made in person at the Public Enquiry Offices. Each dependant must complete a separate Points Based System Dependant form. Applications submitted at the same time as the main applicant's form will pay a fee of £92by post and 118 if they apply in person. If the dependant application is submitted at a later date or for children aged 18 years and over, will incur a fee, this must be asked at the time they apply. The form must be sent with two identical photographs of the applicant and the dependants who are applying with the main applicant. The mandatory sections of the form must be fully completed as otherwise the form will be invalid and will be rejected. For Tier 2 applications the points based system Policy Guidance applies and the applicant must have the points mentioned in certain points scoring areas of the application form to obtain the necessary visa. In addition the

applicant must satisfy the minimum standard of English language and score the points as otherwise the application will be refused. Documents enclosed with this form must be originals and must include passports, or other form of travel document; Police registration certificate if applicable; marriage or civil partnership certificate birth certificate; proof of points scoring documents and driving licence. The applicant must duly sign and date the application. This form must also be completed with details of the representatives acting on behalf of the applicant by providing details as required in the form.

8. TIER 4 - Students applying under Tier 4 (General)

This application is used for adult students for a grant of Leave and Biometric Immigration document. The student must be already in the UK. In accordance with paragraph 34 of the Immigration Rules this form must be used for applications made on or after 6 April 2010. Applications may be made by post, courier or in person but with a prior appointment. The fee for postal application is £357 and for personal applications £628. The applicant must provide two recent identical passport-size photographs for the application to be valid. All mandatory sections must be completed as otherwise the application will be rejected. Dependants must use a separate Points Based System Dependants Application form and provided they apply at the same time as the student's form, a reduced fee of £80 for postal applications and £107 if applying in person is payable. Where a dependant application is made at a later date the fee is £475 by post and £730 if applying in person. The students must give their personal details, passport or travel documents and identity card if they are foreign nationals, the current immigration status, details of criminal offences if any, information for Biometric Enrolment, Tier 4 sponsor contact details, course details, fee, place of study, proof of finances and particulars for Tier 4 points based system. All evidence and documents submitted with the application must be originals such as passports, travel documents or identity card, Police registration certificate, marriage certificate, birth certificate and driving licence. Where a representative is acting on behalf of the student their full details must be provided. If the student has recourse to public funds, details on relevant sections of the form must be completed. The applicant and their representative must duly sign and date the application form.

Case study 54

Client Ms. N.K. came to us in July 2009 regarding a Tier 4 application for further Leave to Remain in the UK. She entered the UK in 2007, having obtained a student visa to study in the UK. She was a student in a college in London and was continuing her studies. We examined her past immigration history and advised her to extend her student visa. As she was a student she had no recourse to public funds and she had a sponsor. We made a Tier 4 application in July 2009 to extend her student visa and for a biometric immigration document to enable her to remain in the UK and complete her course. Her visa was refused with appeal rights, in September 2009 on the grounds that she claimed ten points for funds under Appendix C of the Immigration Rules that her bank statements did not meet the maintenance requirement and the required funds, as one bank statement was a temporary statement and had not been endorsed by the issuing bank and therefore she had not satisfied the authorities to have achieved the ten points. We appealed against the decision of the secretary of state refusing to vary leave to remain under paragraph 245ZX (d) of the Immigration Rules. On appeal it we pointed out that it was due to the banks internal procedure Ms.K.N.'s application was refused and that our client had maintained a good bank balance and also had proof of sufficient funds form her sponsor to continue her studies. The appeal was successful as the Immigration Judge was satisfied that our client had sufficient finances but could not obtain a full bank statement at the time of her application. She was granted Leave To Remain in the UK as a student and was issued the Identity Card for Foreign Nationals (ICFN).

Case study 55

Mr. K.K. has been our client since January 2007 when he came to us regarding extension of his student visa as he had made an application for an extension and his visa was refused with right to appeal. His immigration history revealed that he had entered the UK in September 2002 as a student with restrictions on employment and no recourse to public funds. He had been granted extensions to his student visa every year since October 2003 until October 2006. His application was refused for further stay in November 2006 on the grounds that he was not enrolled on his course. His appeal hearing was due in January 2007 and he sought our help. We agreed to act for him and lodged an appeal on his behalf against the refusal and in our grounds of appeal we explained our client's study

structure where Mr. K.K. was studying for a BSc degree at a London University and had completed his second year of study and was at the same time registering with the Health Professional Council and Institute of Biomedical Science as a Biomedical Scientist which will be recognised throughout the world. In order to qualify for the registration he had to undertake work placements with a laboratory in a hospital which was an integral part of the course he was taking and on that basis he was enrolled by his university. The University had assisted him in trying to find a placement and his supervisor was in constant touch with him as he continued to be enrolled at the University and continued to use its facilities. Unfortunately he was not successful in getting a placement and was seeking to continue his course from February 2007. Our client was able to submit a letter from the University that that he will do so issued on his registration. The Judge hearing the case was satisfied with the Appeal and there was no objection for the Home Office Official, hence our appeal was successful. We then asked for Leave to Remain in the UK in line with the AIT's decision which was endorsed by the Home Office.

__Case study 56__

Mr. N.P's matter was a student visa extension under Tier 4. Our client came to us in November 2009. His immigration history revealed that he had come to the U.K. as a student with a six months visa which was due to expire at the end of November 2009 and he had to extend the visa to enable him to continue his studies. He had no recourse to public funds. We advised N.P. regarding the requirements for an extension of his student visa. Once our client was ready with all the relevant supporting documents we sent a Tier 4 application before his visa expired. The UK Border Agency requested our client to attend the Biometric procedure. Our client's application was refused on the grounds that he had failed to provide the qualification certificates and he had not satisfied the requirement for the 30 points claimed under the points based system. He had the appeal rights and we lodged an appeal in March 2010 and we put forward the plea that the UK Border Agency decision was not in accordance with Para 57 of HC395 (amended) of the Immigration Rules and the provisions of European Convention on Human Rights. Therefore, that our client was entitled to continue his education in the U.K. On appeal we also provided sufficient evidence that he was a prospective student and gave the necessary certificates for his qualifications. The Appeal is due to be heard later this year.

9. HPDL - Humanitarian Protection or Discretionary Leave

This application is made for an extension of stay in the UK or for settlement by a person following refusal of asylum and who was granted either less than four years Exceptional Leave, Humanitarian Protection or Discretionary Leave. The applicant must be in the UK and make an application twenty-eight days before their current leave expires. There is no fee for this application and the application must be made only by post. The application must be sent with four unseparated passport-sized photographs of the applicant and for each dependant. A full history and circumstances of the applicant since last being granted Limited Leave to Enter or Remain in the UK must be explained. Details of all dependants applying with the main applicant must be given. Application must accompany documentary evidence with originals of current passport/travel document or Home Office status letter or Immigration status document. The applicant must duly sign and date the application.

10. FLR (O)

This application is made for the purpose of an extension of stay in the UK in one of the employment or other categories mentioned in the form such as a general visitor, Overseas qualified nurse or midwife, long residence in the UK, other purposes/reasons not covered by other application forms - this include serious medical reasons where the treatment is not private- and some other categories listed in the form. The form has a section wherein the applicant must tick a box to show which category is applied for. The applicant, their partner and any children under 18 applying as dependants must be in the UK when they make the application. Children aged 18 and over must apply individually. The applicant must apply before their current leave expires but must not apply more than 28 days before their permitted stay in the UK ends. This form must not be used to make an application for asylum or international protection (this includes an application for humanitarian protection or an Article 3 European Convention on Human Rights (ECHR) application made on protection grounds or to make further submissions on asylum or human rights grounds after the refusal or withdrawal of an earlier asylum or human rights claim. Under paragraph 34 of the Immigration Rules, this form is a specified form for the purpose of making a valid application on or after 6 April 2010. Application forms change periodically and must check that it is still the valid

version of the form. Some of the categories previously applied on FLR(O) now fall under the Points Based System and falls within Tier 2, Tier 4 (General) and Tier 5. Some have been transferred to form FLR (BID) such as domestic worker in a private household, UK ancestry and visitor for private medical treatment. In long residence cases this form must be used if the applicant has completed ten years continuous lawful residence or fourteen years continuous residence, but do not meet the requirement to have sufficient knowledge of the English language and life in the UK, and not exempt from that requirement (as otherwise SET(O) is applicable). The fee for the main applicant by post is £475 and £730 for applications made in person. For each dependant £92 or £118 must be added depending on the method of application. Two identical photographs of the applicant and dependants must be provided and must be taken as specified in the photograph guidance. The applicant must give originals of the current passport or travel document or identity card for foreign nationals, evidence of details about their housing, any state benefits they receive, criminal convictions if any, bank statements, pay slips, and criminal records if any and birth certificates. In addition specific evidence is also required for each category eg. a general visitor must show that they can maintain and accommodate without recourse to public funds and employment, a qualified nurse must show educational proof. The applicant must duly sign and date the application.

Case Study 57

The applicant NK came to this country as a religious worker under Ministry of Religion category and subsequently extended his visa in 2005 and then in 2008 by completing FLR (O) form accompanied by maintenance, accommodation and temple letters confirming his service since his arrival to the UK. The Home Office considered the applicant and grnated necessary limited leave to remain as satisfied with the Immigration rules requirements.

11. PBS (Dependant)

This is an application made by a family member who want to stay in the UK as dependants of a Points-Based System migrant. Applicant must be in the UK to apply using this form. Dependants are spouse, civil partner or children under the age of 18 years of the main applicant. In accordance with paragraph 34 of Immigration Rules, this form is specified for applications made on or after 6 April 2010 (version 4/10). Application forms change periodically and prior to applying the must check that it is still the valid version of the form. The application may be made by post, courier and in person at a public enquiry office. Application made on this form by post is £475 and if applying in person £730. If the dependant is applying for leave to remain at the same time as the main applicant a reduced fee is payable. Some nationalities are entitled to pay a reduced fee. Applicants must check the fee scale of each category prior to making the application as the fee to be paid for each dependant is determined by the category under which the main applicant is applying and in some cases the nationality of the main applicant. The form has a section asking details of the main applicant and under which category of the Points-Based system has the main applicant applied. The fees range from £0 to £154 for each dependant according to their category. For children 18 or over the standard fee will apply. The family member must ensure they provide all the necessary supporting documents specified in the form at the time they submit the application as otherwise the application will be refused. The Home Office will not ask for the missing document but will refuse the application. All documents must be originals and where a document is not in English a translation must be enclosed. For family members of Tier 2 and Tier 4 categories where the main applicant holds a Biometric Immigration Document (ICFN) any family member must also apply for a Biometric Immigration Document. Applications under the Points-Based System Tier 1 (Investor), Tier 1 (Entrepreneur) and Tier 5 (Youth Mobility Scheme) cannot be validly made at a Public Enquiry Office, however dependants of persons who already have leave in these categories of the Points-Based system can make an application on this form in a Public Enquiry Office of payment of the correct fee. Two recent identical passport-size photographs for each person as specified in the photograph guidance is a mandatory requirement. The documents the application must include are the original passport or travel document or identity card for foreign nationals, evidence of criminal convictions if any, marriage or civil partnership certificate, birth certificate, driving licence, evidence of maintenance of the applicant-each category has different level of fund requirements and these proofs must be shown following the guidance referred to in the application form and evidence for the applicant's recourse to any public funds must be shown. The form must also be completed by the applicant's representative. Application

must be duly signed and dated by the applicant and their representative.

12. SET (F) – Settlement application as a family member of a settled person

This application is made by a family member for Indefinite Leave To Remain in the UK as a child or adopted child under the age of 18 or as a dependant relative over 18. The parent, grandparents or other dependant relative must be present and settled in the UK and must be applied before the current permission to stay in the UK expires. In accordance with paragraph 34 of the Immigration Rules, this form must be used for applications made on or after 6 April 2010. The current fee is £840 for postal applications and £1095 if applying in person. Nobody may apply as dependant with the applicant and they must apply separately. The application must include two passport-sized identical photographs of the applicant. The applicant must state the category in which they apply by ticking the correct box. The applicant must provide original documents as proof of evidence such as their current passport or travel document or identity card for foreign nationals, evidence of relationship of the parent or sponsor and their details as to finances and accommodation and the applicants criminal convictions if any. The applicant must satisfy the English language and life in the UK requirements unless the applicant is under the age of 18 or 65 and over. The applicant must duly sign and date the application.

13. SET (O)

This application is for an Indefinite Leave to Remain in the UK for many other types of settlement applications in one of the specified categories listed in the form to name some are business person, investor, self-employed lawyer, UK ancestry, highly skilled migrant etc. In accordance with paragraph 34 of the Immigration Rules, this form must be used for applications made on or after 6 April 2010. The fee for this application is £840 for postal application and £1095 if applying in person. Dependants who apply at the same time with the main applicant must pay £129 and £154 respectively. The applicant must be in the UK when they make the application and must not send the application more than 28 days before the expiry of their existing leave. The applicant must satisfy the English language and life in the UK requirement unless the exceptions apply. A joint application for partner and children under 18 can be made as dependants of the main applicant. Children over 18 must apply separately. This application cannot be made in person by some categories. Fees are different for nationals of countries which have ratified the 1961 Council of Europe Social Charter. This application is applicable for different categories of applicants and the category must be specified in the application form. Documents necessary are two recent identical passport-size photographs; current passport, travel document or identity card for foreign nationals; details of home, finances and state benefits if any; birth certificate; details of criminal offences if any; immigration history unless they are in the exempt category listed in the application; letter or documents from employer. As this form is applicable for many categories of applicants different types of evidence is required for each category and proof of documents must be given. The application must be duly signed and dated.

Case study 58

We acted for Ms. N.J. who made a SET (O) application with our help. She instructed us in December 2008. We gathered evidence that she entered the U.K. as sponsored by her father who accommodate and supports financially. She was continuing her studies and also had obtained the ESOL qualification. When she came to us her limited leave to remain was due to expire in December 2008. We advised Ms. N.J. that she was entitled to apply for indefinite leave to remain in the U.K. as a family member/ adult dependant of a person present and settled in the U.K. by applying in the SET (O) application form. We submitted the SET (O) application in December 2008 with supporting documents. The UK Border Agency requested us to provide confirmation from her college regarding the language and life in the UK test which we sent later and her passport was endorsed with an extension of stay in the UK. Her application was considered as an application for Further Leave to Remain until by extending her visa for two years until April 2011 and no recourse to public funds. It must be noted that she had satisfied the language and life in the UK requirement and gave documentary evidence to the UK Border Agency. When we pointed this out to them we received a letter saying that our client applied for Indefinite Leave to Remain as an adult dependant of her mother, who had been granted a two year extension of leave to remain as s spouse, as she failed to pass the Knowledge of Life in the UK exam. Our client has therefore been granted an extension of leave to remain for a period of two years in line with her mother. Her entry clearance

was as a dependant of her mother, and she had been granted a two year extension in line with this. They also said our client will be able to make an application for settlement when her mother qualifies. They gave a refund which is the difference in fee between a settlement application and an application for further leave. It was noted that the Home Office approach was incorrect as our client's application was as a dependant of her father and not a dependant of the mother.

<u>Case Study 59</u>

The applicant SV and his dependant wife entered the UK in January 2004 under Ministry of religion and extended their visa by completing FLR (O) form and they were granted limited leave to remain in the UK until September 2009. As he completed his five year residence period the applicant instructed us to apply for Indefinite Leave to remain to his dependant wife as well. Accordingly we collated evidence and advised the client that the requirements he must met before making the SET (O) Application. The application was pending until 11th March 2010 and then was granted Indefinite Leave to remain in the UK.

14. Current legacy programme

This is a questionnaire to ensure that in asylum cases when the Border and Immigration Agency considers a case to ensure that they take into account all relevant information and that the information is up to date. A legacy case is any case where all of the following apply:

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

Generally legacy cases will include:
- cases 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
- cases where the individual has been granted some form of leave to enter or remain, but this is limited and may need to be renewed such as an unaccompanied child granted discretionary leave or a person granted discretionary leave for medical reasons
- cases where the individual has been granted five 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

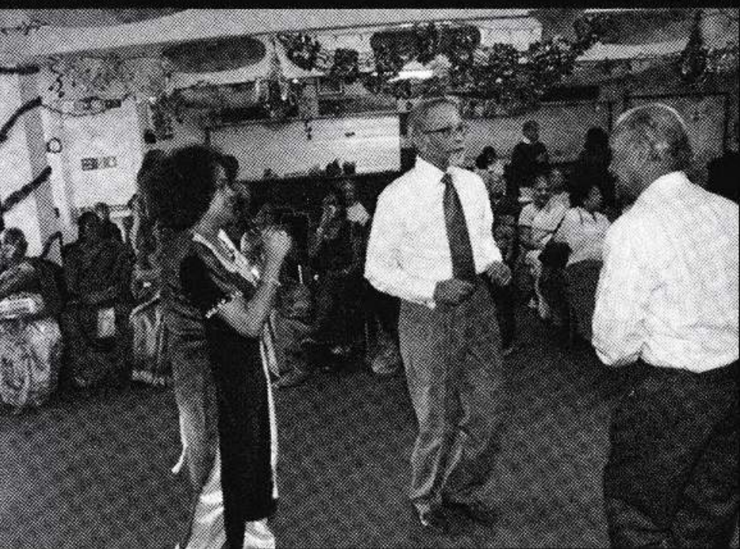
In response to applications for further leave to remain from individuals who fall within the legacy casework category, the Home Office has been sending standard letters, which simply state that the individual's case will be concluded by 2011. When the Legacy Directorate selects a legacy case, they send this 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 in order to clear their backlog.

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

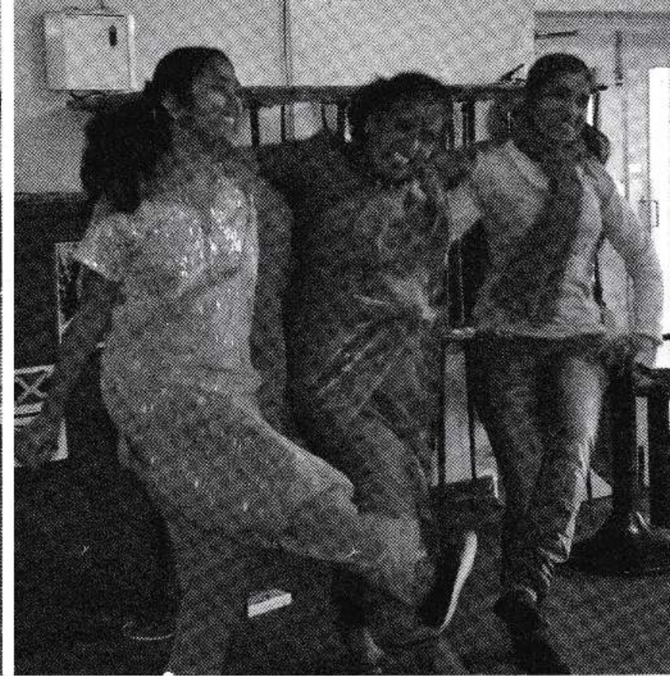
It may be possible to ask the Home Office to treat a case as a priority , but legal advice should be sought before making such a request as there is a risk that the person could be removed from the UK.

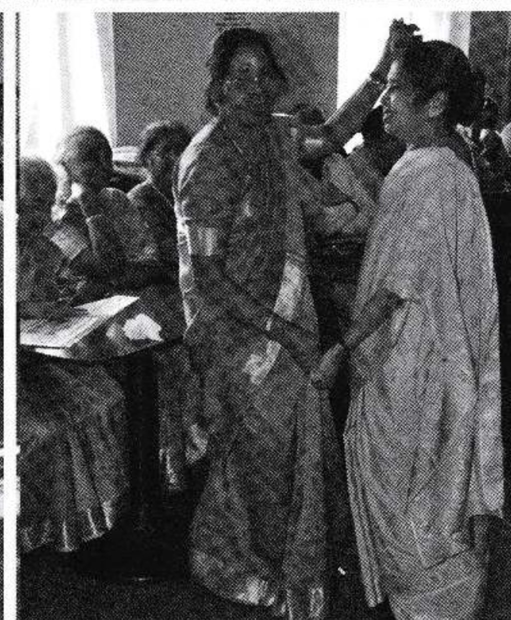
Learning and career development

While we conduct legal case work in Immigration and other areas such as employment, benefits, housing/ homelessness etc. we also involve in developing young children who will be the foundation for the future generation. We assist parents to obtain school admission for their children and advise the refugees to take training for their career development. Volunteers are being admitted in our organisation from schools for their internship and having discussion with the teacher who involved with the particular trainee.



Cultural and Recreational Organisation for Tamil Elders - (Edgware visits to TWAN Elders Day Centre on 17th Dec. 2009

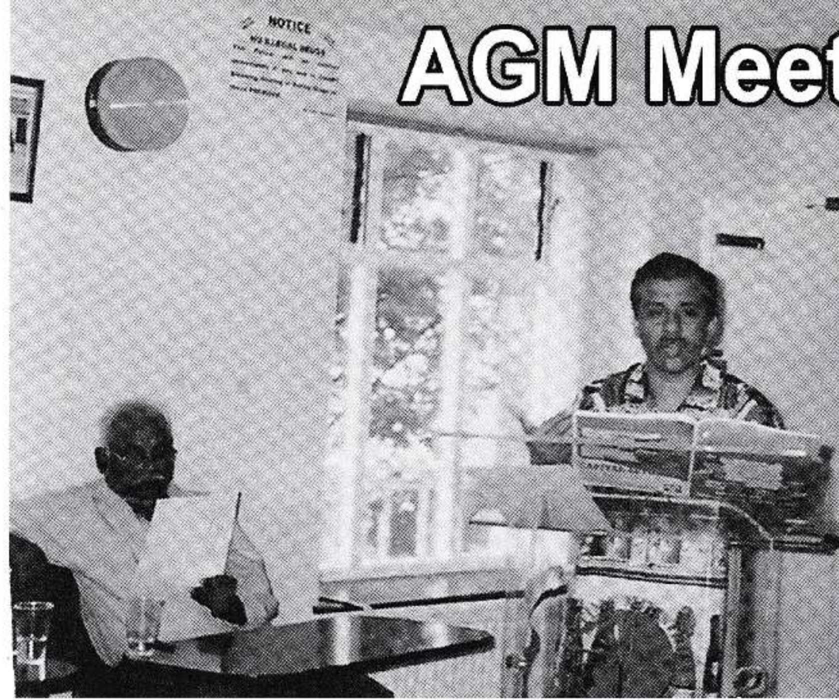




Various dance recitals performed by
TWAN - EDC members in front the CROFTE visitors

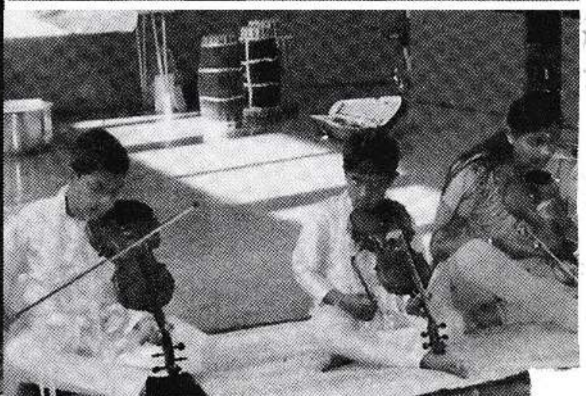
TWAN - EDC members celebrates their X' mas party with the CROFTE visitors

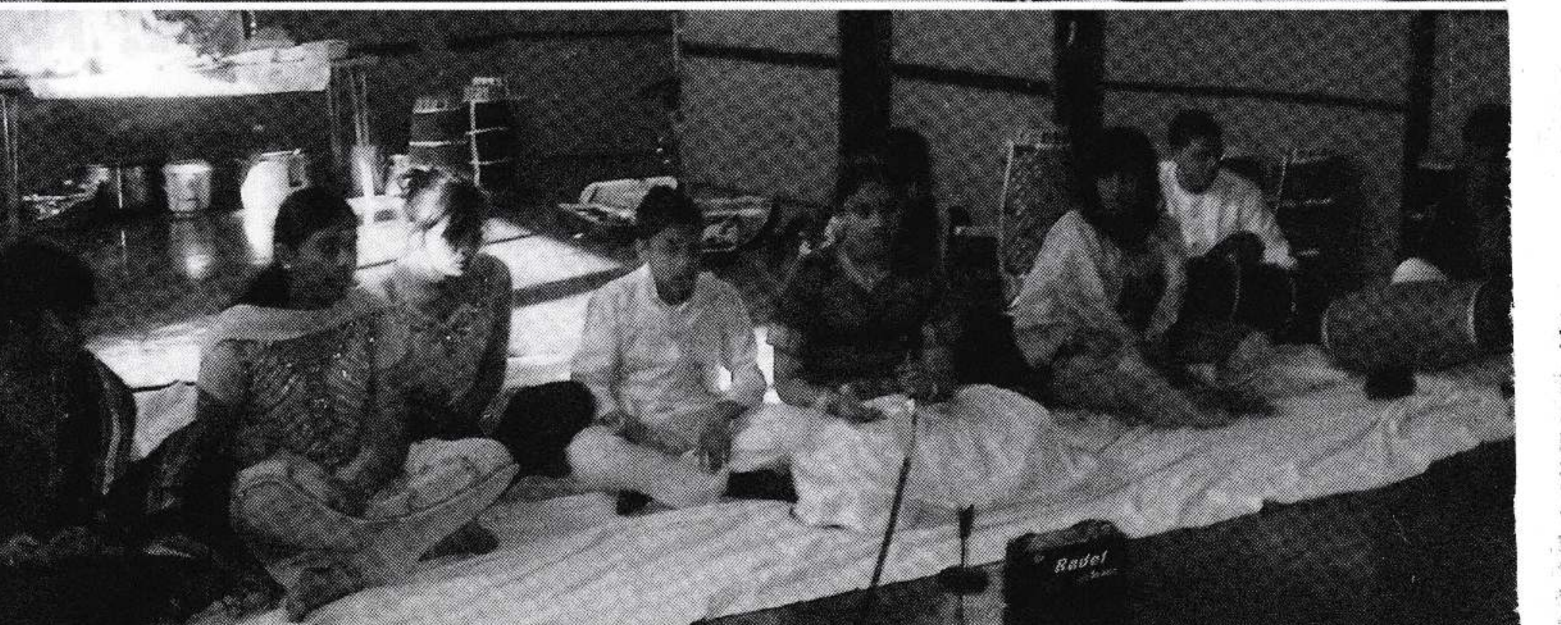
AGM Meeting 2009



Supplementary Education
& Fine Arts Classes

Supplementary Education & Fine Arts Classes





ACKNOWLEDGMENTS

We Heartfelt thank s

To all the people who have supported us over the last 23 years and the funders who have recognized our services and aided us with funds to enable us to fulfill our aims.

We sincerely thank all our members, users and well-wishers of the organisation and our partner organisations. Our special thanks to our honorable invitees for having graced the occasion by their presence this evening. And also a big thanks to our staff, volunteers, artistes and supporters for being with us today.

We also would like to thank the following individuals and organisation who have made a difference to our work and service:

Mr.Stephen Timms MP, Councilor Mr.Unmesh Desai, Mr. Clive Furness & other Local councilors.

Legal Services Commission, London Council, Lloyds & TSB Foundation, City Bridge trust, City Parochial foundation and Age Concern.

OISC, Counsels, Medical Foundation, Professional Doctors, Health Advocacy Services & GP's

Networking Organisations:

Advice UK, BAN Consortium, London Refugee Voice, Ramfel, NCVO, Redbridge CVS, The Warm Front Team, Newham Work experience Team, University of Wetminster, Redbridge Business Education Partnership, Newham Voluntary Sector Consortium, North East London Network, British Refugee Council, JCWI, LASA, ILPA, BID & CLT.

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Dance Lab performed at the" Isai Thendral" Concert with the famous singers Hariharan & Sadhana Sargam and actress Khushboo at the ROYAL ALBERT HALL, London on the 11th April 2010.

For more info please contact: Mars
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