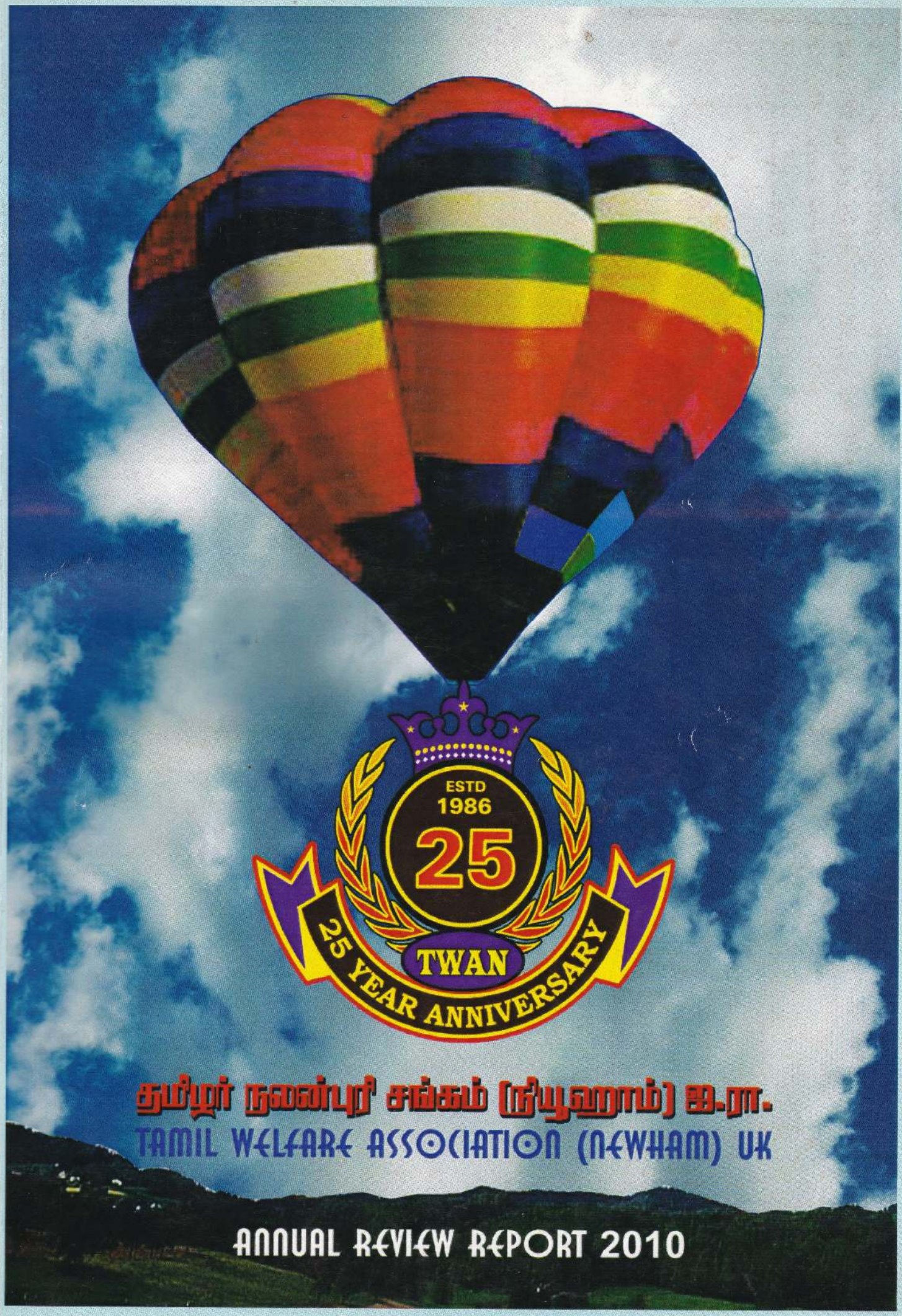

தமிழர் நலன்புரி சங்கம் (நியூஹாம்) ஐ.ரா.

TAMIL WELFARE ASSOCIATION (NEWHAM) UK

ANNUAL REVIEW REPORT 2010

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வாழ்த்துப்பா

அகதிகளாய் ஓர் விடியலுக்காக நாம் விமானம் ஏறினோம்
அது தரித்த இடம் ஐக்கிய ராச்சியம்.
தடுப்புக்காவல் அரனில் அறிமுகம்
ஒரு மாத அன்யோன்யம் வித்திட்டது தமிழர் நலன்புரி சங்கமதை

எண்பத்தைந்தாம் ஆண்டின் இனிய வைகாசி வசந்தத்தில்
நியூஹாம் பகுதியில் தடம் பதித்து
எதிர் கொண்டோம் புலம்பெயர் சவால்களை, அனுபவம் தந்த அறிவோடு,
நற்சேவை ஆற்ற வருடம் எண்பத்தியாறில் துளிர் விட்டது தமிழர் நலன்புரி சங்கம்!

பிறந்த மண் துறந்து ஆற்பரிக்கும் அலைகடல் தாண்டி
ஐக்கிய ராச்சியத்தில் அகதியாய் நின்ற எம்மை
அன்புக்கரம் நீட்டி ஆதரவாய் அரவணைத்துக்கொண்ட
கலங்கரை விளக்கே! எங்கள் தமிழர் நலன்புரி சங்கமே!!

அந்நிய தேசத்தில் எமக்குத் தேவையான உதவிகள் நல்கிடும் அன்னையே!
எங்களை வளர்த்தெடுக்கும் வளர்ப்புத்தாயே!!

அரசியல் தஞ்சம், ஆலோசனை, மறுவாழ்வு சேவை புரிந்து எங்களை காத்திடும் அரணே!
பிரிவுற்ற எங்கள் குடும்பங்களை இணைக்கும் பாலமே!
அன்னிய தேசத்தின் வாழ்வியல் நுணுக்கங்களை எமக்கு அழகாய் விளங்கப் படுத்திய ஆசானே!
கல்வி கற்பித்த கலாச்சார காவலனே! கலைகள் பல பயிற்றுவித்த கலைமகளே!

எங்களுக்காக குரல் கொடுத்து வாதிட்டு எங்கள் குலம் தழைத்திட செய்கின்றாய்.
சஷ்கைகள் பல பெற்று உயர்வாய் யாழும் உய்திட உதவுகிறாய்.

மானியம், வீட்டுவசதி, குடிவரவு, வேலைவாய்ப்பு, முதற்கொண்டு
சிறுவர் முன்னேற்றம், மூத்தோர் நலன் முதலாய் பலன்தரும் நற்செயல் திட்டங்களுடன்
நம் இனத்தின் மேலான வாழ்வுக்காய்
சேவை ஆற்றி வரும் தமிழர் நலன்புரி சங்கமே நீ நீடுழி வாழி!

வருடம் – தமிழ் புது வருடமதில்
ஆண்டாண்டு விழா எடுத்து கலை வளர்த்து
'கர' வருஷத்தை வரவேற்று வெள்ளிவிழா காணும்
செயற்கரிய சேவை புரி தமிழர் நலன்புரி சங்கமே வாழி... வாழி...

Annual Review Report - 2010

தமிழர் நலன்புரி சங்கம் (நியூஹாம்) ஐ. ரா.

TAMIL WELFARE ASSOCIATION (NEWHAM) UK.

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House of Commons
London SW1A 0AA
Tel: 020 7219 4000
Fax: 020 7219 2949

Labour Member of Parliament for East Ham

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

12 April 2011

Dear Friends,

Thank you for your letter asking me to contribute my message to your Annual Review Report. I am delighted that the Tamil New Year Cultural Night celebrations are being held in East Ham once again.

Tamil Welfare Association (Newham) UK has been very successful in building and uniting a strong Tamil community. I congratulate and praise your services to help the Tamil community, and the advice you offer to Newham residents. I am convinced organisations like TWAN are a positive influence in our country - strengthening communities and contributing to the success of Britain's diverse society.

I wish you all a very happy new year, and I do hope you have a very enjoyable celebration. I am looking forward to joining you as usual.

With all best wishes,

Yours faithfully,

STEPHEN TIMMS MP

Message from the Chairman

அன்பான உள்ளங்களே! அனைவருக்கும் வணக்கம்.

இருபத்தைந்தாவது அகவையிலும் இன்புறச் சேவை செய்யும்,இங்கிலாந்தின் கிழக்கு இலன்டனில் புகழோடு விழங்கும் தமிழர் நலன்புரிச் சங்கத்தில் நானும் அங்கத்தவன் என்பதில் பெருமகிழ்ச்சியடைகின்றேன்.

கடந்த பன்னிரண்டு மாதங்களில் பல சமூகசேவை நிறுவனங்கள் நிதித் தட்டுப்பாட்டாலும் இதரபல இடையூறுகளாலும் தொடர்ந்து சேவை செய்ய முடியாமல் தமது சேவைகளை இடைநிறுத்திக் கொண்டதை யாவரும் அறிவீர்கள்.இருப்பினும் எமது சங்கமானது முறையான திட்டமிடலாலும், சேவை மனப்பாங்கு கொண்ட ஊழியர்களாலும் இத்தடைகளையெல்லாம் தாண்டி பொலிவுடனும் வலிமையுடனும் தொடர்ந்து வெற்றிநடை போடுவதையிட்டு நாமெல்லாம் பெருமைப்படவேண்டும்.

கடந்த வருடமும் கணிசமான எம்மக்களின் புகலிட தஞ்ச மனுக்கல் வெற்றி கொள்ளப்பட்டன. நிராகரிக்கப்பட்டவர்கள் தொடர்ந்தும் வழிகாட்டப்படுகின்றார்கள். வருமானமற்ற பலருக்கு வருமானத்திற்கான வழிகள் தேடிக்கொடுக்கப்பட்டுள்ளன. இருப்பிடம் இல்லாது உதவிதேடிய பலருக்கு இருப்பிடத்திற்கான வழிகள் செய்து கொடுக்கப்பட்டுள்ளன. வாரந்தோறும் மூத்தோர் ஒன்றுகூடி, கலந்துரையாடி, உண்டு மகிழும் நிகழ்வு தொடர்ந்தும் நடைபெற்று வருகின்றது.

உடைக்குமேல் உடையால் போர்த்தி, உடம்பை நகர்த்தும் எம்மில் பலர் உள் ளத்தை இன்னும் ஊரிலேதான் அலைபாய விட்டுள்ளனர். அந்த ஊர் நினனைவின் தாக்கந்தான் இதுபோன்ற 'பல்கலை இரவுகள்'. எமது கலை, கலாச்சாரம் மற்றும் பண்பாடுகளை உயிப்போடு பேணும் அனைவரையும் இவ்விடத்தில் பாராட்டுவது சாலத் தகும்.

எமது நிறுவனமானது இந்நாட்டின் சகல சட்ட விதிமுறைகளுக்கமைய எந்தவித வேறுபாடுகளுமின்றி எல்லோரையும் சமமாக மதித்து சேவை செய்து வருவதை யிட்டு பெருமைப்படுறோம்.

எமது சங்கத்திற்கு பண உதவி செய்யும் தொண்டு நிறுவனங்கள், எமது சங்கத்தில் சேவையாற்றும் அனைத்து ஊழியர்கள் மற்றும் சங்க அங்கத்தவர்கள் எல்லோ ருக்கும் சங்கத்தின் நிர்வாக சபை உறுப்பினர்கள் சார்பில் நன்றியை தெரிவித்துக் கொள்கின்றேன் .

கால் நூற்றாண்டு கண்டும் களைப்பற்று கால் கடுக்காது வெற்றிநடைபோடும் எம் நிறுவனம் மேலும் பல்லாண்டு காலம் சிரமமின்றி சேவை செய்து எம்மக்கள் பயன்பெற எல்லாம் வல்ல இறைவன் துணை புரியவேண்டி பிரார்த்தித்து விடை பெறுகின்றேன்.

நன்றி !

TRUSTEE'S REPORT 2011

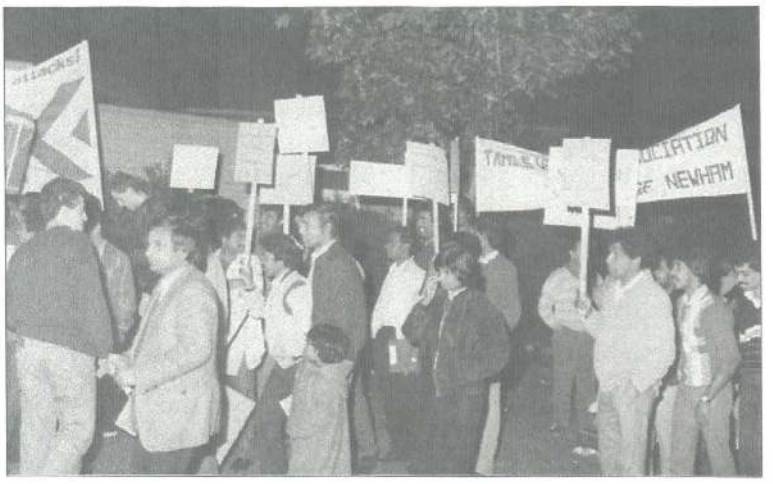
Our journey towards success

This is Silver Jubilee year for Tamil Welfare Association (Newham) as it successfully steps into its 25th year of selfless service of the Tamil community in the UK. The organisation was initially set up by a group of Tamil refugees who came to this country in April and May months of 1985. Around 58 of them were detained at the Ashford detention centre for a month and their asylum claim was refused and faced direction for removal subsequently. Among them three were removed and the remaining detainees those who were kept inside the centre managed to speak with MP Jeremy Cobyen and as a result of this they were not prosecuted and released shortly. Most of them received a lot of support from the members of the Tamil community who were settled in this country and the refugees who came to Newham took initiative to form the Tamil welfare association to support people like them. Initially it functioned as a self help group with an intention to achieve short term goals like getting Tamil refugees out of detention, tackling their removal/deportation issues, preparing them to face asylum interviews and to aid the Tamil community to be self sustained in their welfare matters. The organisation called its first inaugural meeting in May 1986 and it was formed formally as an approved constitution in September 1986. TWAN also took initiatives to form a similar sister concern in south London and it is currently functioning under the name of Tamil welfare association of Wands worth. Tamil welfare association was also started in Ealing as that area hosted a good number of Tamil refugees. Moreover Tamil welfare association formed a Tamil community housing Co-op and a women's wing to solve the issues related to accommodation and women respectively. This Tamil community housing co-op functioned until 1993 as an independent body with around 22 properties to manage and around 64 people were accommodated at any one time. Women's wing also functioned until 1991 and later it was dissolved due to lack of participation by the women members of the community.

From 1986 to 1990 the organisation was run by a group of volunteers and was self financed by its members. The organisation had its office at 33A, station road, Manor Park, London E12 and it was open to the public on all week days between 9 am to 5pm. The organisation tasted its first grant aid from the Trust for London and later it was funded by the Newham council for two years. In 1985 the group also negotiated with Newham council to influence the positive policy making towards the refugee resettlement through council's race, equality, unity monitors. As a result of this policy approval TWAN was awarded with 22 two bedroom flats in the north Woolwich area, out of this only 14 were utilised by the Tamil refugee community. With the continuous efforts of TWAN the council has made a policy to reduce the fees for refugee students in colleges in Newham and other areas. During this policy approval meeting held at Green park centre, Manor Park by the Newham council the officials from the Srilankan high commission who participated in the meeting opposed the councils for providing support and for being sympathetic with the Tamil refugees. They had also tried to tarnish the name of the Tamils and our organisation by stating that we are raising fund for the LTTE and even selling drugs illegally under the name of refugees. The council however neglected their arguments and explained that they are just providing humanitarian support to help the vulnerable people.

In late 1986 due to racial attack on a house at Burgers road, East ham 3 Tamil refugees were killed and at this juncture TWAN took initiative to conduct their funeral service with support and financial assistance from the Tamil community. After this incident racial tension was high in East ham, Manor park area and as a result many Tamil refugees were arrested and detained at the police station as they didn't possess a passport. The council and other officials treated this action as police harassment and TWAN set up a new project with funding from the council to help these

victims. Through the study conducted as a part of this project it was found that a large number of Tamil people were questioned and detained unreasonably and to stop this we made a complaint to the Minister for police, Home office, Queen ends gate on 23rd of April . As a result of the plea the Minister agreed to send a circular to all police stations in London to reduce the brutal act of the police.



Since 1987 the organisation concentrates on providing information and advice to Tamil community. TWAN actively released many Tamil detainees from detention and challenged many removals. As a part of this legal advice project 2 of our clients Vathanan Navarathnasingam(Case No: 13447/87) and Vinnasithamby Rasalingam (Case No:13448/87) were successfully assisted. They were ordered to be removed after their asylum claim was refused by the home office and lost the initial appeal at the appellate authority. Then this case went to high court and this case was represented by Winston lee Bruges solicitors at the high court with three other cases and in the end the court of appeal made the decision in favour of our clients. Subsequently home office appealed to House of Lords and they overturned the decision and all 5 appellants were deported. Subsequently this case was taken to European court of human rights and it was heard on May 1990 and ECHR condemned the UK government's actions and ordered to bring back the appellants to UK as their removal was breach of article 3 of the ECHR.

On behalf of Tamil community we pay tribute to Mr David Bruges who passed away in late 2010 in an unfortunate incident. Mr David Burges and his colleague Mr Chris Randall had tirelessly worked not only for our organisation but with Tamil community and other Tamil groups for many years. They incredibly sacrificed their valuable times to establish human rights of the Tamil victims. Most of all they proved that the UK legislation in respect of human rights violations is narrower than the provisions of ECHR.

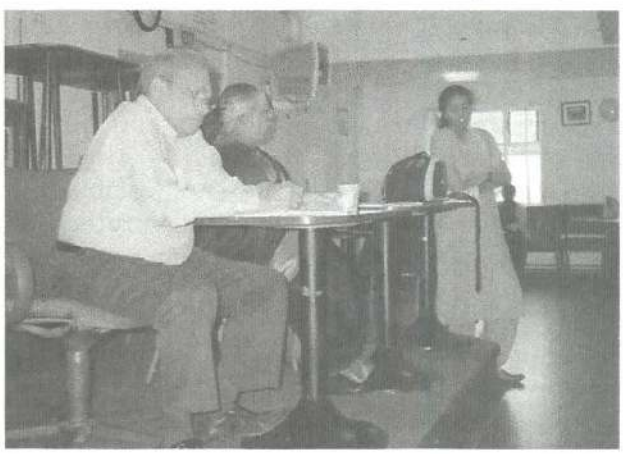
The organization conducted its first summer play scheme for children in 1989. Since 1992 the organisation started to provide legal advisory project in a structured manner. The organisation faced many challenges and success during this 25 year period and particularly in 1993 few members who tried to disrupt its solidarity were expelled from the membership. The organisation also survived a mere collapse as a result of the funding cuts by the Newham council in 1994 and national lottery board in 2001. With the determination of the members, support of fellow community members and volunteers the organisation overcame its barriers and is growing fast by strength. The organisation got registered as a public company in 1992 and obtained charity commission recognition in 1994.In 2003 the organisation was awarded with specialist quality mark and obtained civil legal aid contract for immigration and asylum work in 2004. In January 2002 one of our clients Mr AK (CO/1691/01) was deported by the enforcement unit of the home office. We successfully took injunction against the removal on the same day and established that the home office committed procedural error which is in breach of appellant's human rights and as a result of this injunction the client was brought back by the home office. The organisation is continuously providing quality legal representation and casework to the Tamil community.

The main area of work falls into welfare benefits, immigration and asylum, housing and accommodation, family issues, health care, consumer and financial advice and employment. Since 2004 the organisation is receiving funding from Legal service commission and London council which provides immense support to the uninterrupted delivery of services to the needy people in the community.

TWAN was formed in the middle of eighties with an objective of finding short term solutions to the Tamil refugee's crisis and from then on it is battling with UK border agency for the same purpose throughout its twenty five years of service. The organization desires to develop many other projects to help the Tamil community and for it's betterment but the lack of resources to meet the extensive work load is hindering the development of further new projects.

ANNUAL GENERAL MEETING - 2010

The organisation held its Annual General Meeting on 20th of June 2010 at the Manor Park Community centre Hall between 12.00pm to 4.00 pm. The main agenda of the meeting was to elect a chairperson, deliver project report and treasurer's report and to elect the office directors. A total of 77 members attended the meeting and11 members gave their apologies in the meeting. The annual general meeting was chaired by Mrs.Karuna Senathirajah. The project process report was submitted by the staff Mrs.Maheswary Balasundaram, Mrs Sujitha Kirubakaran and Mr.V.Janarthanan. The secretary Mr P.Chandradas presented the minutes of the last year AGM and the treasurer Mr.S.Muthukumarasamy explained the financial report to the members and both reports were accepted by the members without any amendments According to the constitution the three committee members who were serving for a long duration of time stepped down for re-election. Mr.R.Rajanavanathan, Mr.N.Rakavan and Mr.P.Sivarajeswaren were the three who stepped down for re-election. With their nomination and 3 other nomination from the members finally Mr.Rajanavanathan and Mr.N.Rakavan were re-elected and Mr.K.Maheshwaren was newly elected to the committee. The AGM was concluded with question and answers session from the members.



The board directors for the meeting were

1. Mr.P.Chandradas
2. Mr.V.Janarthanan
3. Mr.S.Paneerchelvan
4. Mrs.M.Balasingam
5. Mr.R.Rajanavanathan
6. Mrs.T.Janaka
7. Mr.S.Muthukumarasamy
8. Mrs.S.Kirubaharan
9. Mr.N.Rakavan
10. Mr.K.Maheswaran
11. Mr.S.Ramanan

THE PROJECTS AND ACTIVITIES OF THE ORGANISATION

Advisory project

The organisation's primary objective is to provide information and advice to the Tamil community in the UK. We are successfully providing these services continuously for over 25 years. This project developed strength to strengthen the service delivery targeted towards the needy and vulnerable individuals who are unable to obtain free service from other service providers like Citizen Advisory Bureau, Law centre or Home of Solicitors for various reasons. An average of 30 persons visit the office on a given day and most of them come for advice. It is also noteworthy that the individuals seeking help in other areas like mployment, family, consumer and money advice is on the rise. The records show that most people visit our office either for advice or second opinion. This project is mainly funded by the London Council and is also supported by the City Parochial foundation.

Legal casework and representation

Most of our casework and representation is with regard to asylum and immigration matters while welfare benefits tribunal, employment tribunal, asylum support tribunal (NASS benefit) and

employment tribunal are the other areas of legal case work and representation we undertake. Our record shows that we have represented a total of 65 cases at the asylum and immigration tribunal and out of these 56 cases were allowed by the immigration judges. The reason for the high success rate of our cases can be attributed to the wrong decision making by the officials, deteriorating condition in Srilanka, preparation and merits assessment we undertake before taking the cases.

Other services

Apart from the above mentioned services TWAN is conducting supplementary education programs and fine arts classes for the welfare of students and youth. These both are being run in the Ilford School in the week ends. Some other services like providing translation support when essential and taking part in outreach activities are also being carried out by our organisation.

Delivery of service

Most of the services are being delivered from TWAN office which is situated at 602, Romford road, Manor Park, E12 5AF through drop in service which is available from 9.00 am to 3.00 pm on Mondays and Wednesdays and from 9.00am to 1.00pm on Tuesdays, Thursdays and Fridays. Clients can also make use of the telephonic advice which is available on Tuesdays and Thursdays from 2.00pm to 4.00pm. In certain occasions we also provide outreach service for clients who are detained or others who are in need of such a service.

The demand for our services is very high owing to past successes which are being spread word of mouth to other people in the community by the individuals who utilised our services and gained benefits. The quality of our services has fetched a good name for the organisation and this reputation attracts more and more clients in the recent years. One more reason for the increasing work load in our organisation is the absence of a similar organisation in the surrounding to work for the welfare of the Tamil refugee community. The closure or funding cut for similar service providers is yet another reason for the continuous high turn over of our clients. On the whole due to its immense quantity of reach and excellent quality of service more and more people are seeking our support with a trust that their genuine issues will be sorted out in the best possible manner by our organisation.

Staff and volunteers

TWAN is being staffed by effective and dedicated individuals whose foremost aim is the welfare of the Tamil population. The organisation comprises of two full time and two part time employees. Apart from this TWAN is supported by volunteers at various levels in running its projects. Volunteers in our organisation work as project assistants, teachers, trainers, play workers and advisors. In a year around 35 individuals volunteer for assisting in the official duty alone and on an average 2 volunteers render their service at the office on a daily basis. Serving of volunteers in the organisation is a two way process where the volunteer contribute their valuable time and effort to the organisation and on the other hand the organisation enables the volunteers to gain a proper employment in the future through its training and guidance.

Finance

The main source of funding is from grants on an annual basis which include Legal Service commission funding which is around £120,000 including client's disbursement. And second large funding is coming from London council for around £40,000. The third funding comes from the city parochial foundation for around£ 15,000 and we received around£6,000 from City bridge trust. Around £2,500 was contributed by the community members. The audited finance records show that the organisation received total income around £210,000 and it has increased by £20,000 this year and the expenses have also increased by around 20,000. The performance related income around 45,000 is transferred to designated fund.

Networking and partnership

TWAN works in partnership with various other organisations with similar objectives of delivering the services and making overall changes in the community. This is mainly with non-profit organisations and sometime we also work with statuary bodies, service providers in the interest of the community. Our main partnership is with various organisations that are registered under the BAN (Black and minority ethnic advice group) consortium and these organisations work for the asylum, welfare benefits and various other services. There are 43 such organisations under the consortium and out of this 4 are situated in northwest London, 8 in west London, 2in south west London,10 in north London, 11 in east London, 3 in south east London and 5 agencies are from other areas. Apart from networking with

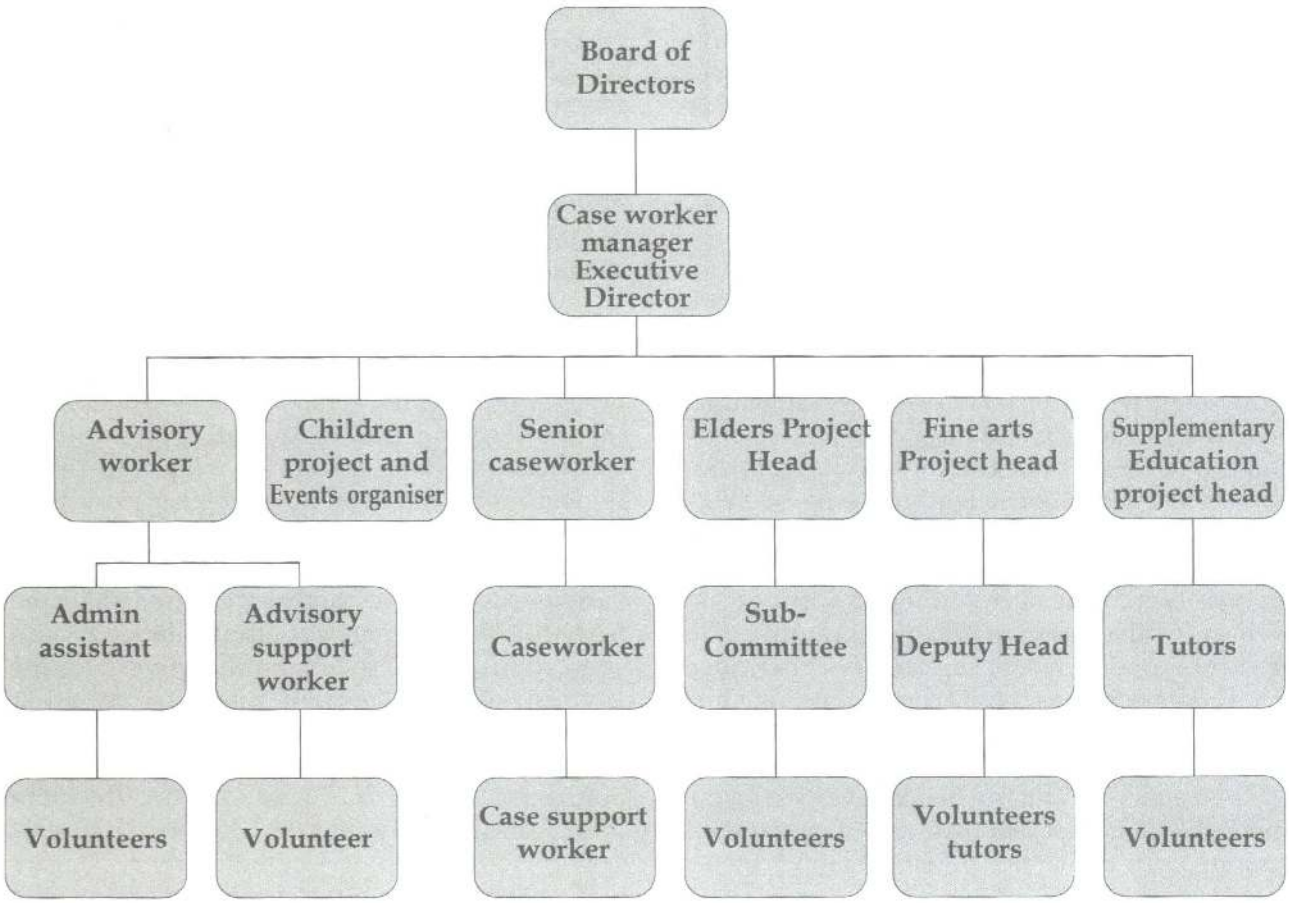
these agencies TWAN also refers individuals who speak other languages and seek other type of services to the agencies which provide such sort of services.

Membership and structure of the organisation

The organisation actively encourages the users to become members of the organisation as it was started as a self help group. The organisation still believes in maintaining the tradition by encouraging users to become members and subsequently participating in TWAN activities in various ways which include representing the Trustee Board to take responsibility and to run the organisation. In the year 2010 251 members paid their subscription to become/continue their membership. All of the directors are either current or past users of the organisation. According to the constitution any Tamil speaking person who is living in UK can submit the application for membership.

The management responsibility of the organisation lies with the Board of Directors and the Board will meet in the last Wednesday of each month to monitor the progress of the organisation. The secretary of the organisation is responsible for the overall management of the organisation while treasurer will be responsible for the financial management. The designated Director of the board will be responsible for the overseeing the day to day running of the office and the Executive Director will be responsible to implement the board decision and running the office with making decision on day to day basis.

The advisory project and legal casework project are the main services provided from the office and the advisors are exempted to provide immigration advice by the OSIC or /and accredited by the LSC for providing frontline advisory work on all week days. While two case workers are responsible for the ongoing cases appropriately qualified casual/ sessional workers are also recruited when ever necessary. A number of volunteers also support the existing staff in administrative duties with practical help. The other projects also had clear identified person responsible for the smooth running and the success of the project.



Resources and future plan

The organisation has adequate experience in managing the projects within the available resources and is also capable of securing additional resources when necessary but time frame could be vital in these matters. When a funding is stopped abruptly then it becomes very difficult for the organisation to identify another potential sponsor in the short duration of time to bridge the gap of resources. Currently the organisation has enough resources to continue the current level of service. However in December 2010 the London council has taken a decision to cut the funding that has been provided for the community organisations which includes our organisation also is a cause of concern even though the London council withdrew their decision later as a result of the legal action (JR) taken by the community groups.

Our future plans are aimed at development of the currently available property, to invest in income generation activities and to expand the service delivery. Under the property development agenda the organisation is planning to purchase certain premises which are close to the office as investments and is also planning to run a social service scheme in one of those premises. Certain activities like running social enterprise company and developing a portfolio of a recruitment agency are in the pipeline for generating income in the future. Expanding service delivery includes providing day care services to the homeless; extending the supplementary and fine arts classes' duration and frequency, provide counselling and referral services for people with mental health problems, establishing a crèche/play school for the children of working parents and developing employment opportunities for Tamil Youth in construction and hospitality industries.

ANNUAL GENERAL MEETING - 2010

FINANCIAL STATEMENTS FOR THE YEAR ENDED 31ST DECEMBER 2010

TAMIL WELFARE ASSOCIATION (NEWHAM) UK

COMPANY NO: 2962857

CHARITY NO: 1047487

FINANCIAL STATEMENTS

- For the year ended -

31ST DECEMBER 2010

ADVANCED ACCOUNTING PRACTICE
Certified Accountants
23 Langmeed Drive
Bushey Heath, Herts
WD23 4GD

TAMIL WELFARE ASSOCIATION (NEWHAM) U.K

DIRECTOR/TRUSTEES

M Balasingham (Mrs)
P Chandradas Esq
T Janaka (Mrs)
S Kirubaharan Esq
S Ramanan (Mrs)
S Paneerchelvan Esq
R Rajanavanathan Esq
S Muthucumarasamy Esq
N Rakavan Esq
P Sivaraseswaran Esq (Resigned 20.06.2010)
M Kandiah Esq (Appointed 28.07.2010)

SECRETARY

P Chandradas Esq

REGISTERED OFFICE & BUSINESS ADDRESS

602 Romford Road
Manor Park
London
E12 5AF

AUDITORS

Advanced Accounting Practice
Certified Accountants
23 Langmead Drive
Bushey Heath
Herts
WD23 4GD

SOLICITORS

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

PRINCIPAL BANKERS

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

TAMIL WELFARE ASSOCIATION (NEWHAM) U.K

REPORT OF THE DIRECTORS/TRUSTEES

The directors present their report and financial statements for the year ended 31st December 2010.

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 £45,000 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.

TRUSTEES/DIRECTORS' RESPONSIBILITIES

The trustees (who are also directors of Tamil Welfare Association Newham UK for the purposes of company law) are responsible for preparing the Trustees' Report and the financial statements in accordance with applicable law and United Kingdom Accouting Standards (United Kingdom Generally Acceptable Accounting Practice).

Company law requires the trustees to prepare financial statements for each financial year which give a true and fair view of the state of affairs of the charity and of the incoming resources and application of resources, including the income and expenditure, of the charitable company for the year. In preparing these financial statements, the trustees 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 charitable company will continue in operation.
- state whether applicable UK Accounting Standards have been followed, subject to any material departures disclosed and explained in the financial statements.

The trustees 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 2006. Thy are also responsible for safeguarding the assets of the charitable company and hence taking reasonable steps for the prevention and detection of fraud and other irregularities.

TAMIL WELFARE ASSOCIATION (NEWHAM) U.K

REPORT OF THE DIRECTORS/TRUSTEES

CLOSE COMPANY

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

INDEPENDENT EXAMINERS

Advanced Accounting Practice, are willing to be reappointed as independent examiners.

By Order of the Board
P Chandradas
P Chandradas Esq
Secretary

Date: 14th April 2011

TAMIL WELFARE ASSOCIATION (NEWHAM) U.K

INDEPENDENT EXAMINER'S REPORT TO THE TRUSTEES OF
TAMIL WELFARE ASSOCIATION (NEWHAM) U.K

I report on the accounts of the company for the year ended 31st December 2010 which are set out on pages 6 to 10.

Respective responsibilities of the trustees and examiner

The trustees (who are also the directors of the company for the purposes of company law) are responsible for the preparation of the accounts. The trustees consider that an audit is not required for this year under section 43(2) of the Charities Act 1993 (the 1993 Act) and that an independent examination is needed.

Having satisfied myself that the charity is not subject to an audit under company law is eligible for independent examinatio, it is my responsibility to:

- examine the accounts under section 43 of the 1993 Act.
- follow the procedures laid down in the general directions given by the Charity Commission (under section 43(7) of the Act, as ammended); and
- state whether particular matters have come to my attention.

Basis of independent examiner's statement

My examination was carried out in accordance with general directions given by the Charity Commission. An examination includes a review of the accounting records kept by the charity and a comparison of the accounts presented with those records. It also includes consideration of any unusual items of disclosures in the account, and seeking explanations from you as trustees concerning any such matters. The procedures undertaken do not provide all the evidence that would be required in an audit, and consequently no opinion is given to whether the accounts present a 'true and fair view'and the report is limited to those matters set out in the statement below.

Independent examiner's statement

In connection with my examination, no matter has come to my attention:
1. which gives me reasonable cause to believe that, in any material respect, the requirements:
a) to keep accounting records in accordance with section 386 of the Companies Act 2006; and
b) To prepare accounts which accord with the accounting records, comply with the accounting requirements of section 396 of the Companies Act 2006 and with the methods and principles of the Statement of Recommended Practice: Accounting and Reporting by Charities.
have not been met: or
2. to which, in my opinion, attention should be drawn in order to enable a proper understanding of the accounts to be reached.

ADVANCED ACCOUNTING PRACTICE
Certified Accountants
Registered Auditors

23 Langmead Drive
Bushey Heath
Herts
WD23 4GD

Date: 14th April 2011

TAMIL WELFARE ASSOCIATION (NEWHAM) U.K

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

	Notes	Restricted Funds £	Unrestricted Funds £	Total 2010 £	2009 £
INCOMING RESOURCES FROM GENERATED FUNDS					
Voluntary Income					
Grants	2	157,441	-	157,441	131,943
Donations			1,441	1,441	1,602
Membership subscriptions		-	984	984	831
Income from generating funds		-	51,885	51,885	85,190
Interest receivable	4	-	112	112	38
Total Incoming Resources		157,441	54,422	211,863	219,604
RESOURCES USED					
Direct Charitable Expenditure		133,818	-	133,818	110,531
Governance costs	3	21,993	5,555	27,548	24,200
		155,811	5,555	161,366	134,731
NET INCOMING RESOURCES BEFORE TRANSFERS		1,630	48,867	50,497	84,873
Transfer to Designated funds		-	(45,000)	(45,000)	(80,000)
Net Movement in funds		1,630	3,867	5,497	4,873
Balance brought forward		15,137	10,742	25,879	21,006
Balances carried forward		16,767	14,609	31,376	25,879

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

TAMIL WELFARE ASSOCIATION (NEWHAM) U.K

BALANCE SHEET AT 31ST DECEMBER 2010

	Notes	2010 £	2010 £	2009 £	2009 £
FIXED ASSETS					
Tangible assets	7		162,888		160,432
CURRENT ASSETS					
Debtors	8	42,746		7,985	
Cash at bank and in hand		126,653		120,077	
		169,399		128,062	
CREDITORS: Amounts falling due within one year	9	(11,623)		(13,427)	
NET CURRENT ASSETS			157,776		114,635
TOTAL ASSETS LESS CURRENT LIABILITIES			320,664		275,067
CREDITORS: Amounts falling due after more than one year	10		(38,968)		(43,868)
			281,696		231,199
CAPITAL AND RESERVES					
Designated Funds	12		250,320		205,320
Profit and loss account	13		31,376		25,879
SHAREHOLDERS FUNDS			281,696		231,199

For the year ending 31st December 2010 the company was entitled to exemption from audit under section 477 of the Companies Act 2006 relating to small companies.

Director's responsibilities:

i) The members have not required the company to obtain an audit of its accounts for the year in question in accordance with section 476.

ii) The directors acknowledge thier responsibilities for complying with the requirements of the Act with respect to accounting records and the preparation of accounts.

The financial statements were approved
by the board on 14th April 2011
and signed on its behalf by

S Muthucumarasamy Esq Director

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

NOTES TO THE FINANCIAL STATEMENTS FOR THE year ENDED 31ST DECEMBER 2010

1. ACCOUNTING POLICIES

1.1 BASIS OF ACCOUNTING

The financial statements have been prepared under the historical cost convention and are in accordance with applicable accounting standards.

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

	2010 £	2009 £
Analysis by:-		
CPF/LTSB Grant	14,250	10,000
London Coucil/Advise UK Grant	40,000	42,334
Legal Services Commission re: Legal work	99,941	74,184
The City Bridge Trust re: Age Concern Project	3,250	5,425
	157,441	131,943

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.

NOTES TO THE FINANCIAL STATEMENTS FOR THE year ENDED 31ST DECEMBER 2010

3. NET INCOMING RESOURCES	2010 £	2009 £
The net incoming resources is stated after charging:		
Depreciation	894	1,052
Operating lease rentals:		
Land and buildings	8,040	7,280

4. INTEREST RECEIVABLE	2010 £	2009 £
Bank and other interest receivable	112	38
	112	38

5. INTEREST PAYABLE	2010 £	2009 £
On bank loans and overdrafts	1,502	1,587
	1,502	1,587

6. DIRECTORS AND EMPLOYEES	2010	2009
Wages and salaries	63,723	59,962
Social security costs	5,720	2,728
	69,443	62,690

NOTES TO THE FINANCIAL STATEMENTS FOR THE year ENDED 31ST DECEMBER 2010

7. TANGIBLE ASSETS

	Land & buildings £	Fixtures & fittings £	Total £
Cost			
At 1st January 2010	154,471	37,838	192,309
Additions	3,350	-	3,350
At 31st December 2010	157,821	37,838	195,659
Depreciation			
At 1st January 2010	-	31,877	31,877
Charge for year	-	894	894
At 31st December 2010	-	32,771	32,771
Net book value at 31st December 2010	157,821	5,067	162,888
Net book value at 31st December 2009	154,471	5,961	160,432

	2010 £	2009 £
Analysis of net book value of land and buildings:		
Freehold	157,821	154,471

8. DEBTORS

	2010 £	2009 £
Other debtors	42,496	7,412
Prepayments and accrued grant income	250	573
	42,746	7,985

9. CREDITORS: AMOUNTS FALLING DUE WITHIN ONE YEAR

	2010 £	2009 £
Bank loans and overdrafts	5,891	6,547
Taxes and social security costs	1,549	4,280
Other creditors	1,583	-
Accruals and grants recieved in advance	2,600	2,600
	11,623	13,427

NOTES TO THE FINANCIAL STATEMENTS FOR THE year ENDED 31ST DECEMBER 2010

10. CREDITORS: AMOUNTS FALLING DUE AFTER MORE THAN ONE YEAR	2010 £	2009 £
Loans	38,968	43,868
	38,968	43,868

11. BORROWINGS	2010 £	2009 £
The company's borrowings are repayable as follows:		
In one year, or less or on demand	5,891	6,547
Between one and two years	11,783	15,784
Between two and five years	23,564	23,675
In five years or more	3,621	4,409
	44,859	50,415

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	2010 £	2009 £
Balance at 31st December 2009	205,320	125,320
Transfer from Unrestricted funds	45,000	80,000
Balance at 31st December 2010	250,320	205,320

13. PROFIT AND LOSS ACCOUNT	2010 £	2009 £
Retained profits at 1st January 2010 as restated	25,877	21,006
Profit for the financial year	50,499	84,873
Transfer to Designated funds	(45,000)	(80,000)
Retained profits at 31st December 2010	31,376	25,879

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.

NOTES TO THE FINANCIAL STATEMENTS FOR THE year ENDED 31ST DECEMBER 2010

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	
	2010	2009	2010	2009
	£	£	£	£
Expiry date:				
Within one year	8,040	7,280	-	-
Between one and five years	32,160	29,088	-	-

TAMIL WELFARE ASSOCIATION (NEWHAM) U.K

DETAILED INCOME & EXPENDITURE ACCOUNT
FOR THE year ENDED 31ST DECEMBER 2010

		2010		2009	
		£	£	£	£
Income					
Restricted Funds					
Grant received	(Sch)		157,441		131,943
Less: Expenditure					
Client disbursements		28,027		22,156	
Childrens' project		531		425	
Education project		7,430		5,797	
Age Concern project		5,723		6,454	
Salaries and wages (incl N.I)		69,443		62,690	
Volunteers and sessional workers		7,200		3,681	
Staff recruitment and training		2,466		620	
LSC grant assessment audit		1,469		-	
Rent,rates and insurance		11,529		8,708	
Light and heat		2,224		1,959	
Telephone and fax		4,197		3,147	
Printing, postage and stationery		5,076		3,248	
Office maintenance		3,926		3,960	
Organisation & Development		900		900	
Accountancy		2,920		2,796	
Security costs		384		363	
Travelling		266		519	
Bank charges		598		1,072	
			154,309		128,495
Net surplus			3,132		3,448

TAMIL WELFARE ASSOCIATION (NEWHAM) U.K

DETAILED INCOME & EXPENDITURE ACCOUNT
FOR THE year ENDED 31ST DECEMBER 2010

Unrestricted Funds		2010 £		2009 £
Income				
Income generated by association re: bonus from LSC		50,000		85,000
Cultural activities collections		1,885		-
Membership fees received		984		831
Rent receivable		-		473
Donations and other income		1,441		1,319
		54,310		87,623
Less: Expenditure				
Cultural activities	2,751		-	
Meeting expenses	216		215	
Sundry expenses	128		152	
Membership and subscriptions	1,566		3,230	
Depreciation	894		1,052	
		5,555		4,649
Net Surplus		48,755		82,974
Gross Incoming Resources before Interest and other income		51,887		86,422
OTHER INCOME AND EXPENSES				
Interest receivable:				
Bank deposit interest	112		38	
		112		38
Interest payable:				
Bank interest	1,502		1,587	
		(1,502)		(1,587)
NET INCOMING RESOURCES		50,497		84,873

TAMIL WELFARE ASSOCIATION (NEWHAM) U.K

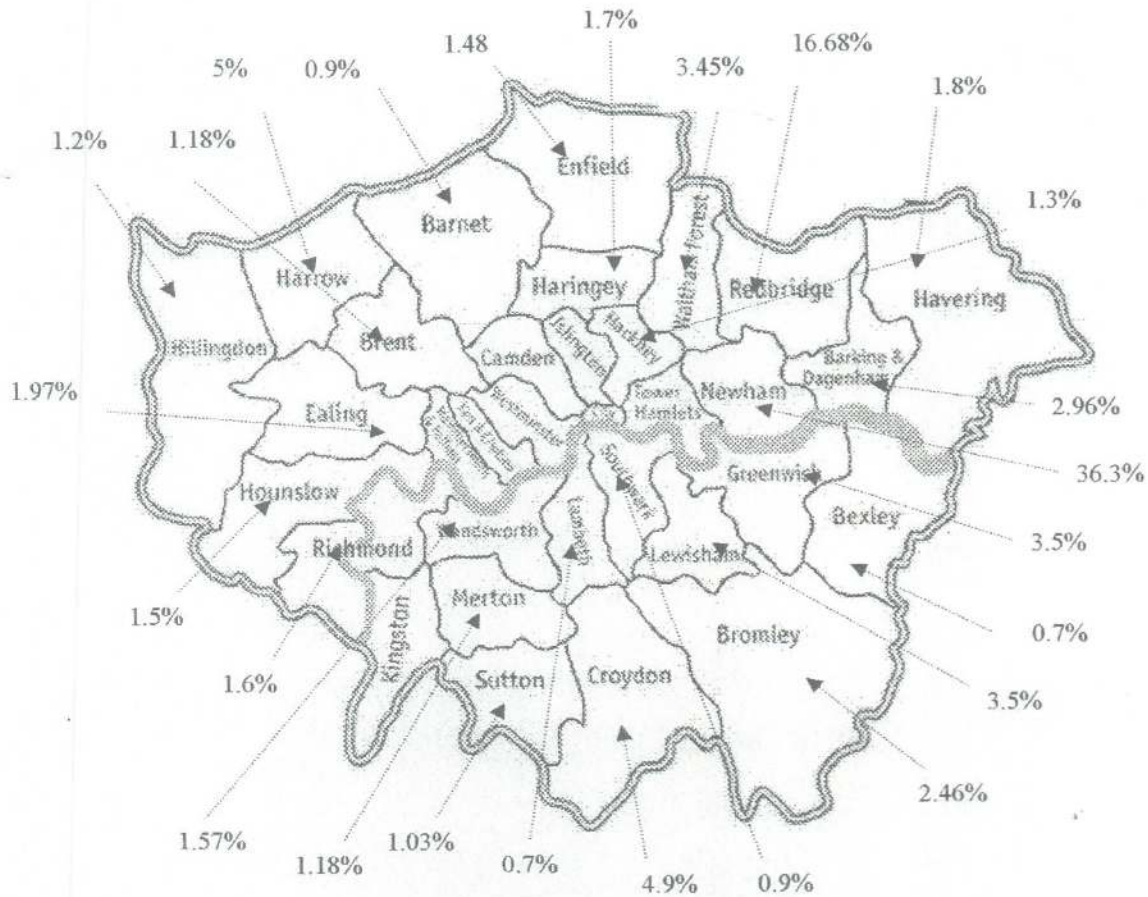
DETAILED INCOME & EXPENDITURE ACCOUNT

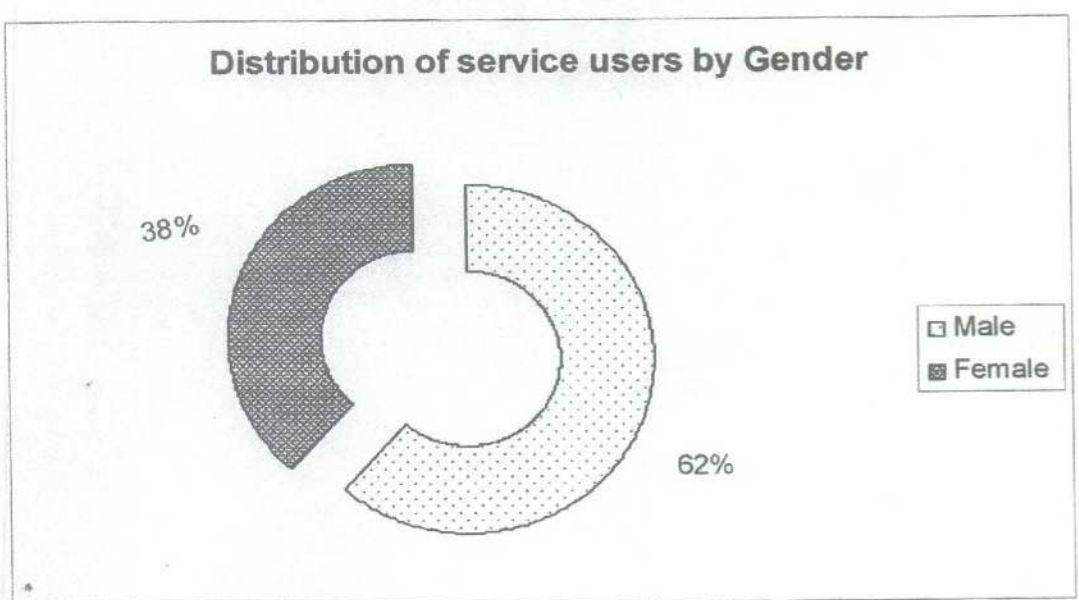
FOR THE year ENDED 31ST DECEMBER 2010

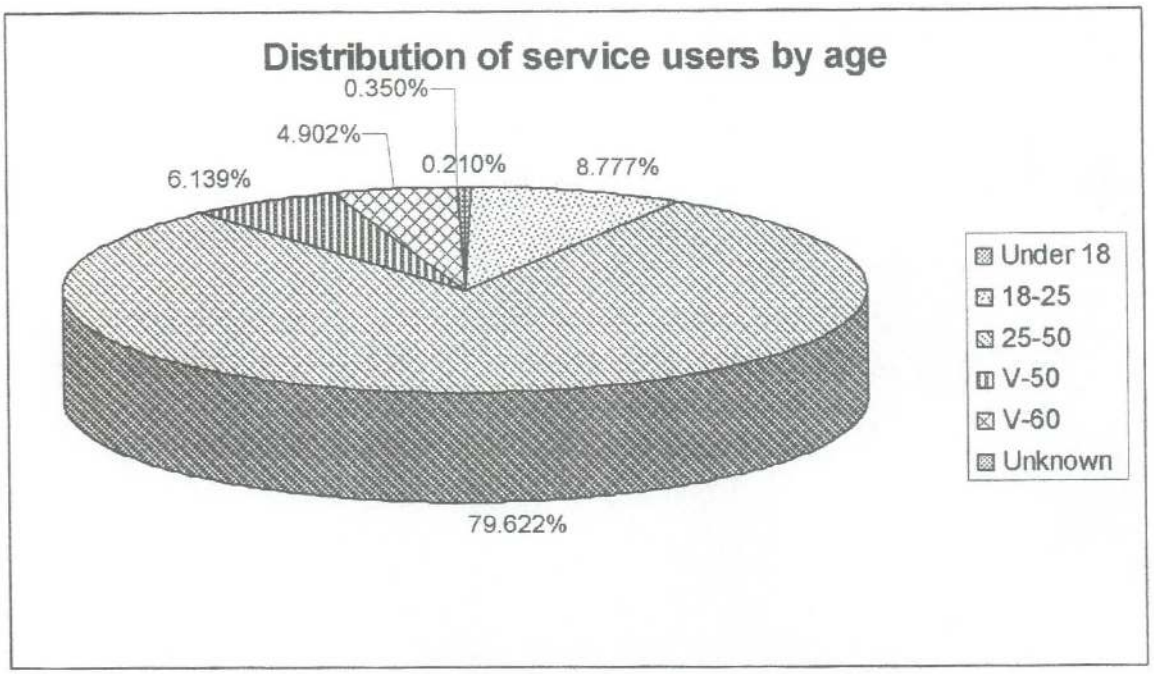
Schedule - Grants received

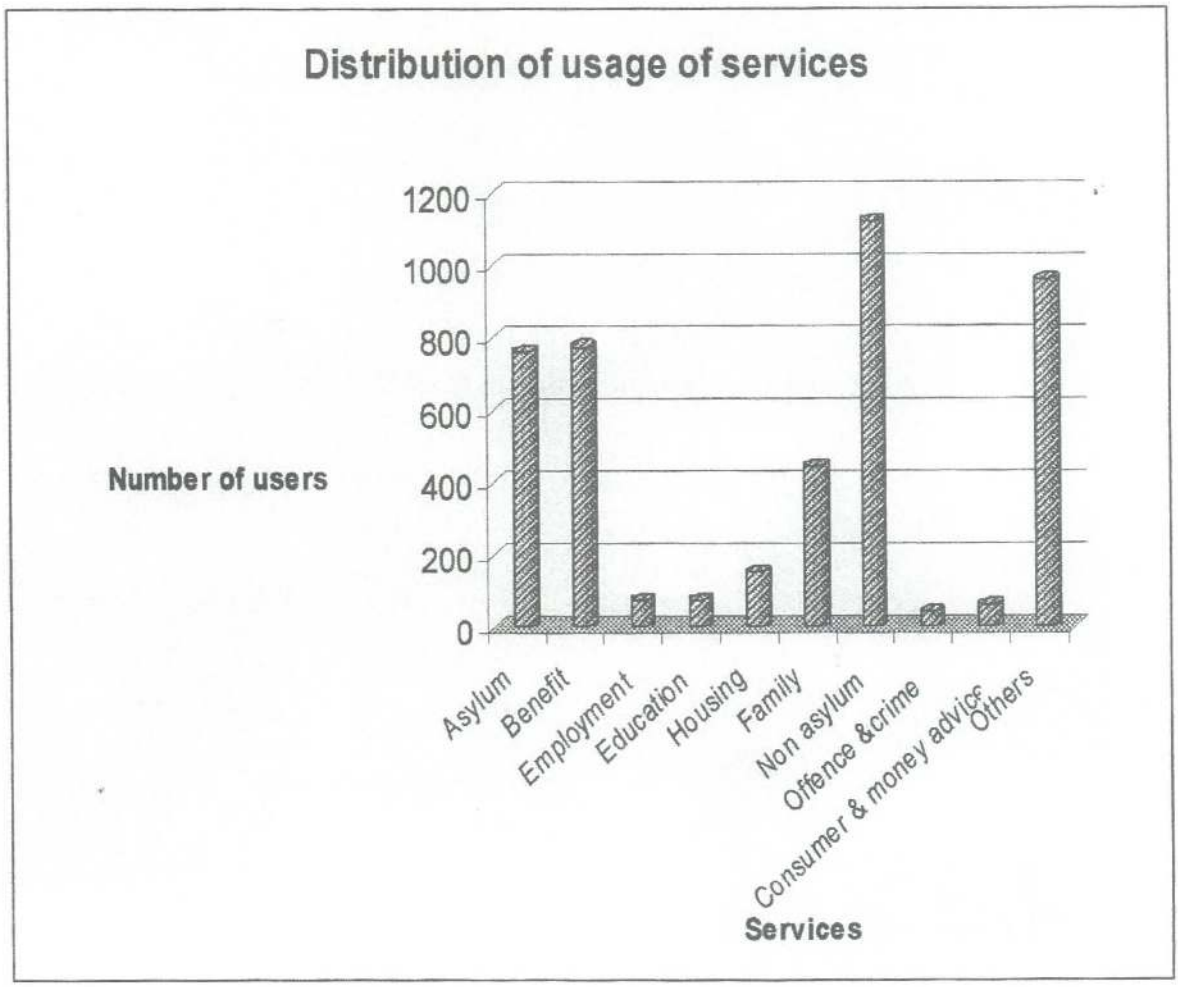
	2010 £	2009 £
CPF/LTSB Grant	14,250	10,000
ALG/Advice UK Grant	40,000	42,334
Legal Services Commission re: Legal work	99,941	74,184
The City Bridge Trut re: Age Concern Project	3,250	5,425
	157,441	131,943

Borough wise distribution of service users






Distribution of service users by age
0.350%
4.902%
6.139%
0.210%
8.777%
79.622%
Under 18
18-25
25-50
V-50
V-60
Unknown


Distribution of usage of services
Number of users
1200
1000
800
600
400
200
0
Asylum
Benefit
Employment
Education
Housing
Family
Non asylum
Offence &crime
Consumer & money advice
Others
Services

PROJECT PROGRESS REPORT 2010

Introduction

Advisory Work

Legal advisory project is the core component of service delivery of our organisation. The organisation began its services 24 years ago with initially sharing information and helping each other among the refugees and subsequently it has developed into an advisory project for Tamil speaking community who seek advice to resolve their hardships.

Most of our users are migrants and apart from language barrier they face a lot of other difficulties to cope with their day to day activities. Some of the difficulties they face include low income, poverty, and homelessness, uncertainty due to their immigration status, primary health care issues, debt and family disputes. These are the main areas for which services are expected from members/users of the organisation.

This project is mainly funded by the London Council through 'Advice the UK'. We also receive funding assistance from City Parochial Foundation in providing frontline one to one services to clients by our advisors with volunteers support. Around 22 individuals are seen on an average in a day by the advisers.

The organisation has over the years specialised in catering to the needs of the community and has gained a reputation for consistently providing various services to the Tamil speaking community in Britain. A considerable number of people who use our organisation often revisit as they benefit from our services for diverse needs. From the users feedback we have noticed that our clients get to know about our services through word of mouth from previous users.

The advisory project not only provides information to the users and educates the community about the services but also interprets the law to the users, and also challenges the current laws and other obstacles faced by our users in obtaining their rights. By doing this we are able to provide a holistic service to the needs of the individuals and the community at large. TWAN prides itself in providing recourse and resource to the ordinary member of the public and in delivering proper justice to their rights and entitlements.

Welfare Benefits Advice

In this 2010 Annual Progress Report we will provide an insight into welfare benefits which are available, the eligibility criteria and also provide case studies from the current year to give a better understanding for the users.

Britain has a lot of welfare measures to help those who are in need of help. At the same time it is worthy to note that the welfare benefits are applicable with different yardsticks and the most important of all is the immigration status of the applicant. This welfare benefit system is in review by the newly elected collaborative government. The early state of this review indicates that benefit (Tax credit, pension credit and rent benefit) cuts are most likely to affect the needy/ vulnerable people in the society.

The government was discussing about making the people who apply for unemployment benefits to do certain low level jobs which are not in par with the applicant's qualification. Such ideas of forcing the unemployed people to involve in jobs like litter picking and gardening as volunteers is disgusting. Litter picking and gardening are jobs and if there is a vacancy it is the responsibility of the council to fill those. On the other hand the morale of the unemployed individuals is likely to be affected if they are forced to do such jobs. The concept of the voluntary work's image is likely to be tarnished, which could have an effect on the existing voluntary sector work. We condemn such plans of the government and expect the government to provide welfare service to the needy as per their requirements with dignity.

In our experience, we believe that most of the unemployed people, those who are claiming job seeker allowance or other benefits are not satisfied with the claim because it tends to keep them within the poverty line. In most cases they claim this without any other choice. Creating more jobs locally or encouraging the unemployed people to migrate to other areas to find a job with practical assistance like finding accommodation, shopping allowance etc. are the alternatives. We aim at finding alternative pathways like appropriate training and filling the gap between the employers and job seekers which will enable the jobseekers to improve their particular job skills and to take a particular job with guarantee by the end of the training.

Benefits and entitlements are determined by Habitual Residency Test (HRT) and Right to Reside Test (RRT) for individuals who fall under the categories of British citizens, Refugees, EEA Nationals, those on Sponsorship visa or Settlement visa and People who have the right of residence in the United Kingdom. Asylum seekers, who are the major beneficiaries of our services, are denoted as People Subject to Immigration Control (PSIC). The welfare benefits available to them are not the same as those determined by HRT and RRT.

Employment and Support allowance which has been introduced from October 2008 has been found to be difficult to comprehend by many of our users and in this year report we will look into the development and the amendment of ESA which will be introduced in March 2011. This report will also give a gist of the various benefits and entitlements that our users can reach out for their wellbeing. Rights and entitlements can be enjoyed only by applying for them intentionally and they will not be provided voluntarily. Unless one knocks on these doors, the doors will not open!!!

Employment & Support Allowance

Some of our clients who are receiving employment support allowance were supported earlier by the asylum team of the local authority under the national assistance care act in view of their immigration status and vulnerability. These people were recently (within one year) granted with Indefinite Leave to remain, mainly because of their number of years of stay in UK. Once they are granted Indefinite Leave to remain then those people are no longer entitled to get support from local authority, which forces them to approach the job centre for their future support. Then they have been advised / directed by the local job centres to make a claim for Employment & support allowance. But switching this local authority benefit to work and pension's department's employment and support allowance is not easy in practice. These people are undergoing 8 to 10 months of hardship to obtain their first employment support allowance after making their application.

Employment and support allowance is available for people who are unable to work or have limited capacity for work because of illness or disability. ESA is not a new benefit but has replaced the Incapacity Benefit and Income Support paid on the grounds of incapacity, for new claims.

Eligibility

A person may be able to claim Employment and Support Allowance if any of the following applies to them:

- Their Statutory Sick Pay has ended, or they cannot get it
- They are self employed or unemployed
- They have been getting Statutory Maternity Pay (SMP) and have not gone back to work for their employer because of an illness or disability
- They are under State Pension age

They must also either:

- Have had an illness or disability which affects their ability to work for at least four days in a row (including weekends and public holidays)
- Be unable to work for two or more days out of seven consecutive days
- Be getting special medical treatment

If they are aged between 16 and 20 (or under 25 if they were in education or training at least three months immediately before turning 20), they must:

- have been too ill to work because of an illness or disability for at least 28 weeks (this limitation only applies to contribution-based Employment and Support Allowance, but you may still be eligible for income-based Employment and Support Allowance)
- have been too ill to work before they turned 20 (or 25 if they were in education or training at least three months immediately before turning 20)

Entitlement conditions

There are two types of ESA namely the contributory based and income based support allowance

Contribution-based Employment and Support Allowance

A person may be entitled to claim contribution-based Employment and Support allowance if they have paid enough National Insurance contributions.

Income-based Employment and Support Allowance

A person may be entitled to claim income-based Employment and Support Allowance if they do not have enough money coming in, or have not paid enough National Insurance contributions, and satisfy the other entitlement conditions. This means the concerned person has savings of less than £16,000 and, if they have a partner or civil partner, they work for less than 24 hours a week on average.

Assessment

All new ESA claimants will undergo an assessment unless they are terminally ill. There is a 13 weeks time period during which the assessment will take place followed by decision making by the assessor. During the assessment phase the individual has to undergo a work capability assessment which is made up of three stages namely

1. Limited capability for work assessment

There are two parts to this test:

- Part 1 of the schedule contains activities relating to physical functions
- Part 2 of the schedule contains activities relating to mental, cognitive and intellectual function.

The claimant has to score 15 points to pass the test. The score can be assessed due to physical, mental or a combination of them both. Those who cannot score 15 points will have to claim through JSA.

2. Limited capability for work related activity assess-ment

This second stage of assessment starts from the 14th week onwards if the concerned person is assessed with limited capability to work. This assessment decides if the person falls under support group or work related activity group. The person is further assessed if they fall in the work related activity group with 11 activities in which both physical and mental aspects are considered.

3. Work focused health related assessment

This stage focuses on identifying the support that is required by the person to get back to work and it's compulsory if a person falls under the work related activity group.

Incapacity to perform any activity in the assessment must arise from:

- A specific bodily disease or disablement or
- A specific mental illness or disablement or
- A direct result of treatment provided by a registered medical practitioner, for such a illness, disease or disablement

Some of the changes to the ESA while assessing are:

- Age is not a criteria or no additional dependent are considered
- Restriction on the applicant Immigration status could be considered
- A person who is receives benefit for a longer will not have the amount increased further.

Work - Focused Interviews (WFI)
A user making a claim for ESA will be expected to attend Work Focused Interviews. This usually takes place 8 weeks after a claim has been made. These interviews will take place with a personal adviser with the job centre plus. The purpose of WFI is to:

- Assess a person's prospects for remaining in or obtaining work
- Assist or encourage a person to remain in or obtain work
- Identify activities that increase the chances of finding or retaining work
- Identify training, education or rehabilitation opportunities to increase chances of finding work
- Identify current or future work opportunities, including self-employment that may suit the claimant

If a person does not attend the interviews unless they have been deferred or waived they will have their benefits reduced.

Deferring and Waiving (WFI)
A WFI can be deferred if it would not be of assistance to the person or not appropriate in their given circumstances. Examples of some circumstances where an interview may be deferred are a worsening or fluctuating situation, a period in hospital, inability to attend due to illness, transport problem on that day, recent bereavement, caring responsibilities and claimant being in the late stage of pregnancy.

Physical Disabilities:
Every disability has score points. Employment and support allowances are based on these points.

1. Walking with stick or other aid cannot:

- walk at any time- 15 points
- walk more than 50 meters with out stopping or discomfort- 15 Points
- walk up or down 2 steps with support of a handrail- 9 points
- walk more then 100 metres without stopping or discomfort- 9 points
- walk more than 200 metres without stopping or discomfort- 6 points

2. Standing and sitting cannot:

- stand for more than 10 minutes without help and need help to sit down- 15 points
- sit in the chair for more than 10 minutes and need help to move from the chair- 15 points
- rise to stand from and sit without others help- 15 points
- move between one seated position to another seated position without help- 15 points
- stand for more than 30 minutes before needing to sit down- 6 points
- sit in a chair for more than 30 minutes- 6 points

3. Bending or Kneeling cannot:

- bend to touch the knees and straighten up again- 15 points
- bend, keel or squat, to pick a light object within 15 cm and move it and straighten with out others help- 9 points
- move bend, kneel or squat to pick up the light object off the floor and straighten up without help- 6 points

4. Reaching:

- cannot raise either arm to put something - 15 points
- cannot raise either arm to top of head- 9 points
- cannot raise either arm above head height- 6 points

5. Picking up and moving or transferring by the use of the upper body and arms cannot:

- pick up and move a 0.5 litre with either hand- 15 points
- pick up and move a 1 litre with either hand- 9 points
- pick up and move a light but bulky one- 6 points

6. Manual dexterity cannot:

- turn the sink tap with either hand- 15 points
- pick up equivalent with either hand- 15 points
- turn the book page with either hand- 15 points
- physically use a small thing- 9 points
- physically use a conventional thing- 9 points
- put a small button- 9 points
- turn a sink tap with one hand- 6 points
- pick up equivalent with one hand- 6 points
- pour on 0.5 litre – 6 points

7. Speech:

- cannot speak at any time- 15 points
- can't be understood- 15 points

- strangers have great difficulty understanding speech- 9 points
- strangers have some difficulty to understanding- 6 points

8. Hearing with a hearing aid or other aid cannot:
- hear the sound- 15 points
- hear, someone talking in a loud voice- 15 points
- hear someone talking in a normal voice- 9 points
- hear some one talking in a loud voice in busy area- 6 points

9. Vision including visual acuity and visual fields, in normal daylight:
- cannot see any thing- 15 points
- cannot see well enough to read- 15 points
- has 50% or grater reduction- 15 points
- cannot see well enough to recognise with in 4 metres - 9 points
- has 25% or more but less 50 % reduction of visual fields- 6 points
- cannot see well enough to recognise with in 15 metres- 6 points

10A. Continence other than enuresis (bed wet-ting):
- has no voluntary control on the evacuation of the bowel- 15 points
- has no voluntary control on the voiding of the bladder- 15 points
- loses controls of bowels in once in a month- 15 points
- loses control of bowels once in a week- 15 points
- occasionally loses control of bowels- 9 points
- control of bladder once in a month- 6 points
- risk losing control of bowels or bladder- 6 points

10B. The claimant uses urinary collecting device continence:
- unable to affix remove or empty the collective device- 15 points
- unable to affix, remove or empty the collecting device without causing leakage- 15 points
- no voluntary control on the evacuation of the bowel- 15 points
- loses control of bowels once in a month- 15 points
- loses control of bowels occasionally- 9 points
- losing control of bowels on risk- 6 points

10C. Continence other than enuresis (bed wetting)
- unable to affix, remove or empty stoma appliance without help -15 points
- unable to affix, remove or empty stoma appliance without causing leakage- 15 points
- Claimant's artificial stoma solely to the evacuation of the bowel once in a week- 15 points
- claimant's artificial stoma solely to the evacuation of the bowel once in a month- 9 points
- claimant's artificial stoma solely to the evacuation of the bowel risks losing control - 6 points

11. Remaining conscious during waking mom-ents:
- involuntary episode of lost or altered consciousness once in week- 15 points
- involuntary episode of lost or altered consciousness once in a month- 9 points
- involuntary episode of lost or altered consciousness in once in three months immediately preceding the assessment- 6 points

Mental, cognitive and intellectual function assessment

12. Learning or comprehension in the completion of tasks:
- cannot learn or understand the simple task- 15 points
- needs to witness a demonstration, given many time on the same occasion- 15 points
- needs to witness a demonstration of simple task- 9 points
- needs to witness a demonstration of a moderately complex task- 9 points
- needs verbal instruction on simple task- 6 points

13. Awareness of hazard:
- reduces awareness of the risks of day to day hazard- 15 points
- injury to self or others or
- significant damage to property or possessions
- reduced awareness of the risks of every day to day hazards for majority of the time- 9 points
- injury to self or others or
- significant damage to property or possessions without supervision

- reduced awareness of the risks day to day hazards for lead frequent instance- 6 points
- injury to self and others, or
- significant damage to property or possessions, cannot be managed on such incidents occurs

14. Memory and concentration:
- on the daily work, loses concentration and need verbal prompting.-15 points
- many time loses concentration to do daily work and need verbal prompting- 9 points
- frequently loses concentration and do the daily work with pre-planning and written task format- 6 points

15. Execution of tasks
- cannot do the daily work successfully- 15 points
- take twice long time, with out mental disablement to complete daily work- 15 points
- take a long time, with out mental disablement to complete daily work- 9 points
- take one more time, without mental disablement to complete daily work - 6 points

16. Initiating and sustaining personal action cannot do:
- personal action -15 points
- personal action without requiring verbal prompting- 15 points
- personal action without verbal prompting on major time- 9 points
- personal action without frequent verbal prompting by others- 6 points

17. Coping with change:
- cannot cope with small thing, expected changes in every day and can not manage- 15 points
- cannot cope with expected changes in every day and significantly more difficult- 9 points
- cannot cope with minor, unforeseen changes in every day and significantly more difficult- 6 points

18. Getting about:
- cannot get any specified place- 15 points
- unable to get specified place without other help on every time- 15 points
- unable to get a specified place without other help on majority time- 9 points
- unable to get a specified place with other help on frequently - 6 points

19. Coping with social situations doing normal:
- activities with fear or anxiety- 15 points
- activities with fear or anxiety on majority time- 9 points
- activities with fear or anxiety on frequently-6 points

20. Propriety of behaviour with other people:
- unpredictable outburst or behaviour, being either- 15 points
- sufficient to cause disruption to others on every day or frequently, severity that although occurring less
- the claimant has an extreme violent outburst leading to threatening behaviour and violence-15 points
- unpredictable outbursts of aggressive or bizarre behaviour frequency- 9 points
- claimant cannot manage every day life with disproportionate reaction- 9 points
- unpredictable outbursts of aggressive or bizarre behaviour on frequent disruption- 6 points
- claimant cannot manage every day life, such events or criticism occurs- 6 points

21. Dealing with other people:
- unaware of impact of own behaviour to the limit that- 15 points
- for some hours, difficulty relating to others or every day, causes distress to others
- claimant misinterprets verbal or oral communication on every day- 15 points
- unaware of impact of own behaviour to the limit that- 9 points
- with in one day or two day, difficulty relating others for long periods or causes distress to others on may time
- claimant misinterprets verbal or oral communication on majority time- 9 points
- unaware of impact of own behaviour to the limit that- 6 points
- once in a week, difficulty relating to others or frequently causes distress to others
- the claimant misinterprets verbal or oral communication on frequent basis- 6 points

Challenging Decisions and Appeals

In our experience challenging the decision initially is not possible because it's often a practice with the work and pension department not to provide a refusal letter and instead they tend to postpone

the case by asking for more evidence and documents. Whenever clients submit those evidence mostly they say, it's not in file, fax not received and on calling them they would say that they have sent a letter to the client. In most of the cases the clients wouldn't have received the letter and this sort of dragging goes on for months. It is therefore very difficult for the advisory people and distressing to the clients. It ends up wasting the valuable time and resources of the organisation.

Appeals

If the decision is wrong, then the appeal should be lodged within 28 days of the decision letter. Once the appeal section receives the appeal they will review the decision, if they are not going to reverse their decision then the appeal will be heard by the welfare benefits tribunal.

Case study 1

Mr. ST was awarded ESA from March 2010 on the basis that he was suffering from Ischemic heart disease. An approved disability analyst advised on the medical report form EAS85A dated 2nd week of April 2010 that the case needed to be referred for assessment. In the first week of May 2010, Mr. ST attended the Highgate medical examination centre for medical examination. In the opinion of the healthcare professional Mr. ST's diagnosed conditions did not provide a basis for the application of any descriptors in the assessment. The decision maker carried out an assessment of Mr. ST's capability for work taking all the available evidence into account, and decided that he scored 0 points on the physical descriptors and 0 points on the mental descriptors. They stated that he did not have limited capability for work and his employment and support allowance was superseded and disallowed from 2nd week of May 2010. The General Practioner (GP) report suggested he is eligible for employment and support allowance. Hence Mr. ST made an appeal on the grounds that he cannot walk due to his heart operation and that he is awaiting another operation in due course. The decision of 2nd week of May 2010 was reconsidered on 3rd week of August 2010 but was not revised. His appeal was heard in December 2010. During this 9 months period he was facing financial difficulty and relying on his relatives and friends for assistance and lived with uncertainty.

Case study 2

Mr. RT was working since 1997 up until 2007. After that he applied for Job Seekers Allowance. He was paid the allowance for 7 months. In November 2009 he received a letter stating that, they cannot pay such allowance and claimant should apply for ESA. But the benefit agency refused his application because he had not made enough National Insurance contributions. Then he had to go for an appeal with the relevant medical supportive documents. He received Employment and Support Allowance from March 2010. In August 2010 he received a letter stating that, they cannot pay ESA, because the medical assessment has proved that he does not have any limited capability for work. Again he made an appeal about Employment Support Allowance. The court decided that, there is no evidence for his National Insurance contributions and hence he submitted his previous payslips. Between the periods the benefit agency advised Mr. RT to apply for Disability Living Allowance. He applied for it but that application too was refused because of his medical assessment. Finally in the first week of November 2010 he went for the ESA appeal and his case succeeded. Now he is claiming ESA benefit.

Case study 3

Mr. NA applied for ESA. But the benefit agency refused his application because he answered in leaflet INF2, stating that, he has some other way of help. He then went for an appeal. The benefit agency instructed that, he did not meet the requirements for the right to reside in UK and considered him to be habitually resident in UK. Mr NA was an EEA national, so the Habitual Residence Test does not apply for him. He was also exercising the Treaty Rights in UK. In the appeal he explained this matter and won the case. Now he is claiming ESA.

Case study 4

Mr. IS is a single man and was born on 23 Oct 1960. He was awarded Employment and support allowance from 13th March 2010 on the basis that he was suffering from Ischemic Heart Disease. Mr IS completed a questionnaire form ESA50 on 1st April 2010. Form ESA50 asks the claimant to provide information about their capability to perform activities in order to assess whether they have limited capability for work. Mr IS has stated that he has problems with walking, standing,

sitting, bending and kneeing, picking up and moving things, speech, hearing, vision continence and consciousness and with the mental cognitive and intellectual functions. An approved disability analyst advised on the medical report dated 7th April 2010, that the case needed to be referred for assessment. On the 4th May 2010 Mr IS attended the medical examination centre for a medical examination. In the opinion of the health care professional as set out in the report Mr IS's diagnosed conditions did not provide a basis for the application of any descriptors in the assessment. The decision makers did not give weight for the evidence and gave 0 points on the mental descriptors. His ESA was superseded and disallowed from 14th May 2010. Mr IS made an appeal on the grounds that he cannot walk due to his heart operation. The decision was not revised. The appeal was scheduled at the Tribunal Service and was heard on the 14th March 2011 before the Tribunal Judge Ms P Ghandi who set aside the decision of the Secretary of state and decided that Mr IS is entitled to ESA with work related activity component and she has granted 15 points to Mr.IS which enable him to obtain ESA.

Job Seekers Allowance

Job seekers allowance can be claimed if a person is unemployed or working less than 16 hours a week. The Job Seekers Allowance is the most straight forward application for some of our clients because they were working in the past and had lost their jobs or prevented from doing any paid job owing to their immigration status. These people are advised and guided to approach the local job centre to make a claim. But often job centres make this claim more complicated by forcing them to make the claim over the phone instead of making it at the job centre or according to the client's convenience. In practise this is creating unnecessary mistakes or misunderstanding, because apart from language difficulties clients are unable to give proper answer over the phone because of their listening and hearing ability. Due to this, the applicants tend to make unnecessary mistakes or unable to give appropriate answer which leads to problems during the assessment of their application. We expect the job centre to give options to the client for making a printed application over the phone application whenever necessary.

Eligibility:

- the person who cannot do full time work at present
- they and their partner are not claiming Income-based Job seeker allowance
- those who do not have limited capability for work
- those who are not a full time student
- they are available and be actively seeking for work
- having jobseeker agreement with work and pension department
- they are under pension age (60 for female, 65 for male)
- they are not claiming and entitled to Income Support

There are two types of Jobseeker's Allowance, namely contribution-based Jobseeker's Allowance and income-based Jobseeker's Allowance.

Contribution-based Jobseeker's Allowance

An applicant may be entitled to claim contribution-based Jobseeker's Allowance if they have paid enough National Insurance contributions (NICs). Jobcentre Plus can pay this for up to 182 days. Generally, self-employed contributions will not help a person qualify for contribution-based Jobseeker's Allowance. If a person is claiming suddenly after the limited capacity work, they must attend the contribution test about their first limited capacity work. They do not earn more than 'prescribed amount' referred by job centre plus

Income-based Jobseeker's Allowance

This is based on the income and savings of the concerned person. A person is entitled to this if they have not paid enough NICs (or you've only paid contributions for self-employment) and they are on a low income.If a person is not entitled for job seeker allowance or they do some work but need extra benefit for meeting the housing cost or dependent's expenses then they are eligible to get income based job seeker allowance.

Job seeking period:

The job seeking period will differ, according to age and status of the labour market conditions. In that period the client should fulfil some other conditions like completing the conditions of National Insurance contributions, do not work on the three days after they left their job, time period not more than 182 days. Certain days are not counted in the job seeking period like the days during which the claim was not made and week ends etc.

Joint claims

Couples with no dependant children claiming the Income Based element of Jobseeker's Allowance can make a joint claim where at least one member

of the couple was born after 28th October 1947; and is also aged 18 or over. In joint claim cases both members will be required to sign the application form and accept equal responsibility for the claim and the reporting of any relevant changes of circumstances.

Exemption groups
Some individuals who are exempted from job seeker allowance are fulltime students, disabled student ,carer, who are incapable of working because of illness and disability, treated as incapable by decision maker ,incapable of work but treated as capable of work or treated as limited capacity of work or not being at full time paid work, admitted in hospital or care home ,mentally and physically disabled, registered blind , pregnant, aged 60 or over, a refugee learning English in order to obtain employment and if they are required to attend the court or tribunal. A person exempted from job seeker allowance might be eligible for various other benefits based on their requirements.

Other groups who cannot claim job seeker allowance
If a person or their partner does full time work then they are not eligible for income based job seeker allowance. The person who is working 16 to 24 hours does not become eligible to joint claim job seeker allowance. An individual who has 'limited capability for work' is also not entitled for job seeker allowance. A sickness period is another criterion which cannot be claimed under job seeker allowance. On the other hand up to two weeks period of sickness in 'Job seeking periods' are allowed.

Training allowance: A person who is not child and not eligible for child benefit, can claim training allowance and Income based jobseeker allowance without conditions.

Available for work: To claim job seeker allowance, the applicant must be able to do work. They must be well and fit to take the job as soon as is available.

Willing and able to work immediately: Desire and willingness of work is important for available work. Willingness must be shown at job centre plus and that are available immediately should be established.

Treating as being available for work: If a person is not available for work immediately then he is considered for short periods of claim. There are a number of conditions which could establish that the person is unavailable for work.

Case study 5

Mr AP was reporting to job centre plus from 5th August 2009 to 27th September 2009 after applying for job seekers allowance. Mr AP believed that he would be paid by the job centre plus for the period he reports but he was not paid as the job centre plus refused his application. He approached our organisation and we appealed against the decision of the job centre plus. Job centre plus responded saying that they are not prepared to reverse the decision by their notice of decision dated 3rd February 2010. Appeal was heard before the Tribunal Judge who set aside the decision of the respondent and allowed the appeal on the basis that the respondent made error in deciding to refuse Mr AP's Job seekers allowance.

Case study 6

Mr KP lost his job and when approaching Job Centre Plus he was advised by the job centre plus to apply for ESA. When applying for ESA they refused his application as he was wrongly advised to apply for ESA instead of JSA by the job centre plus officials. After our intervention they reversed their decision and decided that Mr KP is entitled to JSA.

Income support

Last year only few clients received assistance from us to get income support allowances when compared to previous years. Changes in the criteria of the eligibility are the reason for decline in number of people qualifying for this benefit. However single mothers who are granted leave to remain or indefinite leave to remain are the main category receiving assistance from us to avail this benefit. Few full time students and some people who were receiving Carer Allowance were assisted by us to obtain this benefit. The main problem we are facing as advisers of income support, employment support allowance and job seeker allowance is due to the overlapping of eligibility criteria with each other which leads to confusion among the advisers and applicants. Finally the applicants follow the guidance provided by the benefit agency.

Income support provides basic living costs for people below pension credit qualifying age who are not expected to sign-on for work.

Eligibility for income support

1. Age: the person must be at least 16 years old and below the Pension Credit qualifying age
2. Capital (savings) limit: the savings and investments must be less than £16,000
3. Full-time work: they must not be working 16 hours or more in a week and if they have a partner, he/she must work less than 24 hours in a week
4. Full time education - an individual in full time education cannot claim income support
5. Qualifying group- apart from first four criteria the individual should fall under one of the groups

Exceptions for qualifying under Rule 3

A person who works 16 hours or more can still claim this income support if they work as childminder, volunteer, under government training scheme, carer, respite carer, part time firefighter or lifeboat crew member, an auxiliary coastguard or a member of a territorial or reserve force or, foster carer, local councillor, doing supported permitted work and disabled with a low earning.

Exception for qualifying - Rule 4

Generally a full time student cannot claim Income Support. But there are some exceptions that apply to them if they are responsible for a child living with them, qualify for disability or severe disability premium, orphaned, compelled to live away from parents due to various reasons and have joined or start the non- advanced course before 19 years age. If the concerned person is aged 20 or over and studying full time advanced level course they cannot get Income Support unless they are a weak young person and you remain in related education, up to the age of 21,a lone parent or lone foster parent ,in the first year of living in Great Britain, being considered as a refugee and learning English for 9 months, from abroad whose funds have been temporarily disrupted , only in the summer holiday they are one of a couple and are students and have a dependent child and being a disabled student who has applied before 27th October 2008 and qualifies for disability premium and incapable of work for 28 weeks or more and gets extra grant due to deafness.

Qualifying group - Rule 5:

If a person is eligible for a qualifying group, then they must be in one of the groups below:

Responsible for a child:

- single parent and responsible for a child under the age of 10 (from October 2010, under age of 7)
- the child is under the age of 16 and claiming disability living allowance, who has been placed with the concerned person prior to adoption
- looking after a foster child under the age of 16 and their partner is temporarily in abroad
- pregnant and due to have their baby with in the next 11 weeks or within the last 15 weeks you have hade a baby

Sickness or disability

- Receiving Statutory Sick Pay or Incapacity Benefit

For existing claims:

- incapable of work and have been found capable of work but appealing against the decision and if registered blind
- Work while living in a care home and disabled and the earnings or hours are 75% or less of those without disability who do the similar work.

Carer:

- The individual is claiming carer allowance for some one eligible to disability living allowance and attendance allowance and they stopped as being a carer, described above within the last 8 weeks.
- They are looking after a member of family who is temporarily ill and they are looking after the child, when the responsible person is temporarily ill or away.

Income support calculation

The income support is the amount that the law has defined for a person to lead his weekly living this is called as the applicable amount and less than the amount treated by the applicant as a weekly income. The personal allowance, premiums and housing costs of the concerned person are added together applicable amount and the way their income is treated is calculated. Based on the income of the applicant the applicable amount is calculated.

Case study 7

Mrs. KY came to this country in April 2006 and claimed asylum as a single mother. Her asylum claim was not successful despite her suffering from Sri Lankan security forces and subsequently her appeal right got exhausted. She made a fresh and article 3 related human rights claim and was supported by the National Asylum Support Service (NASS). In 2006, she moved to Essex and she was supported by the asylum team of Redbridge council under the National Assistance Care Act. She was granted Indefinite Leave to Remain (ILR) in June 2009. Since she has been granted ILR the local authority withdrew their financial and accommodation support because she was no longer entitled to their support. We advised and assisted her about the welfare benefits entitlement. Accordingly she went to the local Job Centre to register herself in August 2009. She was initially assessed by the Job Centre and she was advised to claim Job Seekers Allowance. After 3 months of assessment, she was told that she is not entitled for Job Seekers Allowance. We appealed against the decision then the benefit agency officers reviewed her claim and asked to claim Employment and Support Allowance. Accordingly she submitted that application with the relevant medical evidence. After 2 months of delay she was told that she was not successful with her claim for Employment and Support Allowance because she has not made any NI Contribution. We challenged the decision again in January 2010 and she was asked to complete a claim for Income Support and she did that straight away. During this period, the council withdrew their property and she was supported by people from Sri Lanka. After 2 months of delay, in March 2010 her claim for Income Support was finally approved. But she was unable to obtain her benefit because she didn't have any bank account because she doesn't possess a passport to open a bank account. After a negotiation, the benefit agency agreed to make the payment by giro check for a small amount. In middle of May 2010, she received her benefit and we made the arrangement to find an accommodation for her to live with her daughter on her own with Income Support. During this ten months period, she suffered hardship and uncertainty about her accommodation.

Pension credit

Senior citizens both male and female are provided with pension credit once they reach the age of 65.This is one of the benefits, about which and the entitlement to which is not known among our community members to a greater extent. This has occurred as nearly all of our users are migrants and their presumption is that they have not worked in this country therefore they are not entitled for this benefit. Lack of knowledge about the benefit system and lack of opportunity to get advice about the factors are other contributing factors leading to fewer applications under this category by our community members. Once again immigration status and mode of entry could question their eligibility and these are the areas were our organisation needs to work to enable the elders receive the benefits they are entitled to.

Pension credit consists of two parts namely Guarantee credit and savings credit. Guarantee credit ensures that no one lives on less than the set amount. Under this a single person is paid £132.60 and £202.40 is paid for a couple per week. Extra amounts are paid when necessary and in case of severe disability this is £53.65 and for carers its £30.05. Savings credit is paid to those who are aged 65 or over and who have modest savings and extra income on the savings credit threshold. Saving threshold for a single person is £98.40 and couple is £157.25. Savings credit can be paid on top of guarantee credit or on its own if a person only qualifies for the savings credit.

In exception to Attendance Allowance, Disability Living Allowance, Housing Benefit and Council Tax Benefit, Child Benefit ,Child Tax Credit, Guardian's Allowance,£10 War Widow's or War Disablement Pension / Armed Forces Compensation and £10 Widowed Mother's or Widowed Parent's Allowance are the other benefits that are fully counted for calculation of pension credit. Working Tax Credit, Incapacity Benefit, Employment and Support Allowance (contri-butory), Contribution-based Jobseekers Allowance, Severe Disablement Allowance, Maternity Allowance and Maintenance payment for them or their partner are neglected in saving credit. Charitable and voluntary payments, first £20 income from boarders plus 50% of any charge over £20 and £20 from sub- tenants are neglected from income.

Changes in personal circumstances

Senior citizens aged 65 or over will be set an assessment income period for 5 years and those in the age group of 75 years are provided with an indefinite period. In this period the elders are expected to inform any change in their circumstances like change in a relationship or moving to a care home etc.

Housing Benefit and Council Tax Benefit

Housing Benefit

This is one of the common problematic areas for many of our clients seeking advice on Housing Benefit issue because more than 80% our users are from low income families or those in receipt of welfare benefits for their living. The decision making process of the rent benefit application is not transparent enough to the community and necessarily takes 3 or 4 months for decision making of the Housing Benefit application. It increases the burden on our clients who are debtors and subsequently become homeless. It would be of great help if the concerned officials take steps to solve these issues in a short term. Even if they are making the negative decisions then the applicant should be given a clear return explanation for their decision which enables them to exercise the appeal rights without further delay rather then sending the standard refusal letter without a specific reason. If the applicants are not satisfied with the decision then they should make a written review request or appeal within 28 days.

Eligibility for getting Housing Benefit:

- Capital- should be under £16,000 or below. If a person receives Pension Credit guarantee credit they are eligible to claim full Housing Benefit and Council Tax Benefit regardless of the capital.
- The person or their partner must be liable to pay rent

A person is excluded from this benefit if they are a full time student, leasing a house for more than 21 years, paying rent to some close acquaintances and has owned a property less than 5 years back. The Housing Benefit is based on the rent paid and the amount calculated varies with the authority who rents the house. If someone lives with the person then the rent will be reduced by non dependant deductions.

If a person applies for Housing Benefit or changed their address from April 2008, then the rent will be calculated under the new Local Housing Allowance rules. If their house is under the Housing Association or Local Authority, the above rules do not apply. An Individual can claim for protection from rent restrictions if:

- Previously they had enough amounts to pay the rent and have not claimed Housing Benefit in the last 52 weeks (protection lasts for 13 weeks)
- They have had a bereavement in your household (protection lasts for 52 weeks)

Local Housing Allowance rate:

Local Housing Allowance is based on the geographical area which considers the number of bedrooms required in the household. This amount is reviewed and published every month. The authorities also list out the size criteria for the rooms that are rented for. The rent will continue to be calculated under the previous system unless there is a relevant change of circumstances. Ineligible charges will not be included in the Housing Benefit rent. Every 52 weeks it will continue to be reviewed.The rent figure used will be calculated under the old rules. Water rates, Fuel charges, Meals rates and certain service charges are grouped under the ineligible charges.

If a person who is claiming Housing and Council Tax Benefit has difficulty in paying rent or Council Tax, then they will be able to get extra benefit to their housing costs in the form of a Discretionary Housing Payments from their local authority. If a person is paying rent for two homes then they can claim Housing Benefit for up to 4 weeks with some restrictions.

Calculation of Housing Benefit:

Housing benefit is calculated by working out the eligible rent by reducing the amount for non dependents. This is the maximum housing benefit amount and an individual will receive a maximum amount if they receive income support, income based job seeker allowance, income related employment and support allowance or pension credit guarantee credit. If not the applicable amount is worked out by after adding the personal allowance, premiums and ESA. Their income is worked out subsequently and if the income is less than the applicable, then they can claim the maximum Housing Benefit. If the income is higher than the applicable amount, their maximum Housing Benefit is reduced by 65% of their Over Income. Over income is the amount of income that is higher than your applicable amount.

<u>Case study 8</u>

Mr. KJ submitted his house benefit claim form on September 2009. The benefit agency required his bank statement. He informed that, he does not have any bank account and that he was receiving

the child benefit with post office account. He also stated that he was paid his wages in cash. Hence the benefit agency instructed him to submit the documents to confirm that he was paid his wages by cash. His employer gave a letter stating that he was paid his salary in cash. Client submitted all the requested documents to support of his house benefit claim. On February 2010 he received a letter form benefit authority stating that, he was not entitled to housing and council tax benefit. The reason for the refusal was that the client had failed to submit sufficient evidence for his capital. We instructed the client to send a letter stating the need for reviewing the decision and in cases of refusal then his plans of appeal were made clear.Following that the benefit team reviewed their decision and granted his housing and council tax benefit.

Case study 9

Mr. SE an EEA national came to this country with his wife and 4 dependent children. He had claimed housing and council tax benefit under his name. In the second week of April 2010 he was away from due to domestic reason while his wife and children were present. On June 2010 the benefit team came to know that, and worked out overdue payment for one week which was calculated for the period of his absence. They informed the client to repay that overdue amount. We advised the client and he sent a letter regarding overdue. In the letter he had explained that during his absence his family was living at the same home and he had paid the rent for that week as well. He established that the overdue worked out was a wrong decision and hence requested to review the decision and stated that he would need to lodge an appeal against the decision. Then the overdue amount reversed and dismissed.

Council Tax Benefit

A person can claim council tax benefit if they are liable to pay council tax and have a low income. Generally the landlord, occupier or tenant is entitled to pay the Council Tax. The person who is having a proper agreement is liable for Council Tax before the sub-tenant sharing the same home. The landlord is liable for a house with no permanent residents or if the house is under multiple occupations. Students, resident freeholder, resident leaseholder, resident statutory or secure tenant, resident with a contractual license and owner of the house are exceptions for liability. Joint owners and joint tenants are eligible to share the bill. The Council Tax is based on sizes of the house.

A house is exempted from council tax if its unoccupied, unfurnished as it was recently altered or repaired or the processing work going on, if it is left unoccupied by people who are in hospital, care home, hostel, All residents are students and all the residents are severely mentally disabled or under the age of 18.If the resident is permanently and substantially disabled he/she is not entitled for Council Tax. On the other hand if the property is built purposely to disabled person it is not entitled for reduction. If there are less than 2 residents in the property then the concerned person can get discounts. If a single adults stays in the home, the council tax will be cut by 25% discount and no one lives in the house or treated as no-one living there, 50% may be discounted on the bill. However, if the applicant has a second home then they can only get 10% discount. Discount can be backdated. People aged less than 18, student nurses, full-time students, youth trainees and apprentices, people who are in prison, people who are in residential care or nursing homes or hospital, carer, care workers and a severely mentally disabled person are included when counting the residents of a house by the council.

Those who have savings/capitals more than £16,000, those under immigration control, those who are not frequently resident, Full-time students- exception include lone parents and disabled people and People who are getting more income are not entitled for council tax benefit.

People subject to Immigration control:

According to the Immigration and Asylum act 1999 they are not a national of EEA state who require Leave to Enter or remain in the United Kingdom but does not have it and this includes individuals who have entered UK without permission and over stayed, People subject to a deportation order and asylum seekers. The other category of people are those who have been granted Leave to Enter to remain in the United Kingdom and subject to condition that he/she does not have recourse of public funds like visitors, civil partners, Highly skilled , workers with a job offer and Students ,individuals who entered the country under the Youth mobility scheme and temporary workers. Those who have been granted Leave to Enter or remain in the UK given as a result of maintenance undertaking are also included under the immigration control.

Overpayments:

Overpayments are usually recoverable if the local authority estimated the Housing Benefit, when calculating in between payment and if benefit payment paid is calculated for their further period. Discretion is allowed if an overpayment is made based on the official error and the local authority or Department of Work and Pension giving a wrong advice and the concern person didn't cause it and could not reasonably be expected to realise that they done that. They can be recollected if the over payment was made by adjusting the concerned individuals local authority rent account, by way of court or from other means-tested benefits.

If the person's circumstance changes might affect the entitlement it must be informed to the local authority.

Local authority reconsiderations:

If the request made in writing, the local authority can take action to review and suppression on changing its decision. A review is done if the time limit is one month from the decision, the decision was wrongly taken and takes effect from the date of the original decision. Suppressions are made if there is no time limit, changes in personal circumstances and takes effect from the Monday following the date of notification or of the change. Appeals should be made within one month time limit, and the appeal can be made to the appeals service, when they are not satisfied with the decision about the Housing Benefit. If the local authority decision does not give a written reason, one can write and ask them to provide that. Some decisions cannot be appealed. These are based on administrative issues about how payments are made or recovery of overpayments.

Tax Credit

Almost everyone in our community is entitled to and is receiving Tax Credit. The changes in household income and some errors made by the officials result in overpayment or under payment by our clients. We have to assist them to sort these kinds of issues. European Nationals who have come recently to UK and been excising their treaty rights approach our office in large numbers to get our help to claim this benefit. The two types of Tax Credit that they claim are:

1. Child Tax Credit
2. Working Tax Credit

Child Tax Credit

If a person is responsible for a child or young person who is living with them, then they are entitled for Child Tax Credit. The person making the claim must be aged atleast16 years old and can make a joint claim if they have a partner. A child is included in their claim until 31st August following the child's 16th birthday or up to age 20 years old, if the child is in full-time student, non-advanced education or unwaged or work based training. The applicant needn't work to claim Child Tax Credit.

Child Tax Credit- elements:

The maximum annual amount is calculated by adding together the elements that apply to a particular family.

- £545 family element
- £545 baby addition, paid up to child's first birthday- family element
- £2300 child element for each child in the family-
- £2715 disabled child element for each child on disability living allowance, either component at any rate, or who is registered blind.
- £1095 severely disabled child element for each child in the family on disability living allowance highest rate care component.

Working Tax Credit

When a person is working or going to start working within next 7 days and aged above 16 years, then they are entitled to claim Working Tax Credit. To be entitled for Working Tax Credit the concerned person or their partner should be working for 16 hours a week or more with low income and

- They have a dependent child and a lone parent or a member of a couple or
- They are at the disadvantage of getting a job because of their physical or mental disability or
- They are aged 50 or over and recently started to work after receiving Income Support, State Pension with Pension Credit, Job Seeker's Allowance, Employment and Support Allowance, Severe Disablement Allowance or Incapacity Benefit for 6 months

If a person is not eligible for the above category, but they are aged 25 and working 30 hours per week, then they can also claim Working Tax Credit.

Working Tax Credit is based on the number of hours a person 'normally' works. If their working hours fall below qualifying hours with then their claim will stop and there are some exceptions for this calculation.

Working Tax Credit elements

The annual grant amount and the elements are covering individual circumstances, following that:

- £1920- Basis element
- £1890- Couple element- for you and your partner
- £1890- Single parent
- £2570- disabled person. When they have difficulty in getting a job because of their physical and mental disability and working 16 hours or more. If you are couple, this applies to you and partner. You are entitled two disability elements.
- £790- You and your partner working and paid for 30 hours in week. Both of them or one of them have dependent child.
- £1095- you or your partner is disable person and claiming higher rate benefit or claiming high rate attendance allowance or your partner is not working. In case both are disabling person, you can get two severe disability elements.
- £1320- 50+ elements for working 16 hours and more then and less then 30 hours. When you work less then 30 hours, you can not claim the couple element otherwise you are disabled or having children.
- £1965- 50 + elements for working 30 hours per week.

Childcare element: an individual can claim 80% of child care cost which amounts to £175 for one child or £300 for more than one. Child care cost means, childminders, nurseries, out-of-hours schools or local authority clubs. For getting the child care cost, the concerned individual should be a single parent or couple and must be working 16 hours per week. If the child carer is their relative then some rules apply.

Any relevant changes must be informed within a month, to avoid penalty and a delay in the process may lead to create underpayment or over payment.

Disability and Carers Benefits

Disability Living Allowance:

This benefit is not very much familiar among our community members even though they are residing in this country for many years after the migration. The nature of the complexity and the lack of awareness of requirements to file a successful application are preventing some members of the community those who are entitle for this benefit from applying for the same. Even those people, who are in receipt of Disability Living Allowance Benefit, unreasonably refused after the benefit agencies medical officer assessments. The key element of failure of this assessment or the benefit agency normally fails to use the interpreters while the doctors assessing. The visiting doctors' behalf of benefit agency is doing the assessment within an hour. The GP's or hospital report does not give enough weight while they are refusing the existing clients those who are seeking disability living allowance. The claimants often come to our office to negotiate with the benefit office or to lodge an appeal against the decision. Around 18 such cases were handled by us in the last year. We noticed some claimants had a habit not to accept their disability when they are completing this form in assessment. We strongly advise claimants of the benefit seek advice before the medical assessment or the review.

Eligibility:

Any physically and mentally ill or disabled person and in need of help with personal care or getting around or both are entitled to claim Disability Living Allowance. There is no lower age limit to claim this benefit.

Disability allowance is non contributory and is paid on top of all the other benefits.

Disability Living Allowance has two components:

- Care component (paid at three levels)
- Mobility component (paid at two levels)

Care component:
When a person has a physical or mental disability, they need a lot of attention or supervision and are entitled for Care Component. If they are 16 or over and need help for the part of the day, they are entitled for lower care component of £18.95.For

claiming middle or higher care component they must fulfil certain disability tests. As a part of those in day time they should need regular help for their daily activities like washing, dressing, eating, using the toilet or Need supervision to avoid causing substantial danger to yourself or others and in the night time they should need repeated or prolonged attention in their regular work or in need of watching over to avoid substantial danger to themselves or others

Weekly rates

£71.40 - for terminally ill or for those who need care day and night
£47.80 – if they need care either in the day or at night
£18.95 - needs help during part of the day or if they cannot cook for themselves
If the individual is not terminally ill then to be entitled they must be in need of help for 3 months and likely to need it for following six months. Terminally ill means those suffering from a progressive disease and it may be reason for their death within six months.

The non- disability tests:

Age limits	Care component	Mobility component
To make your first claim	Before your 65th birthday	Higher rates from 2 years 9 months and Lower rate from 4 years 9 months before your 65th birthday.
To be paid	From 3 months old. No upper limit.	Higher rate start form 3 year and lower rate start from 5 year. No upper limit
Extra tests for children	Before 16th birthday	4 years and 9 months before of 16th birthday in lower rate only
Residence in the country test for babies	First 3 months qualified period and not delay to 6 months	Under 3 children not entitled
Cooking tests	After 16 years and before 65th birthday	Do not apply
Lowest/lower rate	Before 65th birthday. After 65 you can stay or renew the lowest rare or make repeat claim with in one year	Same as care component

Qualifying periods

Backwards test	Your first entitlement day is under 65 you must full fill the disability test through-out the 3 months before the award will start. If you are 65 or over with in 6 months, there is no qualifying period when you are terminally ill.	Your first entitlement day is under 65, you must full fill the disability test throughout the 3 months before the award will start. You are 65 or over and renewing a claim with in 3 months, there is no qualifying periods when you are terminally ill.
Forward test	After your first day of entitlement. When you are 65 or over or attendance allowance, there is no forward test in renewal claims, revisions or super sessions.	6 months following first day of entitlement.

Residence and presence

General	Present and ordinarily resident not in immigration control. Present for 26 out of the last one year.	Same as care component
Babies	Present and ordinary resident not in immigration control. Present for 13 out of the last one year	Under 3 children are not eligible
Terminal illness	Present and ordinary resident and not to subject of immigration control	Same as care component

Other rules

Hospital and care homes	When in hospital or in carer home, the claim will be stop	When in hospital the claim will be stop. But if in carer home, it not affected
Prison	When in remand, the payment is suspended but the arrears will paid, you do not get a custodial or suspended sentence.	Same as care component

Mobility component:

When you have difficulty in getting around, you can claim the mobility component. In that case, the person must have needed help for 3 months and is likely to need the same help for at least the next six months unless they are terminally ill. The higher rate of £49.85 is paid if they have physical disability due to which they are unable to walk, virtually unable to walk due to a physical disability, The action require to walk would form a danger to your health or have no legs or feet, both deaf and blind and need help outdoors and claiming high rate Disability Living Allowance care component and you are severely mentally impaired with severe behavioural problems. The lower rate of £18.95 is paid when you need supervision or guidance from someone on most of the time when you are in outdoors and you are not familiar with the routes.

Attendance Allowance

When a person needs assistance in personal care and supervision by others then they can apply for attendance allowance. They can make claim from the age of 65 and individuals who are over 65 and terminally can also claim this benefit. It is non-contributory and pays on top of all other benefits. It entitles a person with extra amounts on mean-tested benefits and tax credits and is ignored as income. To be eligible for this claim, they must meet the similar tests that are conducted for assessing care component. They are paid £71.40 if they need care in both day and night or if they are terminally ill and £47.80 if need care either in the day or at night. They must have met these conditions at least for six month, except if they are terminally ill.

Carer's Allowance

Those people who are eligible to claim Carer's Allowance are individuals who regularly care at least 35 hours of a week for a person who gets attendance allowance or disability living allowance care component at the middle or higher rate. The carer must be 26 or over and he/she should not be studying more than 21 hours a week. A person can earn up to £100 weekly while claiming carer allowance. A Weekly rate of £53.90 is paid as carer's allowance. In this claim, the extra amount may be paid for an adult dependent. This allowance is non- contributory. It is on overlapping benefit. The carer allowance is not paid for the breaks in caring until they have been caring for at least 22 week out of 26 weeks only

this 22 weeks are counted for the carer allowance then. This period may be reduced to 14 week out of 26 weeks if either of them were in the hospital. Carer's allowance will be paid for up to if they are in hospital; you are eligible for 12 weeks and 4 weeks for any other reason. Cares are entitled for 12 weeks break in any 26 weeks period for the caring. When the person cared for loses his disability allowance and attendance allowance then the carer is no more entitled for carer's allowance. The carer premium/addition on the means- tested benefits will continue for the next eight weeks. After death of the care person, the benefit will continue for the following 8 weeks.

Maternity Pay and Child Benefit

This is the more straight forward benefit when compared with other benefits but not every one is successful in getting these benefits automatically. The main reason for this is not claiming this benefit itself due to lack of awareness about the benefit entitlement. Many people in our community are those with limited leave to remain and hence are not entitle for this benefit. Among our clients we generally see that only one partner is settled and the other has recently arrived and so on. So while making applications the benefits are claimed on behalf of the settled parent. In most of the occasions the concerned officials neglect this and state that the parent is not settled and tend to deny the benefit. This situation should be change and the officials should consider the applications based on the applicant's settled status and should not give more emphasis on the partners status.

Statutory Maternity Pay

When a woman is pregnant and employed they are eligible for Statutory Maternity Pay. It is paid for up to 39 weeks when they are absent from work. If they do not return to work, they do not have to repay the amount. For claiming this benefit the individual should have worked with the same employer for 26 weeks in qualifying weeks that is before 15 weeks from the due date. To claim this benefit, at least £97 per week should be earned in the last 8 weeks of qualifying period. A Higher rate of 90% of the average earning is paid for 6 weeks and a lower rate, 90 % of your average earning or £124.88, the one which is lower paid in remaining 33 weeks .The concerned person is entitled to claim this benefit for 39 weeks and can claim it from any week beginning from the 11th week before the baby is due to the day following of baby's birth. It is a non- contributory payment. It counts in full as income for Income support, income Based Job Seekers Allowance and income related Employment Support Allowance and Pension Credit. It counts as earnings with disregard for Housing Benefit and Council Tax benefit and also counts as earnings for Tax Credit with a £100 a week disregard.

Claiming procedure:

For claiming Statutory Maternity Pay, the employer must be informed at least 28 days before they plan to stop working in writing if required. They must also submit evidence of when the baby is due to their employer generally using certificate MATB1 issued by your doctor or midwife.

Maternity Allowance

If a woman is pregnant or recently given birth and not entitled to Statutory Maternity Pay, then she can claim Maternity Allowance. All employed and self- employed women should have worked for 26 weeks in the 66 weeks before the baby's due. The 26 weeks can be entitled for both employment and self- employment and the average weekly earnings must be at least £30 per week. The Allowance is paid for 39 weeks and it begins in any week from the 11th week before the baby's due date to the day following the birth. The person will receive £124.88 a week or 90% of their weekly earning whichever is less. If they are self employed and paid Class 2 National Insurance Contributions for the 13 weeks in the 66 weeks before the baby's due, £124.88 is paid to them. For existing claims an extra amount may be paid for an adult dependent. It is non - contributory. It calculates in full as income for means tested benefits. It is completely disregarded as income for Tax Credit and overlapping benefit too.

Statutory Paternity Pay

An employed parent is eligible for paternity leave if they are

- Having responsibility for the child's upbringing and
- Entitled to be baby's mother's husband or partner or biological father and
- Has worked regularly for their employer for at least 26 weeks

This payment is available, when they qualify for paternity leave and they earn an average of £97 or more. The amount is paid by the employer for

maximum 2 weeks to both men and women. The earliest date start with the baby's birth or adoption placement and the latest is eight weeks after that date. Weekly rate of £124.88 if they have earned £97 a week the amount £124.88 a week or 90% of their average weekly income whichever is low, is paid to them as paternity pay It is non - contributory and follows like maternity pay. It counts in full as income for Income support, income Based Job Seekers Allowance and income related Employment Support Allowance and Pension Credit. It counts as earnings with disregard for Housing Benefit and Council Tax benefit and also counts as earnings for Tax Credit with a £100 a week disregard.

Child benefit

When a person is responsible for a child or a qualifying young person then they can claim Child Benefit. A weekly rate of £20.30 is paid for the eldest child for whom Child Benefit is payable and £13.40 is paid for each following child. Child benefit is non-contributory and neglected as income for means tested benefits and Tax Credits. Child Benefit can be claimed for the child or young person who is:

a) Aged under 16
b) Aged 16 and has left education or training- the benefit is paid until and 31 August of following child's 16th birthday whether they attend the school or not
c) Aged 16 or 17 and has left the education or training recently and has registered for work, education or training with an approved organisation and he/she is in non-paid work for24 hours or more in a week and within the child benefit extension period
d) the child is aged 16 or over but under 20 and she/he in full time education or approved training then they can get the child benefit for a young person aged 19, or were or enrolled or accepted on their course or training before their 19th birthday.
e) the child aged 16 or over but under 20 and she/he completed a course of full time non advance education or approved training and she/he enrolled or accepted on a regular course before their 19th birthday
f) 16 or over but under 20 and the child is eligible for the child benefit form the date of leaving education or training up and including the first Sunday on or after the following terminal date. This date will be end the last day of February, May, August or November. When the young person reaches 20th birthday before any above dates child benefits cease in the week ending on the Monday before their birthday.

If the child is not going to school including a residential school for disable person, they can claim the benefit. If the concerned child is in hospital and then the individual who spends for the child will be entitled for the benefit. If the child has been in local authority care for 8 weeks, the benefit will not be paid usually. For all other absences child benefit will be stopped after the 8 weeks unless the concerned person is responsible for the child's maintenance.

The concerned person will cease to receive the benefit if the young person gets married or enters into civil partnership, starts cohabiting, unless their partner is in relevant education or approved training, claims incapacity benefit, income related employment and support allowance, income support, income-based job seeker allowance or working tax credit.

Bereavement Benefits

Bereavement payment

Bereaved spouses or civil partners are paid a lump sum of £2000. It based on the national insurance contributions made by the person's late spouse or civil partner unless their death was form an industrial accident or disease. It is not included as income for tax credits. A person can avail this benefit if they are under pensionable age at the time of the death. If they are over the pensionable age they can receive this payment provided their late spouse or civil partner was not entitled to a Category A state pension. If the partner of the dead person was co-habiting with someone at the date of their spouse's or civil partner's death then the person is not entitled for this benefit. It has to be claimed within 12 months.

Widowed Parent's Allowance

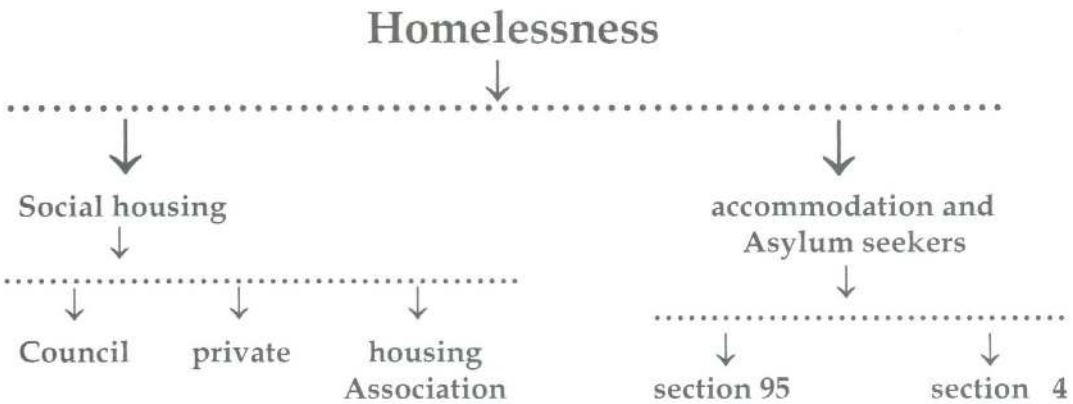
This is a weekly benefit for bereaved men or women who are having at least one dependent child. It is based on the National insurance contributions made by their spouse or civil partner unless death was form an industrial accident or

disease. For claiming that, the person must be under the pensionable age at the time of their spouse or civil partner's death. A weekly rate of £97.65 is paid and this benefit counts as income for means- tested benefits with a£10 or £15 a week disregard. It counts as pension income for tax credits and overlapping too. This benefit will stop when the person re- marry or cohabit. If they no longer have a dependent child they will not be eligible to further bereavement benefits unless it is within 52 weeks of your spouse's or civil partner's death. If it is within 52 weeks they will be entitled to bereavement allowance for the remainder of the 52 week period following the death.

Bereavement allowance

After the death of the spouse or civil partner the other partner is eligible for an allowance for 52 weeks. They can avail it, if they don't have a dependent child aged at least 45 and under pension able age during the death of their partner. If the person re-marries or cohabits then this benefit will be stopped and it based on national insurance contributions made by their late spouse or civil partner unless their death was from an industrial accident or disease. A person aged 55 or over is paid £97.6 weekly and those aged 45 and 54 will receive a lesser amount and it counts as income for mean- tested benefits and tax credits. It is also an overlapping benefit.

Homelessness and Housing



Over View

The actual figure of homelessness is not available with the local authorities, government or voluntary organisation. Strict gate keeping by the local authorities prevents the genuine homeless people to register with local authorities for seeking help. In our experience we see that many local authorities are employing the reception workers at the housing department or local service centre. These workers act as gate keepers to reduce the homeless/housing registration numbers by giving various reasons and asking certain documentary evidence which applicants will not be in a state to produce. The helping attitude or solving homelessness related crises scenario of the local authorities has changed over the years. This has laid more burdens on voluntary sector and community. The community or the voluntary sector also does not have enough recourse to co operative with the demand while number of night shelter or hostels availability is reduced. The charities who wish to build or run night shelter for homeless people is not supported by the local authorities threw the planning permission scheme.

The Housing and Homelessness issues can be divided into two ways. The social housing scheme is available for people who settled in this country and those who have been granted limited leave to remain in UK. The second category of the people are asylum seekers or failed asylum seekers and their accommodation needs are catered by the national asylum support service (NASS) and local authorities under the national assistant care at 1948. A person is considered homeless if they or anyone who could be reasonably expected to reside with the person doesn't have a place to accommodate themselves in the UK or elsewhere. A person has accommodation but it is not reasonable to continue to occupy it can also be considered homeless. If the housing authority has

reason to believe that on applicant may be entitle for assistance, homeless and have a priority need, then the authority under section 188 is to ensure that suitable accommodation is available for the person immediately. A person is considered homeless if they were threatened with homelessness within 28 days, have accommodation to which they cannot gain entry and have accommodation consisting of a movable structure and there is no place to stay and sleep.

Social Housing

The individuals, who are not subject to Immigration Control, are eligible to seek housing support from the local authority under the Social Housing Scheme. The local authority will consider accepting the person once they make application for the being considered to avail accommodation under the Social Housing Scheme. If the person fulfils the priority criteria, then he/she would be given accommodation by the local authority. Sometimes the accommodation could be through the private Housing Scheme or Housing Association if the persons fallen under that category.

Eligible for assistance

Some people are not eligible to housing from local authority and those include individuals subjected to immigration control, who are not habitually resident in UK, who don't have the right to reside and whose Immigration status and eligibility for assistance are completed areas of law

Priority need

Individuals who are homeless as a result of fire, flood or other relevant cause and if the person who is reasonably expected to reside with them is pregnant, dependent child and vulnerable as result of old age, illness or other special reason are given priority.

Women's Aid refuges:

In most cases a women who has left her home because of domestic or other violence remains homeless even if she had found a temporary haven in a women's refuge. Although there may be situations in which it is reasonable to continue to occupy a refuge indefinitely. One of the aspects where it's reasonable to continue to occupy that is Domestic and non domestic violence

Intentionally homeless

While verifying a person's application it's verified whether they became homeless or threatened with homelessness intentionally and examined whether they or a member of household did or fail to do something which directly led to them losing the last settled accommodation which was available and reasonable to continue to occupy.

Challenging Decisions

If the officials decide that it's not their duty to provide with accommodation, request for a review can be made within 21 days. But if the review is unsuccessful, the applicant can apply to County Court within 21 days of the notification of the review decision.

Case study 10

Mrs. NS a Sri Lankan National, came to this country in July 2007 as the spouse of an EEA national with her children. Her husband exercises his treaty rights in UK and she has been granted residence card for five years to stay in this country. The Redbridge Social Services got involved due to domestic issues and ordered her and the children to stay away from the husband. Initially they provided accommodation on a short-term basis until they complete the assessment under the children's act. Later she was provided accommodation through an estate agent in May 2010 and she made the housing benefit application to obtain housing benefit for her accommodation. However housing benefit section refused to accept her application because of her limited leave and for reasons that she is a dependant of an EEA national and cannot claim housing benefit independently. At this point the Redbridge child protection and assessment team refused to continue her accommodation support and advice her to seek legal advice or return to her native European country. At this point she approached us for further legal advice on her homelessness and we negotiated with housing benefit section and children protection and assessment team. Neither of them was helpful and hence we referred her to homelessness unit to seek help under part VII of the housing act 1996 as amended by the homelessness Act 2002. After the assessment the homelessness officers refused to provide accommodation. This is because she had not reported the police about her domestic violence she underwent. Therefore homeless person unit has considered that, she was homeless intentionally. At this stage she was facing eviction

with her 4 children and we decided to make a judicially review against the homeless person unit of Redbridge council. In this circumstances the clients application was changed, because the children are EEA nationals, she was eligible for assistance as their mother. Then the Redbridge housing benefit team considered her application and now she claims housing benefit and they agree to pay the backdated housing benefit payments. The council accepted that they were wrong in deciding to refuse the housing benefit for Mrs NS.

Case study 11

Mr. YV a Sri Lankan national came to this country as an asylum seeker. He has been granted indefinite leave to remain on February 2010. By mistake his name misspelled in the Visa paper. Hence he didn't posses any document to prove his identity. As a result of this he couldn't work and make any income related claim. Therefore he became homeless and slept in bus station. He met a solicitor in March 2010 to change of his name in the home office visa document. During the case proceedings the home office granted section 4 support to the client for further two weeks so that the status document be issued under the correct name. The individual who was providing the accommodation was informed and was requested to continue their support. He received his visa with correct name shortly and was entitled for further benefits automatically.

Accommodation for Asylum Seekers

Asylum seekers and failed asylum seekers

Asylum seeker means an individual who is claiming asylum and whose case is now being considered by the home office or a person who case is appealed and the appeal has been lodged within the time limit against the home office decision to refuse their asylum claim. A refused asylum seeker is some one whose first claim for asylum has been totally refused including appeals.

National Asylum Support Service (NASS) and the UK Border Agency (UKBA)

In UK asylum seekers receive support under a separate system and the benefits which they receive which includes housing and support is called asylum support. Generally it is known as NASS support. Asylum seekers are advised on their entitlement to support do not need to be registered with the office of immigration service commission (OISC) as this does not fall under immigration or asylum law. From April 2008, the government body responsible for making decision on asylum claims and on applications for support is the UK Border Agency (UKBA). Before the changes, it was National Asylum Support Service, or NASS was responsible for handling application for support. In spite of the changes over to UKBA the term NASS is still being used.

Eligible to get support:

Asylum seekers and some group of refused asylum seekers are eligible to support. For that, the person must be aged 18 or over, he/she has made a claim for asylum under the 1951 refugee convention or claim under Article 3 of the European convention on Human Rights and the claim was made at the port of the entry or at a 'designated place' which are the Asylum screening units based in Croydon, Liverpool.

Sec 95 Support

Eligible for Sec- 95

Section 95 supports the person, whose claim is still, be considered including appeal which they have made against the decision. NASS 1 form is used for support of sec 95. When the asylum seeker files the application for claiming his asylum support, he/she will be given emergency accommodation by UKBA while their application is in process. They can apply for this support from the date they make their asylum claim.

For getting the support of section 95, the person must have made a claim for asylum and must be in need. The person's needs are considered, if they don't have proper accommodation and/or are unable to meet their basic living needs like food and other essentials. Dependent means children, husband wife, partner and dependent relatives can also receive the support.

Types of support:

Asylum seekers are provided with housing and benefits equivalent to 70% of income support levels for adults, and the children entitled for full income support. Once they have been given support, usually they are provided with accommodation outside London and in the south east area. Some cases asylum seekers can raise

request to remain in London city for exceptional circumstances. The people who can get free accommodation from friends and relatives, can claim support called as 'subsistence only'.

Explanation in law

The section 55 under the Nationality, immigration and asylum act 2002, 'the person who does not claim asylum as soon as reasonable practicable' can be refused support. As following the 2004 high court judgement known as Libuela, 'section 55 is now normally only applied to people who make a late claim for asylum and who apply for substance only support'.

Final of section 95- support

When a person is granted leave to remain his support will be stopped within 28 days or when their asylum claim was refused and loose all their appeal rights, the person's support going to end after 21 days. When the person is granted asylum or leave to remain, he/she will be entitled to welfare benefits or to take up employment. When the person asylum case was refused, he/she are no longer entitling to asylum support and they will be advised to take steps to leave the UK. However if the person can not return to home country based on some reasons, they may be able to apply for a special type of support available for refused asylum seekers well known as section 4 supports.

Exception for families:

In section 95, some exception applies for families. The asylum seekers with dependent children under the age of 18, whose asylum claim bas been refused, they will continue to get the Sec 95 support as long as, the children are living in their household, when their asylum application or appeals are still being considered.

Case study 12

Mr. UJ came to this country as an asylum seeker in July 2010 and claimed asylum at the home office in Croydon but was not provide with accommodation. Initially he gave a letter to the asylum screening unit about his NASS entitlement and it stated that, 'if he requires support (either accommodation and/or essential living expenses) he may apply for support under section 95 of the 1999 Act. But the section 55 (1) of the Nationality and Asylum Act 2002 prevents the UKBA from providing support, if it not satisfied that the person made their claim for asylum as soon as reasonably practicable after his arrival in the UK. That means if the applicant did not make his asylum claim application as soon as after his arrival to UK, it may affect his/her eligibility for support. Despite of his in country asylum claim when he approached to NASS section he was provided accommodation with other support by the NASS and he was move to Newcastle upon Tyne under the NASS dispersal system, subsequently his asylum claim was refused by the home office in August 2010 and his appeal was allowed by the immigration judge on end of November 2010. Due to this successful appeal decision he is no longer entitled for NASS support and is going to be supported by the social security benefit in future but he has not got the address to move to make JSA application and during this process again he became homeless.

Case study 13

Mrs. KS came to this country in April 2010 and she claimed political asylum in country on June 2010. UKBA refused her asylum claim in July 2010. Then she lodged her appeal in the last week of July 2010. In the mean time she applied for NASS support for her accommodation. She had 2 dependents namely her mother and younger daughter. She was supported by Section 95 and provided weekly subsistence and accommodation from the last week of August 2010. Mrs. KS was blessed with a baby boy in September and from then she had 3 dependents to accommodate. On December 2010, UKBA sent a letter to her in the supported accommodation address and she had not replied this letter. Following this the UKBA terminated the support accommodation from the first week of January 2011. She lodged an appeal against the decision in the end of December 2010. Then the home office re instated their decision and concluded the case and continued to provide support.

Section 4- support

When a person's asylum application has been fully refused he/she becomes a refused asylum seeker. In this period, people they are expected to return home. Due to some reason if they can not return to home country, they can apply for support under section 4 or 'hard case' support. The support is considered if the person is unable to return home temporarily. This section 4 supports is very

difficult due to the narrow criteria. The current statistics shows that around nine thousand individuals are supported under the above section. People who are entitled to sec 4 supports are now receiving weekly £35.00 vouchers in super market. (There is no cash) and housing. Dependents also supported under the sec 4 from 31st of January 2008, the home office made some changes in sec 4 regulations, that mean some people can received extra vouchers. Some strict criteria will apply to people whom are going to get support of section 4. First of all they must be in destitution that means in state of helpless.

Destitution:

If any one of past asylum seeker has applied for sec 3 support within 21 days of the completion of the sec 95 support, UKBA will consider the person as a destitute. If the person has been unsupported for some time, UKBA will need the evidence for the person's helpless. UKBA guidelines explain that, if the person has been helpless for long period, then it would be reasonable for the case worker to assume that the person has other source of support and he/she can continue to do so.

The following types of evidence help to prove the destitution status,

- The applicant's witness statement explaining how they are supporting their self.
- If they are staying with friends/relatives, they should provide a letter from their supporting person, explain about what support they provided (food, housing) and why the support was stopped. The letter should have the sign if many people are giving the support.
- If possible bank statement to prove no balance condition
- Evidence from charitable organisation, if they are provided any food or clothes.
- Letter from doctor or midwife about applicant's physical and mental well being.

Following that the destitute the applicant should meet one of the below criteria:

1. They are taking all the reasonable steps to leave the UK. i. e, signing up with IOM to return, and applying for travel documents to their embassies etc.

The applicant should submit the evidence, that he/she has approached IOM and/or their embassies in the UK for his travel documents/facilities return. They have only to prove about they take steps to return. If the client has been unable to leave, it is not their mistake and they should qualify for sec 4.

2. They are unable to leave from the UK as they are too ill, to travel including physical or mental health problems.

    - Women who are in the last stage of pregnancy and who are with six week under babies generally qualify for the above condition.
    - Who are proving letter or correct report from the medical experts explaining about the nature of the applicant's condition, they are not able to travel and how long they are likely to remain so. Mental health problem also include in this condition.

3. They are unable to leave from UK because the secretary of state considers that, there is currently no viable route of return available.

The secretary of state believes that, currently there in no safe route in other counties

4. They have applied for judicial review to the high court relating to their asylum or 1they have been made an out of time appeal against the claim

In England and Wales permission must have been granted to proceed with judicial review in order to meet the condition. The applicant should proof that an out of time appeal has been submitted to AIT.

5. Under person's convention rights within the meaning of the human rights act 998, the person must provide accommodation to avoid a breach.

When a person makes a fresh claim for asylum based on new information or has made a fresh Article 3 claim, it could be used where the applicant can prove there would be a breach of the person's convention rights if the support is not provided. This could include issues such as a rights to liberty, right to fair trial, and right of

family life. The person normally need to prove that, why he/she can not leave the UK. if they have made a fresh claim, then you will be need to provide evidence of delivery. When UKBA 'record' it as a fresh claim, then the applicant is eligible to Sec 95 again.

Extra Vouchers in Section 4:

From 31st January 2008, the home office brought in new rules to allow extra vouchers to be given to some people those who are eligible to sec 4.

In section 4 supports everyone can apply for extra vouchers for:

Travels or journeys over 3 miles if it is:

- To get healthcare treatment (the applicant-give evidence for the medical appointment) or
- Birth registration.

Birth certificates.

The applicant can get the full birth certificate cost.

Telephone calls and letters.

The limited list of people can get the cost of telephone calls and postage/stationery.

- Regarding medical care
- To a qualified person (qualified to provide immigration advice)
- To a court of tribunal
- To a voluntary sector partner
- To a citizen's advice Bureau
- To an immigration officer or
- To the secretary of state

Pregnant women and parents who are with dependent children under age of 16 are entitle to get extra support.

One-off voucher to pregnant women and new mothers.

There is a voucher of £250 for each new child. They must applyed for that up to eight months before the expected due date and with in six week after the child's birth.

Additional weekly vouchers for pregnant women and children under three:

The pregnant women get £3 per week, the new baby with in one year old get £5 per week and the child under age one to three get £3 as additional vouchers.

The child gets £5 extra voucher for their clothes up to their 16th birth day.

If any exceptional needs for travel, telephone, postage/stationary or essential living needs, the evidence must be provided.

Section 4 support for those who are in Detention:

From March/April 2008, UKBA changed their policy in relation to detention case. Refused asylum seekers who were applying to be released on bail, could be supported with section 4 accommodation without having to meet the criteria for support as set out in the: immigration and asylum (provision of accommodation to failed asylum-seekers) regulation 2005.

That means, the failed asylum seekers in detention who are applying for sec 4, do not have to prove their state of helpless or meet one of the other 2005 qualifying criteria such as taking all reasonable steps to return, physical impediment to travel etc. the accommodation should be provided to the applicant for a long as their bail conditions apply.

This policy changes reflects a closer interpretation of section 4 (1) of the immigration and asylum act 1999. That states:

The secretary of state provides, or arrange for the provisions of, facilities for the accommodation of persons-

1. The paragraph 21 of the schedule 2 of the act 1971 temporarily admitted the applicant to the UK.
2. Released the person on bail from detention or
3. Released on bail from detention under any provision of the immigration acts.

Failed asylum seekers, those who entered the UK with other types of visa and who are detained and applying to be released on bail may also apply for support under section 4 (1) in addition. This would apply to those who have been detained for the purpose of removal following a criminal sentence (foreign national prisoners).

The right to appeal to the first- tier tribunal asylum support

An asylum seeker or a failed asylum seeker, when they are refused support or it has been taken way then they have the right of appeal against this to the Tribunal. UKBA must inform the concerned person before they withdraw or refuse support, giving reasons for that decision in writing. In that letter they should also advise the person of their rights of appeal and provide along with an appeal form. An appeal should be made within three working days.

Case study 14

Mrs. KY came to this country as an asylum seeker and applied for asylum in 27th March 2002. Her claim was refused in April 2002 and her appeal was dismissed in June 2003. Then on exercising her appeal rights in end of June 2003 she was granted subsistence support under section 95. That support was cancelled on August 2004 and again she was granted section 4 support in June 2005 based on the conditions in Sri Lanka at the time as it was hit by Tsunami then. She had made an application under the voluntary assisted return and Reintegration Programme (VARRP) earlier and the appellant withdrew her VARRP application on July 2006 after receiving section 4 support. In April 2008 she made a fresh claim and it was refused in October 2008 and as a result of this her section 4 support was withdrawn. At the same time she was having a medical condition and was being treated for her illness. She also had produced number of documents to substantiate her health conditions. The GP had also stated that, Mrs. KY is not fit to fly and there are no relatives to take care of her in Sri Lanka. Based on this she lodged an appeal in August 2009. The case was reviewed and she was granted section 4 support keeping in mind her age(60 years then) and health condition.

Case study 15

Mrs. PT came to this country as an in country applicant. She claimed asylum at the home office few days after her arrival. She made the claim for NASS benefit and her claim was considered under the section 95 under the Immigration and Asylum act 1999. As she was in-country applicant, her claim was refused under the section 55 of the Nationality, Immigration and Asylum act 2002 on the basis that the appellant claim for asylum needs to be made as soon as reasonably possible after her arrival in the UK. She had also mentioned in her NASS application that she needs subsistence money alone as she is being accommodated by her daughter. Keeping in mind all these points especially the fact that she didn't exercise her appeal rights within the prescribed time we advised her about the poor success rate of the appeal.

Case study 16

Mr. UJ came to this country as an in country applicant. On his first screening interview, he informed that, he did not need temporary support which is provided in the form of full Board Accommodation. The home office stated that, whenever he requires the support, he can make an application in relation of his support under section 95 of the 1999 act. Later he made a NASS support application and was granted the support. This is because he applied for full board accommodation with voucher. Therefore he claimed the support.

Case study 17

Mrs. TN came to this country as an asylum seeker with 2 under aged children and she claimed asylum as an in country applicant to. She sought NASS help form home office and her claim was assisted and approved she was dispersed to Swan on sea. She was granted accommodation and free voucher under section 4 support.

Some situations of no right of appeal

When an asylum seeker support is dispersed, there is no appeal against that. They do not get a choice about where they are dispersed to and can not appeal against the decision to accommodate them in a particular area. If they want to challenge the decision to send them to a particular area this has to be done through the high courts. There is no appeal against about the support amount one receives under the section 95 support. They get cash to the value of 70% on income support levels (full amount for children) and section 4 currently £35.00 per week in vouchers and accommodation.If anyone is refused support under section 55, there is no appeal to the AST. Section 55 allows UKBA to support the applicant who did not claim asylum as soon as reasonably practical after arriving in the UK. This is usually taken to mean 72 hours after they entered to UK. They can only

use section 55 where they can show that the person convention rights would not be breached if they did not provide support.

Individuals out of the Asylum support system:

Unaccompanied Minors

Children under 18 years who are arriving in UK alone are known as unaccompanied minors and are not supported by UKBA. They should apply to social service for support under section 20 of the children act 1989. If the child reaches age of 18, they should normally continue to be supported by social services until they reach the age of 21 under the children (leaving care) act 2000.

Individuals in need of care and attention

People who have support need are entitled to apply for support from social services under the national assistance act 1948. Section 21 of this act allows social services to provide support to a person in need of care and attention, and those include elderly, disabled, individuals having health difficulties, women in the last stages of pregnancy or early breast feeding. These people should contact their local team and make request for an assessment from the social service.

Local authority support for asylum seekers under section 21 of the National Assistance Act 1948

An asylum seeker of 18 years or over may be 'in need of care and attention' due to age, illness, Disability (physical or mental health difficulties) or other circumstances and they are entitled for accommodation and support under section 21 of the National Assistance act 1948. This is known as 'community care support and is provided by local government social services departments, (not the UKBA or any national government department). The support can include housing, cash, (some social services agree vouchers only), special equipment for physical disabilities home help etc. The UKBA asylum support prefers the community care support because the range of support that is possible and because it involves dispersal.To get the support the procedure is to ask the social service for community care assessment under sec 47 NHS and community care act 1990.

Section 47 (1) explains *'where it appears to a local authority that any person for whom they may provide or arrange for the provision of community care services may be in need of such services. The authority:*

a) shall carry out an assessment of his/her needs for those services and
b) Having regard to the results of the assessment shall then decide whether his/her needs call for the provision by them of any such services'.

For applicant's advice, they take the first step to send a letter for asking an assessment. Most of reasons social service refusal the proposal because they do not understand their own legal obligation and argue that the applicant must apply to UKBA for support. The refusal is challenged by formal complaint, complaint to the ombudsman or by judicial review depending on the urgency.

Failed asylum seekers:

In need care and attention' and need help form social services there is more complicated in failed asylum seekers limited circumstances only that failed asylum seekers will be able to get this kind of support, because most will be excluded as a result of schedule 3 of the immigration and asylum act 2002.

Schedule 3 excludes, many different group of people from accessing social services support including some failed asylum seekers and the person failing to co-operate with removal directions. Particularly it excludes those failed asylum seekers who are in the UK breaching the immigration laws.

Human rights:

The immigration and asylum act 2002 says that, even failed asylum seekers are excluded from applying for support. Social service has the duty to provide support if it is necessary to avoid a breach of a person's convention rights. In this situation the above rights could cover failed asylum seekers who have made a fresh claim for asylum or a claim under the European convention of Human Rights (ECHR). The argument would be that if a failed asylum seekers is in 'need of care and attention' a failure to provide support would be a breach of their convention rights and they need support whilst these are being considered and they can not be expected to leave the UK abruptly.

Case study 18

Mr. SS came to this country in July 1999 as an asylum seeker. His asylum case was refused in November 2000 but he was permitted to work in UK. Hence he was working from May 2001 till September 2009 and paid his tax and National Insurance appropriately. Following this he applied for Section 4 support under NASS on March 2010. In the end of March UKBA requested some evidence to prove his destitute state and subsequently he submitted those. But the UKBA refused the NASS application because the evidence which he had submitted was not enough to confirm that he is a destitute. He lodged an appeal against this in the last week of April 2010. The First- Tier Tribunal returned his appeal as they considered it invalid. He lodged an appeal again in May 2010 and won it by the end of May 2010. From then onwards he is entitled for section 4 NASS support.

Case study 19

Mr. NK came to this country and claimed asylum on 1991. He was granted leave to remain for one year and extended it for three year twice. He was granted indefinite leave to remain in the period of 1998-1999 during which he was homeless and he did not have any documents for his identity. He has been issued with NINO and also claimed jobseeker's allowance in from1998 to 2000, signing in his local job centre. Then he worked in a company from 2000 to 2004. In November 2010 he attended the homeless unit with the letter about his circumstances. The council replied that, they could not conduct an assessment for client for priority need because he did not have a local connection and had no identity documents confirming his immigration status. It was weekend and also late afternoon, so it was decided after receiving permission from the trustee to the emergency welfare fund and provides our client with bed and breakfast accommodation, transport costs and food for the weekend. On the first day of the week, client presented to the council in which he was residing previously but was unable to receive assistance because of immigration status. The next day the client contacted his former employer for work reference to prove that he was working and also sent request letter to home office to confirm his immigration status. The same day we contacted HMRC to obtain copy of NI Number and confirmation of his national insurance number. The next day, West London Reconnect (no recourse to public funds) advised the client that he might not be applicable to that group and unlikely to be accommodated. On that day OISC accredited body offered assessment and support. Finally Slough Refugee Supported referred him to us. Then we gave him accommodation in Tamil community housing association on a temporary basis.

Money and Consumer advice

TWAN is registered in Advice UK group and granted Debt Counselling Licence. The migrant community people will take some time to understand and manage the lifestyle and system of their host country. The most discussed issues among the community are the dept and consumer related issues. Our community people during their settlement process, they are face a lot of challenges with regard to these matters. They are not familiar with Credit card culture and are not aware of the consumer act. The unplanned usage of credit cards and 'chit fund' money system are creating the financial burdens. The chit fund is not a bad system for saving the money but some times when the people are not cautious they end up in debts. Another important thing is that our community people try to keep up with the lifestyle in par with the high standard of living with others.

The credit crunch and the fall of economy also make its mark as majority in Tamil community, live in the border of poverty line and due to un-employment or under employment they sink further below the poverty line. These also increase the chances of them getting into debt and poverty. In this year nearly 63 persons had advice and support in relation to consumer related advice and dept. Few cases were handled by case workers at Case work level.

After the new coalition government came into power, unemployment and poverty among the low income families are raising. This national trend is affecting ethnic minorities more and in particularly among the migrant community. Due to loss of earnings and lack of experience to handle the debt families are into distress. We are expecting that this new development will accumulate further work in this area for upcoming months.

A creditor can approach the county court to get a CCJ (country court judgement) and they can use

the bailiff order to collect back the monies owed. CCJ record on a person will be a black mark on them and they wil have issues in lending money from other banks in the future. Few clients had bailiffs order asking them to report to the county court.

Case study 20

Miss GS a prospective student enrolled with the City of London College was finishing her first semester. Due to a sudden fatal illness in her sister she was unable to start her second semester and was also not able to finish her first semester also. This was informed by GS in writing to the college and administration and to the attention of the Principal. However GS paid her fees for the first semester. As soon as she paid her first semester fees, the college administration turned down and said that they were not informed about the semester off and GS has to pay again for first semester which was £4500.00. Miss GS approached TWAN and we advised her to attend the meeting which has been arranged by the College administration with the Principal. GS attended the meeting as scheduled with her ill sister; but the college said that there was no meeting arranged. Then TWAN contacted the college and forwarded a full statement together with supporting evidence. College then contacted GS and agreed to let her continue her second semester as arranged earlier.

Dealing with debt problems

We must understand that, the debt cannot be just wiped away without any actions. The debtor (borrower) can approach an organisation which has the capacity to solve their debts either through negotiations with the debtor or handle with them lawfully. Some test cases have been made by consumers against the creditors and decision have been made by competent courts in the last year which is huge bearing on how the law is going to deal with claims by creditors or debtors as may be the case.

In this year report, we will have a look into the 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 country court judgement or bad credit report. If there is no other way of getting away with debt then they can apply for bankruptcy to relive oneself from the burdens of re-payment. There are possible approaches to get relief form debt without having to aid to bankruptcy as listed below.

a. **Debt Relief Order (DRO)**

DRO provide debt relief, with some restrictions. The people who do not own their own home and have little surplus income and assets and less then £15,000 of debts for last 12 months are entitled to DRO. In the mean time, creditors named on the order cannot take any action to remove their money without permission from the court. In the end period, if their circumstances have not changed, they will be freed from the debts that were including in their order. DROs do not involve with courts. They are managed 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 a person must be unable to pay off the debts, have property less then £15,000,own a car to the value of £100, and the total value of other assets must be under £300,after the tax, national insurance contributions and normal household expenses the debtor's disposable income must be no more than £50 a month, they must living in England or Wales or some time in the last 3 years have been living or carrying on business in England or Wales, not been subject to another DRP with in the last 6 years and not involved in another formal insolvency procedure at the time of applying.

b. Formal arrangement or informal arrangement

When people realise that, they cannot pay all of their debts then they can consider writing to individual creditors to see if a compromise can be reached. The informal arrangements have the disadvantage that, it is lot legally bound and hence creditors could ignore it later and ask the debtors to pay in full.

Case study 21

Mr. PP came to this country in 1999 and his asylum request was refused. He approached TWAN in December 2007 and informed that, he had a loan in bank. He didn't have any income and also he was not allowed to work in this country. He could pay only £10.00 per month and this situation was explained to the bank in writing. Then the bank asked him to make telephone call and offered to allow him pay £26.00 on every month. Even

though the client was not in a position to pay this amount we sent the letter to bank explaining his circumstances. Subsequently the bank made restriction on his account and stopped him from using means credit card and cheques. The credit agencies will inform other agencies by default. At the same time, the bank offered that he can approach the court for seeking more time. In the mean time some of private sectors contacted him for further action and advice. So he forwarded his financial statement to one of the credit adviser.

c. Administration orders

When one or more of the creditors have obtained a court judgement against the debtor, the country court may make an administration order. It is the court based procedure where by a person can make regular payments to the court to pay towards what the debtor owes the creditors. The total amount must not be more than £5000 and the debtor should need enough regular income to pay weekly or monthly. The administration orders do not need the fee but the court will take a small percentage like cost from the debtors pays. When the debtor does not pay regularly, the order will cancel and the person may become subject to some restrictions as someone who is bankrupt. When the debtors circumstances change and cannot pay as ordered, they can apply to the court to change the order. The court which made the order will inform them about what to do. In local country court the administration order details are available.

d. **Individual voluntary arrangements. (IVA)**

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

For proceeding with the IVA the debtor must identify an authorized insolvency practitioner, on behalf of them, get an interim order from the court. The insolvency practitioner informs the court about the details of debtor's proposal and when the meeting is held, the date and details are sent to their creditors. On the meeting the creditors vote to accept the debtor's proposals. If enough creditors vote in favour the proposals will be accepted. The arrangements are supervised by the insolvency practitioner and pay the creditors in accordance with the accepted proposal. 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.

Bankruptcy (Insolvency)

In expert's views, bankruptcy is the best option for those with considerable debts, no income and assets. The people on whom it has the most detrimental effect are those with equity in property. Individuals with disposable income and professional qualifications will have their dignity damaged on claiming bankruptcy.

The process of bankruptcy

When a person decides to apply for bankruptcy then they should contact the local authority court or the high court if they live in London. When the creditor presents the petition, an insolvency order can still be made even if the debtor refuses to acknowledge the proceedings. The first step 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. When the debtor disputes 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.

The government has increased the self petition cost for bankruptcy. This includes the cost of the administration of bankruptcy by the official receiver. Income support of the self petitioner may not have to pay above court fee.

Role of the receivers

For administering bankruptcy an official receiver will be appointed for winding up the assets the concerned person possess 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 bankruptcy estate. After the order any earnings or assets received will have to go straight to the receiver to then administer to creditors. Sometimes, the insolvency practitioner is appointed as trustee instead of the official receiver. They are responsible for disposing of assets and taking

payment for the bankruptcy procedure and making payments to their creditors.

Assets that can be kept

A bankrupt person will no longer have control over their 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 their employment or business. The person will also be able to keep clothing, bedding, furniture and basic household equipments.

Restrictions

There are four main things not permitted to do as a bankrupt person:

- They should not try to get credit for more than £250 without disclosing that they are a bankrupt- and this includes trying to get credit jointly with someone else. It also applies to goods or services you might order then failing to pay on delivery.
- They should not continue the business in other name from the one in which they were made bankrupt without informing all those involved the name in which they were made bankrupt.
- They should not form or manage a limited company or act as a director without the court's permission.
- They can not hold certain public offices, such as MP, JP, school governor, the trustee of charity or a pension fund.

Financial statement

At TWAN we trying to help our client through our service of discuss with the creditors and try to ease their the burden of debt. Most of banks will ask for financial statement of the debtor which is prepared after taking instructions from the user. After discussion with the client a financial statement is prepared and it will be 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. After 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. 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. When the creditor explains why they are not accepting the offer and have given the reason for it, we will send an explanation as a reply to them. If they have not given a reason we will ask them for a reason for refusal of our client's offer and client will be encouraged to pay what has been offered in the financial statement during the periods of negotiations to gain confidence of the creditor on the debtor.

Case study 22

Mr. VV was offered a loan in a private bank. His outstanding balance was over the limit. So the bank closed the account and transferred to debt collection services. They asked to him to settle the amount within seven days. Then the client approached TWAN and requested our advice. We informed to bank with a letter stating that, he can pay up to £10.00 per month. The bank requested to submit the client's financial statement with all paper works. Therefore we submit the relevant documents for their consideration. Then the bank accepted the request and offered the chance to pay £10.00 per month.

Consumer credit Act an Introduction

The act was made to provide an extensive code to regulate the supply of credit and hire individuals and cover consumer protection, all stages of credit and hire transactions, general credit regulations and the enforcement of credit and hire agreements. The act introduces a totally new way of regulating borrowing and lending.

The consumer credit act 2006 principally amends the Consumer Credit Act 1974 , which is the statute governing the licensing of, and other controls on, traders concerned with the provision of credit or the supply of goods on hire or hire-purchase to individuals and with the regulation of transactions concerning that provision or that supply. The purpose of the 2006 Act is to reform the 1974 Act to:

- provide for the regulation of all consumer credit and consumer hire agreements subject to certain exemptions;

- make provision in relation to the licensing of providers of consumer credit and consumer hire and ancillary credit services and the functions and powers of OFT in relation to licensing;
- enable debtors to challenge unfair relationships with creditors; and
- provide for an Ombudsman scheme to hear complaints in relation to businesses licensed under the 1974 Act, as amended

The CCA introduced centralised licensing under the control of the 'director general of fair trading (DGFT) with responsibility for enforcement shared with local authorities' trading standards departments bases on the Crowther committee's recommendations. Some powerful sanctions are available in cases of breach of the licensing requirements.

It deals specifically with the form and content of agreements, signature, copy agreements and notice, cancellable agreements and cancellation rights, and the effect of improperly executed agreements. Certain agreements are exempt from these requirements.

The time of term of a credit agreement, bases on request, a debtor is entitled under the act to receive certain information from a creditor on minimal payment.

Consumer advice

We all are victims of consumerist goods in a consumerist society like Britain. We are surrounded by a number of advertisements and we end up buying things that are necessary and which are not necessary. In many cases in immigrant communities like us are unaware of many rights that we are entitled to as a consumer. Many of consumer goods are having warranty and guarantee and in case of faulty workmanship or danger to the well being of the user, the person can approach the manufactures for a refund or damage claim. In case of injury to the person no occurring due to the negligence or wrong use of the buyer a claim for compensation can also be made.

The client is advised to seek redress from the place where they purchased the product, if they do not provide that with a proper redress then the customer can approach consumer direct .At any time TWAN users can approach us for help in accessing there rights through our advisory service in person or over the phone during the telephone advise time and 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.

Case study 23

Miss. SR deposited a sum £1200.00 in a private sector with a plan of buying a property and she was told that the deposit fully refundable initially. Unfortunately the property market fell and the company did not refund her money. She called them over phone and wrote and letters to them a number of times but they refused to refund her deposit. They had also stated that, the amount was deposited to purchase electric goods and business plan advice. Finally the client approached us, and sought our advice. Therefore we made claim form and sent it to the court. After that the company agreed and refund the amount.

Ombudsman

Independent complaints schemes aim to settle disputes about financial products or services impartially. Their services are free for consumers. The client can get help from one of these schemes if they have not 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 24

Miss. PS is a student and she had paid £2500.00 to her college as course fees. She had withdrawn her course and the withdrawal was processed in November 2010. She did not attend the college from October 2010. After that she made an application for refunding her fees. We also forwarded a letter to the respective college on her behalf to take action in order of her refund. Further to the letter we received mail and informed that, they need the supportive evidence on refund application. The case is ongoing as of now.

Awareness on scams, Rogue traders and bogus callers

During the time of recession, many schemes and scams usually crop up. The fair trading office, the

Metropolitan 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 with the help of Age Concern and Met-Police. We will discuss scams which our users are 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 website similar to the original organisations. At no given time will any genuine organisation ask for update from their clients over the e-mail or phone.

There are many scams such as work from home opportunities, lotteries, foreign money offers, pyramid selling, miracle cure etc. if your are in doubt, want to complain or have been a victim contact consumer direct or visit Tamil Welfare Association (Newham) UK office during office hours or telephone during the telephone advisory time for further help.

Health Care

TWAN is providing services in the health care field to fill the gap between the service providers and health cares services in UK. Educating and ensuring our clients their entitlements in the health care field is our objective. Denying service or demanding for a huge payment from the patients is increasing in the hospitals and ambulance service while the clients are entitled for free medicine and treatment. In primary care field GP's are reluctant to take new patients and tend to remove the patient those who are challenging with GP'S for their entitlement by stating that they you are not in their catchment area. Negotiating with health professionals and supporting through necessary documents to provide better service by the health profession are our ongoing duties. In some occasions we took action against the health authority or GPS through complaining procedure or other available remedies in the interest of the client.

Health care in UK

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

- The secretary of state for health may make regulations for certain types of health service to be charged.
- The secretary of state may make regulations for some circumstances in which people who are 'not ordinarily register with GP'' may be charged.

In 1989 health and social welfare act regulation amended the 2nd clause by making asylum seekers as "not ordinarily resident''.

Meaning of ordinarily resident in the UK

Individuals who are living lawfully in the UK and 'settled' in the UK are considered as ordinarily resident. A person is not considered to be living lawfully in UK, when they have overstayed their visa or entered the UK illegally, if their claim for asylum and any subsequent appeals have been refused.

A person needs to show that they are 'settled' if they or their partner have claimed asylum and are waiting for a decision, have been granted refugee status, are taking up permanent residence in the UK, are pursuing a full time course of study or 6 months or more, or less than 6 months, if substantially funded by the UK government.

Individuals with low income who are ordinarily resident in UK and unable to access healthcare avail form HC1, which provides them certain medication and supper 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 on referral by a doctor or dentist and Wigs and fabric support, such as abdominal and spinal supports are the provisions that they are entitled to if they are claiming certain kinds of benefits or on low income then the eligibility will depend on other circumstances as well such as age, health etc.

Free NHS prescriptions:

A person can get free NHS prescriptions if they are aged 60 or over, under 16, aged 16, 17, or 18 in full time education, pregnant, or have had a baby in the previous 12 months and have a valid exemption certificate, have a listed medical

condition and have a valid exemption certificate, have a continuing physical disability which means they can not go out without help from other person and having valid exemption certificate, in-patients, get or are included in an award of someone getting income support, income based job seeker's allowance, Income- related employment and support allowance, Pension credit Guarantee Credit, who are entitled to, or named on, a valid NHS tax credit exemption certificate, who are named on a valid HC2 certificate and who have a valid war pension exemption certificate and the prescription for your accepted disablement.

Asylum seekers entitlement

Based on the decision taken by the House of Lords in Shah V Barnet case 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 the asylum seekers many times find difficulty with their health care access and provided with a copy of guidance paper to the GP to register asylum seekers. The department of health issued the guidance in 2004, that mainly deals with hospitals and clearly includes asylum seekers and whose asylum claim or appeal remains outstanding access to most of medical care available to ' ordinarily resident' persons.

With the decision of, *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. Following that, the Department of Health has made up a new guidance in 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'. A refused asylum seeker who has been in the UK for more than 6 months and has a current IS96 form granting temporary admission is likely to receive free treatment.

How to get medical exemption certificate:

One should ask their doctor for form FP92A to apply for a medical exemption certificate. The GP, hospital or service doctor will sign the form to confirm the statement. The certificate will start one month before the date that the NHS Business Services Authority (NHSBSA) receives the application form. This certificate normally has five years validity and then needs to be renewed.

NHS low income scheme:

When a person is in low income and he needs to pay for his NHS prescription, the NHS low income scheme may be able to help them with their health costs. For that, they should have capital which is over the capital limits, £16000 or £23000 for people who live permanently in care home, but they cannot claim any help through this scheme. If they have a partner, their property, savings and any other money is counted with theirs. But children will not be included in the NHS Low Income Scheme assessment.

If a person is aged 16 or over, they can make their own claim on an HC1 form, but they needn't do this if you count as a dependent of someone who is getting any of the eligible benefits or credits. If a dependent child under 16 has to go to for NHS treatment under the care of a consultant, or through a referral by a doctor or dentist, they can claim help with their travel costs. Any help will be based on the parent's income only. To calculate a person's low income entitlement, their income will be compared with their 'requirements', which include a personal allowance, premiums, plus housing costs and council tax that they have to pay.

Asylum seekers

Asylum seekers and who are supported by the Border and Immigration Agency (BIA), including those on subsistence support only, can send an NHS charges certificate (HC2) for full help with health costs with their first support payment. But the HC2 certificate does not entitle them for NHS treatment. It entitles them for full help with health costs if they have been accepted for NHS treatment. if a person needs help urgently with any health costs before claiming IS, JSA (IB), ESA(IR), Pension credit or tax credit are awarded make a separate claim on an HC1. If they do not want to delay their NHS treatment or repair/ replacement of glasses or need emergency NHS dental treatment, they may need to pay and claim a refund later.

Under the Health Act 1999, any patient found to have wrongly claimed help with health costs will face penalty charges and in some cased prosecution. The penalty charge is a civil fine and may imposed where a patient is found to have wrongly claimed total or partial help with health costs. The penalty charge is five times the amount

owed, up to a maximum of £100. This is in addition to the original charge. Payments will be pursued by civil recovery if necessary.

EU Nationals

When an EU national is visiting another EEA country on a holiday or business trip, then they will need a European Health Insurance Card (EHIC) to access state-provided healthcare that becomes necessary during your visit. But the EHIC does not cover all healthcare costs like cost of their travel etc. The EHIC access to healthcare becomes necessary while a person is abroad, it does not allow you to go to another EEA country specifically for treatment. A person, who is going to live in another EEA country but not intending to work, may be able to get state-provided healthcare at a reduced cost or sometimes even for free. For availing this they must be receiving state pension, long term incapacity benefit or Bereavement benefit in the UK.When they have received short-term incapacity benefit, or have previously worked and paid national insurance contributions in the UK, they may qualify for healthcare for a limited period.

Case study 25

Mr. SS is a Sri Lankan National who is settled in UK. He suffered from many medical complications. He was registered with the GP in his area. That surgery had more than 2 doctors and hence he was treated by more than one doctor. In April 2009 he was issued medical prescription which was different from the previous doctor's advice. He wrote a letter in May 2009 and remainder letter in November 2009 about the confusion in his prescription but there was no response. Further they refused to see the patient and even make an appointment for meeting a doctor to clarify his doubts. We advised Mr. SS on this matter to change the GP and to make a complaint to medical council with private Solicitors. The solicitors sent a notice demanding for a further appointment to explain the patient's illness but the surgery denied that also. Later he approached another surgery and registered as a new patient. Also he attended the test and got his fresh illness report. Then he approached National accident helpline to make claim against his previous surgery who were gave complicated medication in December 2009.In January 2010, one of the private solicitors replied to SS and instructed him, that they can not take up his case as it was purely a clinical negligence case. When the process was going on, the applicant received a letter from the surgery stating their mistakes and many other issues. Following this he withdrew the case.

Case study 26

Ms. FS came to this country come to this country in student visa. Later she got married to Mr. KS who is a permanent residence in UK in a solely religious proceeding. Subsequently she was pregnant and received a NHS bill around £3000.00 for her medical expenses. Her husband was working only 20 hours per week, so they were not able to bare the expenditure. She was also issued with a Maternity exemption certificate from the date of her pregnancy which was valid until after one year of delivery date. She approached TWAN and requested for our advice and assistance in this matter. Following this we forwarded a letter to NHS and stated that, 'according to immigration law, a spouse of a person present settled in UK is entitling for free medication and treatment under the NHS scheme'. We also requested to review their decision and treat the client under free NHS scheme. Subsequently we received a telephone call from NHS department with request to submit the client's maternity exemption certificate for further progress. The client forwarded the certificate as requested and is still waiting for the review.

Case study 27

Ms. SM came to this country in 2007 as an asylum seeker. She claimed asylum and her asylum claim was under consideration and she was given an ARC card from the Home office. She was receiving NASS support and had a HC 2 certificate for aiding her medical expenses. The home office's ILPA information sheet stated that, an asylum seeker who is in UK for more than six months and having current IS96 form granting temporary admission is eligible to receive free treatment. But the council NHS trust did not register her name with GP and refused her free NHS treatment though she was granted refugee status in August 2010 which was valid until August 2015. We then forwarded a letter to NHS trust to register the applicant for free treatment. Following this the NHS gave appointment to enquire her for further progress. The process is still going on.

Case study 28

Mrs KP came to this country to reunite with the family in July 2010. She has been granted leave to enter valid until January 2013. Her spouse was also granted refugee status in UK. The NHS did not allow her to avail free medical treatment. But according to the immigration law, a spouse of refugee is entitled for free medical treatment and medication. We are in the process of forwarding a letter requesting them to review the decision and allow our client to receive free medical treatment.

Case study 29

Mr.SR is 68 year old, came to this country as an asylum seeker. He was given appointment by the asylum screening unit home office 3 weeks later. During this time, he was in need of urgent medical attention, because he was badly injured and suffered by the Sri Lankan forces attack at the Mullaithivu area. Since his arrival he was unable to register with a GP because he did not have any Home Office paper to confirm his asylum seeker's status and hence we referred the client to Project London team who are providing free medical support irrespective of the client's status. Following this the client received treatment from them. After his claim was sucessful, he was able to register with his GP.

EMPLOYMENT ADVICE

Few years ago, TWAN successfully executed a project which aimed to finding employment opportunities for individuals and making them economically active through different existing scheme. The members of the community benefited by our services through this significantly, unfortunately for the last 3 years we could not secure the funding to run this project to the required level. However with available resource we are helping the community by enabling them to find employment, advising and making representation on their employment advice and also negotiating with employers to solve their differences to keep them in the employment. Moreover those who are entitled to work, but being terminated from the employment because of the ambiguity of the immigration status are also supported in various ways. The asylum seekers are entitled to obtain permission to work if their asylum claim is not determined within one year (decided case of *ZO (Somalia)*). But in practice the Home office is not granting permission to work even if they are entitled to. In many occasion employers have terminated some of our clients even they are entitle to work continuously. If any asylum seeker was offered a job before 1st May 2004, he can continue his work. Otherwise the employer should check the employee's status with original documents.

If any person works in UK illegally (with out permission to work) the maximum penalty is currently £5000 to the employer for that person.

Case study 30

Mr. KV came to this country in September 1997 as an asylum seeker. He claimed asylum after one week of his arrival. He got temporary admission in the UK and was permitted to work. Later his asylum application was refused in 1999 and his asylum and human rights appeal was dismissed. In 2006 he made his fresh and human rights application on the basis of his long residence and private life establishment. Based on that, he was issued ARC without permission to work and hence he lost his job. In the meantime he got married and was blessed with a baby. So he suffered a lot and was not able to meet his daily life expenses. Then he attended TWAN and requested our advice. TWAN lodged judicial review on the basis of the case of *ZO (Somalia) & others (2009)*. The judgement states that, ' if a decision at first instance has not taken within one year of the presentation of an application for asylum and this delay cannot be attributed to the applicant, member states shall decide the conditions for granting access to the labour market for the applicant.' After obtaining CLS funding certificate from the Legal Services

Commission we filed JR claim. The respondent informed their consent to consider our claim within certain period. Mr KV and his family have been granted Indefinite leave to remain in UK in January 2011.

Case study 31

Mr SR came to this country in June 2000 as an asylum seeker. He submitted his SEF form in November 2000 and he was interviewed in May 2001. That time he was permitted to work. After that he did not receive any response to his application until June 2006. In the period he was granted temporary admission and he singed in Eaton House regularly. In June 2006 when he attended the office, he received a letter in hand, stating that his asylum application was refused. But it was not a formal notice of refusal, removal directions or any appeal forms. It also did not state that, the client will be removed to Sri Lanka. The appeal was out of time and we could not lodge appeal to tribunal and so his permission to work must be continued. In the relation to this, we requested home office to forward the reason for refusal by letter or fax with appeal forms. But they informed that, they sent the refusal letter in November 2004 to our old address. That was their fault so again we requested for the refusal letter. In June 2008 the Home office issued new ARC in which his permission to work was prohibited. Also he was required by the Home office to cooperate with the Sri Lankan travel document interview to enable them to remove the client. Upon receiving counsel's advice we sought JR claim. At the same time we requested the home office to send the appeal forms on behalf of client. Then in June 2009 we sent Judicial review threat to the Judicial review Unit of the Home Office. In April 2010 after giving consent order with the condition, client was requested to send his original documents for further action. Later he was granted indefinite leave to remain in UK In September 2010.

Case study 32

Mr. SS came to this country in July 1999 as an asylum seeker. He claimed asylum within few days with the help of a solicitor. After his asylum application was refused he forwarded an appeal in November 2000. In the mean time he was granted temporary admission and he was allowed to work in UK from May 2000 to December 2001. On the next temporary admission he was prohibited to work. Later he attended our office to get assistance in this mater. In March 2001 we made a second political asylum application on behalf of our client. In March 2003 we requested the Home office to reinstate the decision of permission to work. But the Home office continually prohibited him to work. Later we made his fresh claim on the basis of his long residence in October 2009 but this application considered invalid because of the failure to remit the exact fee payment. A new application was made again in January 2010. In the mean time he was supported by NASS and home office requested his original documents for further progress in April 2010. As he is not permitted to work he was not able to continue his work and is depending on NASS.

Case study 33

Mr. SG was employed as a Sales Assistant from January 2006 to March 2009 at a Private petrol station and Mr. SJ was also working in the same shop from August 2005 to March 2009. There it was the duty of the store Manager to close the till. In February 2009 the client worked in 2pm to 10pm shift and had called the next sales adviser who was supposed to report to duty after him. The other person had reported that he is on off that particular day and this was informed to the store manager. The store manger also made some alternative arrangement and asked the other sales person to leave and only Mr. SG to remain. On the other hand both of them closed the till and refused to serve the customers. The next day, the supervisor who checked the shift sheet came to know about what had happened the day before. Following this the company dismissed Mr SG and SJ. After that they filed a case at the Employment Tribunal against dismissing in May 2009. Finally the court heard the case in December 2009 and made judgement in January 2010 and had stated that, the court cannot break the company's decision. Therefore the dismissal maintained.

Case study 34

Mr. RK came to this country as an asylum seeker and claimed asylum. Later his application was refused and he was granted only temporary admission. He was working as a sales advisor from April 2004 in a shop run by a private organisation. In February 2006, the company requested him to provide Standard Acknowledgement Letter (SAL) or any other documentation as a proof of his eligibility for work from 1998. He attended our

office and sought our advice. We forwarded his IS96 forms for the period from 1999 to 2005 and stating that the client has been employed by a particular employer before April 2004. As there are strong evidences for his pervious employment the current employer was specifically emphasised that the client needn't produce his ARC card or other evidence to prove his eligibility of work. We also requested the employer, to stop harassing him in this regard and allow him to continue to work.

Case study 35

Mr SL came to this country as an asylum seeker and claimed asylum in this country. Later he has been granted Indefinite leave to remain in UK and he was employed in a private sector. In March 2008 he obtained two weeks leave and travelled to India. Due to his daughter's illness he was not able to return in the given time and extended his leave. He returned to UK in the second week of April 2008 and called his higher officials and reported his situation. Though he explained everything to the management he was refused to continue his work by them. In this case the client was issued any written explanation of his suspension. We forwarded a letter to the employer to issue a written explanation and review the decision. Following this the employer reversed his decision and reinstated the employment of Mr SL.

Case study 36

Mr. PJT was employed as a shop assistant from 2004 and he was performing well at his job without any complaints. In April 2009 his current manager was dismissed and a new manager was appointed in his place. The new manager made changes in the client's job position and asked him to work full time on the till -pay point. As a matter of fact Mr. PJT has not got any previous experience with till point and was asked to do this job without his consent. Hence he was struggling with his work and did his work very slowly as he took make sure that doesn't make any mistake. He also went ahead and requested the manager shift him to his previous job. His request was refused and he was totally confused and continued working with hardship. In the mean time, he was not offered break at work place as required and this took a toll on his health as he was a diabetic. He was allowed for a short break once he submitted a request for the same to his manager. As he continued to work slowly due to the reasons mentioned earlier he was subsequently dismissed from his job. He approached us for legal action against his employer. We intervened and forwarded a letter to his employer explaining that a disciplinary action would be taken if the client was not allowed to work and treated properly at work place. As a result of this action the employer allowed the client to his job without any issues.

FAMILY ADVICE

The value of family life is an important matter within our community. As recently arrived migrants Tamil community find it difficult to adjust their life style in line with this country life style, especially by the family members who were already settled in the United Kingdom. Lack of understanding and inappropriate way of approaching family matters by the officials of the council or social workers or the Police affect some of families in our community. The intervention of police or social services in the family issues fundamentally affects the family relationship and the family members are not able to reconcile even after the officials withdraw or conclude their investigation. This is crippling all aspect of their family life and this subsequently results in the damage of morals and financial set backs. As a community organisation we are in responsible position to repair this damage at the early stage and when necessary we may have to make referrals and have to work with other service providers to bring in reconciliation in families. The immigration status in the benefit system is not helping the families during their family disputes and in bringing up the children.

Family mediation service:

TWAN refers Family Mediation Service for various family problems. In the process the counsellors provide mediation for both husband and wife. They make arrangements to take decisions together in relation to children, property or financial issues in a way that reduces conflict and costs. The mediator keeps in mind about the confidentiality and well being issues. When children involved in the problem, counsellors promotes family communication and establishes

a basic foundation to provide a good parenting for the children.

Case study 37

Mrs. NS is a Sri Lankan national and she came to this country as a dependent of an EU national. In May 2010 her family life was disturbed when one of their children made complaint about the father's inappropriate behaviour following the intake of alcohol. When the matter was referred to social services by school, the social services separated the family immediately. After 9 months of investigation, they said 'they have completed the investigation and the child's complaint is not serious enough to take further action and closed the file'. Unfortunately the 9 months period of separation has worsened the situation and the family was unable to reconcile. TWAN supported this family through out their difficult time and helped them solve their problems one by one. The couple are referred for counselling and the father is working with the view of promoting his parenting skills.

Case study 38

Mr. MK provided shelter and care to 13 year old girl a distant relative of him who came to this country in year 2008 as an unaccompanied minor. The girl spent her time with Mr. NK family and when she went for a placement through her school and there she spoke about her life style in MK's house. As a result of this conversation the supervisor referred her to the social service department. The social service department took the girl under their custody and after two months of investigation, the social service concluded their investigation without any further action and asked the girl to return to MK's house. Mr.MK refused to accept this girl for reasons that he and his family were badly treated by the social service and police during the investigation. But the girl desperately wanted to reunite with MK's family instead of staying with social service care. TWAN was involved in this case throughout this process but were unable to reunite this girl with Mk's family.

Case study 39

Mrs. SS is a European national who came to this country by exercising her European treaty rights in the UK; subsequently she found a job and decided to stay in this country because she established social life in UK. However her husband wanted to return to his native European country purely for the reason of family dispute which resulted in abuse and violence. She was given our contact number by the member of Tamil community to seek advice from us. She and her husband were supported by us initially and through our support and guidance he was avoided being arrested by the police or facing court proceedings. But he continued to harass his wife in the UK, through phone calls, letter and sudden visits. His approach became more unpredictable and we advised Mrs. SS to take injunction against her husband to enter her house. Despite of this injunction he continued his abusing approach towards her. Finally she decided to get divorce and we referred her to a family solicitor and assisted Mrs SS during this divorce proceeding.

Case study 40

Mrs. SK is a British Citizen living in this country for many years and she enjoyed her family life and blessed with a daughter. However two years ago social services attention was required as her daughter was separated from the couple which has to lead family dispute. Now they are assisted by us to overcome their difficulties and reunite with her daughter and to get back to their normal family life.

CRIME, VICTIM AND MOTORING OFFENCE

This year it is better than previous years in relation to the number of gangster activities among the Tamil youths. Four or five years ago, our community made the head lines for wrong reasons and after years of community and official partnership this had faded off to a greater extent. Our nature of work in this matter is to continuously provide practical support to victims and to help to secure the rights of offenders by making referral to criminal solicitors and shadow their case whenever appropriate. Moreover when following up of ex offenders if probation service requires our service, we cater to their needs whenever possible by various ways like finding accommodation in a safe area, monitoring the ex offenders to prevent them from committing

further another crime In many ways TWAN is doing whatever is possible to keep the community away from trouble and try to facilitate the members for being a low availing citizen of this country.

The motoring offence related number of callers are in increase because the local authorities and traffic wardens with other form of road traffic offence related work is increasing over the last two years lack of assistance from other service provider and officials increased activity to issuing penalty notice or course of concerned.

Case study 41

Mr. FI is settled in UK and living in the country for many years. On April 2010 when he was driving, his car broke down due to overheating in a restricted car parking area. He called the mechanic and was waiting near the car. In the mean time, the traffic police issued penalty notice for car parking in the restricted area. Mr. FI explained his situation to the police but they did not agree with that and they sent a further notice for payment. We advised him to write a letter to council about the incident. Then he forwarded a letter with supportive evidence of the car mechanic statement and finally the penalty was cancelled.

Criminal Injuries Compensation Authority (CICA):

A person, who has been injured physically or psychologically because of violent crime, can claim the damages with CICA in two years period. They can also make application on behalf of their parent, child, partner who died as the result of violent crime or a close relationship with another person who was affected with victim. But the circumstances play a main role in claiming for damages.

Following circumstances are not eligible for compensation:

If the crime took place outside England, Scotland or Wales and if the person suffered only a single minor injury, such as a black eye and the crime incident took place more than two years ago, unless with valid reasons for delay and injured with sexual abuse, or other sexual assault which ended before October 1979 and if the person who assaulted them was living together as member of the same family and injured by road traffic accident, unless a vehicle was used deliberately to injure the person they are not eligible for compensation.

They must have fallowing things in support of their claim If you fight with your injury or you agreed to take part in a fight in which you were injured, the compensation should be refused or the amount will be reduce, they must inform the incident to the police or other authority as soon as possible, they must be able to claim compensation for loss of earning or been unable to work for a full 28 weeks or more from the date of injury and also produce evidence from doctor or other authorised person. The compensation application is available in local police station or local victim support scheme.

Case study 42

Mr. SR is Sri Lankan national settled in the country for many years. In November 2009 while he was walking on the road in the night a gangster appeared before him and attacked him. Due to the incident he was admitted in the hospital for treatment. He also visited the dentist for further treatment. Following that he attended our office to get assistance in making a claim to the Criminal Injuries Compensation Authority (CICA). CICA asked Mr. SR to provide medical evidence in support of his claim. He was examined by a specialist Doctor and forwarded the medical report. Later in March 2010 he was awarded the injury claim.

EDUCATION AND ADVICE TO YOUNG PERSONS

The organization is providing advice and guidance in children's school admission and youth career advice for their further education and finding school admission and other education related issues. TWAN assist family disputes and related issues and in respect of their children's schooling and related issues. TWAN also make representations or negotiate with schools or appropriate authority to solve their difficulties. This includes transfer of school admission, to help them families to solve their difference with schools and free meals entitlement. Also we are providing placement for school age children. These children are referred by the Newham Work Experience Team. We offer training to students yearly around 12 members and help them to get placement in suitable place.

LEGAL CASE WORK IN IMMIGRATION

INTRODUCTION

This is the most successful project the organisation undertook in recent years as we have been awarded specialist quality mark status in the year 2003. Subsequently we have been granted civil Legal Aid Contract by the Legal Services Commission in year 2004. Since around 85% of Legal case work and Representation and asylum work are funded by the Legal Services Commission. Cases that failed under the means and merits assessment criteria of Legal Services Commission will continue to be assessed under the other funding assistance. Certain other type of work on immigration matter which is not qualified under the Legal Aid Contract system will also continue with other funding help. Around £75,000.00 per annum we receive from the Legal Service Commission while around £40,000.00 from London Council with around £15,000.00 from City Parochial Foundation enables us to provide legal casework and representation which is not carried out under the Legal Aid Contract.

The main type of Immigration work carried out by us are European Community and European Economic Area Law, Nationality, application for variation of leave (Tier 1, 2,3,4 and 5) Human Rights applications, Asylum claims and British entry visa applications (spouse visa, tier 4 and PBS dependant application, visit visa various categories) are the main category of works. Apart from this work detention and removal issues, travel document and visa endorsement, voluntary return programme and obtaining permission for marriage are the other types of work we deal with.

Our statistics chart 2010 shows that approximately 763 people obtained advice and case work from TWAN in respect of asylum matter and 1127 people received advice and case work in relation to non Asylum Immigration matter.

The Right to Reside in the UK and EU Community Law

The primary sources of European Community law are the Treaties. They provide the framework for legislation. The Treaty provisions are directly applicable as they become part of the member state law without requiring further legislation.The secondary sources of EC law are EC Regulations, Directives, Decisions of the European Court of Justice ("ECJ") and Recommendations and opinions.

In the UK Immigration system European Community Law plays an important part by virtue of the Immigration (European Economic Area) Regulations 2006 (SI 2006/1003) (" the Regulations ") . It is to the 2006 Regulations that a person entitled to EC rights must look first to discover his or her rights of cross-border movement into and settlement within the UK.

This has had an enormous impact on Tamils in the UK as they have ensured that EEA nations and their families are able to freely exercise Treaty rights in accordance with the domestic law. As far as the Tamil community is concerned the European Community Law has been very much advantageous to the Tamils. Due to the ethnic war of Sri Lanka the Tamils had to flee their native country in order to escape from violence and fear of persecution. The Tamils from Sri Lanka fled to different continents around the globe and settled in countries such as the UK and other European states and USA, Canada, Australia and New Zealand. Most Tamils were able to get the Refugee status after much struggle in the countries they arrived and managed to rebuild their life style. There were those of our community who were not lucky as some countries who do not adhere to the 1951 Refugee Convention sent the Tamils back to Sri Lanka. Tamils who were able to remain in their country of arrival started to live with others of their community living around them but being separated from their immediate family members.

Most people acquired nationality in the countries they arrived. The introduction of the European Community Law was incredibly beneficial to the Tamils as this legislation gave them the right of freedom of movement throughout Europe. The Tamils of the member states were able to move freely between the UK and Europe and reunite with their family members and enjoy meeting their relatives at various social gatherings. Generally UK Immigration is very strict and entry to the UK for non Europeans is very difficult unless there is good ground for entry to the UK. After the

introduction of the European Community Law Tamils were allowed freedom of movement throughout Europe for all citizens of member States and obtaining employment in the UK.

They also had the opportunity of obtaining full citizenship rights to any country within Europe in which they choose to live and the children born to a parent who was a citizen of Member States automatically became a citizen along with their parent. Due to the fact that Tamils who came to the UK from another EU member state if they have been exercising Treaty Rights and in continuous employment for a period of five years were able to become British Citizens.

EEA nationals and their family members are issued with a Registration Certificate and residence card which is effective immediately and unlimited in duration. This gives 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 of an EEA national to live in the UK as long as they can prove their marriage relationship is subsisting.

The European Directorate Instructions of the Home Office in relation to the family members and extended family members (non EEA nationals) wish to reunite with members of their family who are exercising their treaty rights within the UK has inconsistencies with the corresponding EC law. All EEA nationals and their family members who wish to join with them in the UK are given an initial right of residence of six months and then they must apply to extend their stay subject to the requirements of the European Directorate Instructions.

Requirements for making settlement applications by European Nationals and their family members:

Nationals of European Economic Area (EEA) who are exercising Treaty rights in the United Kingdom, and who have exercised Treaty rights for five years in a capacity other than that of a student, may apply for permanent residence. To qualify they will though need to have been issued with a Residence Permit. EEA nationals are not required to hold a Residence Permit whilst engaging in economic activity in the UK but to comply with the rules they will need to have been issued with a permit before they can qualify for permanent residence.

The exercising of Treaty rights for the purposes of obtaining permanent residence are employment, self-employment, economic self-sufficiency, Retirement for people who have been economically active, incapacity for people who are unable to work.

The applicants should submit either their valid passport or a valid national identity card as evidence of their nationality. If they are in employment they should provide evidence for exercising of Treaty Rights for five years. The evidence should be P60 tax certificates covering the relevant period of five years, employer's letter confirming employment over the relevant period and pay slips. They should also submit two passport sized photos of themselves and three recent wage slips.

Spouses or dependant family members of EEA nationals who are either EEA nationals themselves or nationals of other countries may also apply for permanent residence if they have lived in the UK with their European family members for five years.

The Immigration (EEA) Regulations 2006

The Regulations serve as the instrument by which the rights to freedom of movement under EC law. Free movement Regulation 1612/68/EC and the Citizens Directive 2004/38/EC are enacted in the domestic law. They set out the kind of rights that are available and the individuals who may benefit from them.

(i) EEA Nationals and Family Members

The EEA national will be the principal applicant. An EEA national is a national of a member state of the European Union not including the UK. According to Regulation 7 family members of the principal applicant include spouse or civil partner, direct descendant or the spouse or civil partner who is under 21 or dependant of spouse or civil partner and dependant direct relatives in his ascending line or that of their spouse or their civil partner. Regulation 8 deals with the extended family members

ECJ JUDGEMENTS 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 was one of the test cases and the decision was in pursuant to Article 234 of the EC Treaty to seek a preliminary ruling from the Court of Justice on the interpretation of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the rights of citizens of the Union and their family members to move and reside freely within the territory of Member States.

The applicants were a married couple. 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. In this case Ms. Ngo Ikeng was a national of Cameroon and had been granted refugee status in the UK in 1999, and subsequently citizenship. She moved to Ireland in 2006. She was in a marital relationship with Metock since 1994 before coming to the UK. They met in Cameroon and have been in a relationship for thirteen years and had two children one born in 1998 and the other in 2006. Metock arrived in Ireland in June 2006 and applied for asylum but his claim was refused in February 2007. The couple married in Ireland in October 2006. 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 Citizens Directive was lawful.

The single reason and basis of the refusal: Mr. Metock application for residence was refused on the grounds that "the provisions of Regulation 3(2) require that in order to avail of residence rights under the Regulations, applicants must submit evidence showing lawful residence in another EU Member State prior to arrival in Ireland. In the instant case, following an examination of his file, it was decided that due to the fact that no evidence was submitted to satisfy this requirement and that therefore, residence can not be granted.

Article 2 of the Citizens Directive states that "family members" includes spouses, partners, direct descendants and dependant direct relatives in the ascending line. It does not require these family members to have lived in a member state prior to joining their EEA national family member. In such a legal context Mr. Metock's spouse Mrs. Ngo being an EU national (UK citizen); her husband did not have to live in an EU country prior to making an application for residence in another Member State, in this case Ireland. The legal procedure to quash such unlawful decision was to lodge an appeal case against the decision in the High Court arguing that Justice Hanna J was in error in not taking into account the judgement of the Court of Justice in Yunying Jia v. Migrations vertket (case C-1/05) [2007] ECR.. The Minister in reaching his conclusions on the meaning of Directive 2004/38/EC and the validity of article 3(2) of the 2006 Regulations also argued that they also submitted that in reaching a conclusion in these cases on the proper meaning of Directive 2004/38/EC, he must in addition take into consideration the judgement of the Court of Justice in case Minister voor Vreemdelingenzaken en Integrate v, R,n, g Eind (C-291/05) (Unreported, European Court of Justice, 11th December, 2007) ("Eind") which post-date the judgment in S. K. and Anor. v. The Minister for Justice, Equality and Law Reform and Ors.

Case conclusion

Throughout the four (4) cases sent to the High Court for a Judicial Review, it has been vastly proven that the primary decision of the Minister on such cases including Mr. Metock and Ms Ngo's was unlawful in his refusal to grant residence to these families and their members under EC Law. He was therefore obliged by Directive 2004/38/EC to issue a Residence card to family members within six months of the date of application according to Article 10(1
).
In his conclusion statement he argued this: "Whilst I have formed the view that it is necessary to seek a preliminary ruling on the interpretation of Directive 2004/38/EC in relation to the prior lawful residence requirement in Article 3(2) to enable me to give judgment on the applications for certiorari I am also of the view that the applicants have adducted strong arguments in favour of the contention that Directive 2004/38/EC does not permit Member of States to have a general requirement that non-EU national spouse of a Union citizen must have been lawfully resident in another Member State prior to coming

to the host Member State in order that he or she be entitled to benefit from the provisions of Directive 2004/38/EC."[1] The Minister accepts that Directive 2004/38/EC does not require so.

The ECJ found that:

1. It was unlawful to make the rights of a spouse of an EEA national to reside in a member state conditional on prior residence in another member state.
2. 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.

Yuning Jia (2007)

This case raises the sensitive issue of the conditions under which family members of Community citizens from countries outside the European Union may claim the right to reside in a Member State of the European Union. In particular, it concerns the question whether these persons must already legally resident in the European Union before they can claim the rights they enjoy under secondary Community law, as the Court ruled in the context of the *Akrich* case. Or by contrast, is it sufficient for them to demonstrate their family relationship with a citizen of the European Union, as the Court held in Mrax.

The case also refers to the fundamental dilemma which exists in respect of the legal status and rights of these persons. On the one hand, third-country nationals related to Community citizens derive rights from the legal provisions governing the free movement of persons within the Community. On the other hand, in the absence of, as yet, complete harmonisation in the in the field of immigration, the Member States retain competence to the lay down rules on the first admission of third country nationals to their territory and, ipso facto, to the territory of the European Union.

The following refers to a preliminary ruling concerning the interpretation of Council Directive 73/148/EEC of 21 May 1973 on the abolition of restrictions on movement and residence within the Community for nationals of Member States with regard to establishment and the provision of services and of Article 43 EC.

This was an appeal by Ms Jia, a retired Chinese national, against a decision of the Immigration Board, Sweden rejecting her application for a long-term residence permit in Sweden. The case was heard in the ECJ and established the key fact that a family member of a Union Citizen was entitled to reside with them in a member state despite their arrival from a third country and never resided in a member state. This applies to family members who fall under the definition in Article 2 of the Citizens Directive.

According to the Citizens Directive / EEA Regulations 2006 in Chapter 1 entitled "**Who benefits from the Directive?**" Article 2 defines family members as: "these broadly the same as those family members previously provided for in Regulation 1612/68 and Directive 90/364 for instance: namely spouses, dependents in the descending and ascending line."[2]

In the legal context of the case of Ms Jia and this according to Community legislation, in Article 1(1) of directive 73/148 provides: "The member States shall, acting as provided in this Directive, abolish restrictions on the movement and residence of: (d) the relatives in the ascending and descending lines of such nationals and the spouse of such nationals, which relatives are dependent on them, irrespective of their nationality.'

Article 3 of that directive states as follows: '1. Member States shall grant to the persons referred to in Article 1 right to enter their territory merely on production of a valid identity card or passport. 2. No entry visa or equivalent requirement may be demanded save in respect of members of the family who do [not] have the nationality of a Member State. Member States shall afford to such a person every facility for obtaining any necessary visas.'

Article 4(3) of that directive provides: 'A member of the family who is not a national of a member State shall be issued with residence document which shall have the same validity as that issued to the national on whom he is dependent. Article 6 of the directive states:

'An applicant for a residence permit or right of abode shall not be required by a Member State to produce anything other than the following,

[1] SOURCE: Neutral Citation Number: [2008] IEHC 77, The High Court Judicial Review [2007 No. 1324 J.R.], [2007 No 622 J.R.], [2007 No 106 J.R.], [2007 No. 1620 J.R.]

[2] SOURCE: Garden Court Chambers, The Citizens' Directive / EEA Regulations 2006, 31st May 2006 (repeated 13th June 2006)

namely: (a) the identity card or passport with which he or she entered its territory; (b) proof that he or she comes within one of the classes of person referred to in Articles 1 and 4.'"[3]

Article 8 'Member States shall not derogate from the provisions of this Directive save on grounds of public policy, public security or public health.'

JUDGMENT OF THE COURT
(Grand Chamber) 9 January 2007

(Freedom of establishment - Article 43 EC – Directive 73/148/EEC – National of one Member State established in another Member State – Right to residence of a spouse's parent, the spouse and the parent being nationals of non-Member country – Requirement that the parent be lawfully resident in a Member State when joining his family in the Member State of establishment – Evidence to show that the parent is a dependent)

Case conclusion

The European Court of Justice (ECJ) made a favourable decision on the case of Ms Jia on the basis of the forgoing considerations and suggested that the Court give the following answers to the preliminary questions referred by Utlanningsnamnden, Sweden on the grounds that:

- Article 1 of Directive 73/148/EEC is to be interpreted as meaning that right to permanent residence of a relative of a citizen of the Union, who is a national of a non-Member Sate, presupposes that the national of a non-Member State is lawfully resident in the Community.

- Lawful residence within the Community implies that the third-country national concerned has been admitted to the territory of a Member State for a longer period of at least one year, such that he has a prospect of obtaining more permanent residence status. Where permission to enter the territory of a Member State has been restricted to a short term or for certain purpose, as is the case with a tourist visa, this cannot be regarded as constituting lawful residence.

- If relative of a citizen of the Union, who is a national of a non-Member State, cannot benefit from the right to permanent residence under Directive 73/148/EEC because he is not lawfully resident in the Community, a refusal to grant a relative a residence permit for permanent residence or decision to deport him does not restrict the right of the citizen of the Union to freedom of establishment under Article 43 EC.

-Article 1 (d) of Directive 73/148/EEC is to be interpreted as meaning that the concept 'dependence' refers to the situation in which a relative of a citizen of the Union is economically dependent on that citizen of the Union to attain the minimum level of subsistence in the country where he is normally resident, not being the Member State where he is seeking to reside, and prove that this situation is structural in character.

Finally, in Article 6(b) of Directive 73/148/EEC is to be interpreted as meaning that the Member States may require a relative of a citizen of the Union who claims to be independent on the citizen of the Union or her/his spouse to produce documents, in addition to the undertaking given by the citizen of the Union, which prove that there is a factual situation of dependence.

Case study 43

The applicant is a Deutsch Citizen who first came to the UK in October 2007 as a worker and was working in a shop. The applicant, husband and her children were living in the UK and exercising Treaty Rights under the European Community Law. We made an application in February 2009, requesting the UKBA to grant Residency Certificate for her and children and Residence card for her husband. In this case the spouse of the EEA national is not themselves EEA nationals but will be treated for immigration purposes as a family member of a legally resident EEA national and as such free to live and work in the UK. The application for the EEA national, her children and her spouse were refused in December 2009 for the reason that the main applicant failed to provide evidence that she was a qualified person. No right of appeal was given and we challenged the UKBA decision and appeal was lodged. The honourable Judge allowed both the appeals. In this case the Respondent was not represented at the hearing or a request for an adjournment requested. The appellants were present. The Key question in this appeal is whether the first Appellant is in the UK as an EEA national exercising Treaty Rights. If that is established, then the decision of the Respondent was incorrect both in respect of the first

[3] SOURCE: Garden Court Chambers "EU nationals and their family members: Jia explained", 1. Judgment ECJ in Jia (Case C-1/05)

Appellant's rights and the second Appellant's entitlement to a residence card. In immigration appeals the burden of proof is on the Appellant to show on a balance of probabilities that his or her application complies with all the requirements of the relevant Immigration Rule. The first Appellant was exercising treaty Rights on the basis that she was working in the UK and sufficient proof was given. The second Appellant testified that during the delay in the processing of their application the identity cards and travel documents for the two children had expired as they had only been issued for five years. He said that applications were with the German Embassy, London, for the re-issuing of new identity cards and travel documents. The original passports for the two Appellants and the expired identity cards for the two children were produced at the hearing. This case was considered under the provisions of regulation 16 and 17 of the Immigration (European Economic Area) Regulations 2006. All information requested by the Respondent together with the Appellant's representative's response was produced as evidence. The judge in the findings said the evidence does not appear to have been considered by the decision maker or that it was misplaced somewhere within the UKBA. The Judge had no evidence from the Respondent to explain the omission. The Appellants satisfied the provisions of paragraph 6 (1), 7 (1), 16 (1) (a) and 17 (1) (a).

Case study 44

An application was submitted for a Residence Card as confirmation of a right to reside in the United Kingdom, seeking to qualify for a Residence Card according to the EEA Regulations. The applications were refused on the grounds that whilst some evidence of the EEA family member (the qualifying person) had been given relating to self employment there was no tax or national insurance contributions were provided. They refused stating there was insufficient information that the EEA family member has been exercising treaty rights in the UK as claimed. An appeal was made by the EEA national and his four dependants. The Appellants were citizens of Sri Lanka. The Honourable Judge proceeded to determine the appeal pursuant to Rule 19(1) of the 2006 Procedure Rules. The relevant Immigration Rule is set out at Regulation 20(2) of the Immigration (EEA) Regulations 2006. The Appellants gave extensive bundle of evidence for the benefit of the hearing to satisfy the court that the EEA family member was exercising treaty rights from 2005 onwards up to the date of the hearing. The documents produced by the Appellant were within the terms of continuity, the EEA family member's employment history and payment of the contributions were complete. Thereby they dealt with the issues raised by the Respondent. It was found that there was no breach of the EEA Regulations and the decision made by the Respondent is not in accordance with the law and the appeal was successful.

Case study 45

This is an immigration and human rights case which involves Mr. N.T. a Sri Lankan citizen asylum seeker who arrived illegally in this country, the United Kingdom (UK) on 20th May 2000 and claimed asylum. His application for asylum was refused on 13th September 2001 and his appeal against that refusal heard on 19th June 2003. Although the appellant was found credible in his claims to have been detained and ill treated, his appeal was dismissed on the basis that there was no objective risk for him to return to his country of origin. His human rights appeal was also dismissed. An application for leave to appeal to the Tribunal was refused on 14th August 2003. On 23rd December 2205 the appellant applied for a residence permit as an extended family member of SN who was by then exercising Treaty Rights in the United Kingdom having moved from Denmark (where he had become a naturalised citizen) to work as a chef in the United Kingdom.

Legal context and argument of the application for Residence in the UK

In his determination at §24-27 the Duty Immigration Judge (DIJ) made the following findings: based on the argument whether Mr. N.T' application in accordance with his Danish citizen relative was lawful under UK Immigration Laws. He questioned this legal argument whether it was "therefore appropriate to look at the Directive 2004/38 of EC to ascertain to what extent it encompasses persons such as the appellant. That Directive has in common with all the EU Treaties a number of matters set out in 31 points explaining the basis and terms of the directive.

The Directive recites for example in paragraph 1 "the unalienable right of the citizens to move and freely reside within the territory of member states only subject to limitations laid down to give that effect. It emphasised that union citizenship is a fundamental status of nationals of the member

states. DIJ' argument stresses the fact that the Directive has been issued with a view to remedying a sector-by-sector piecemeal approach and in paragraph 5 it sets out the right of all union citizens to move and reside freely and should if it is to be exercised under objective conditions of freedom and dignity be also granted to their family members irrespective of nationality.

For the purpose of the Directive the definition of family members would also include the registered partner if the legislation of the host member state treats the registered partnership as akin to marriage. Preamble 6 refers to the necessity of maintaining family in a broader sense and without prohibition of discrimination on the basis of nationality.

The legal argument concludes: "The situation of those persons who are not includes in the definition of family members under this Directive, and who therefore do not enjoy an automatic right of entry and residence in the host state should be examined by the host member state on the basis of won national legislation in order to decide whether entry and residence could be granted to such persons taking into consideration their relationship with the union citizen by any circumstances such as the financial or physical dependence upon the union citizen." However the case was refused and an appeal was lodged.

Case conclusion:

On Thursday 10th June 2010, in the Court of Appeal from the Asylum and Immigration Tribunal, before Lord Justice Maurice Kay and Lord Sullivan an order for permission to appeal was granted and the case was to heard by three judge court which may include a High Court Judge. Following the appeal on 30th July 2010, the UK Border Agency granted Indefinite Leave to Remain in the United Kingdom to N.T based on the argument that the claimant did "not wish to proceed with the case and withdraw the appeal pending at the Civil Appeals office.

Case study 46

This case is about Mr S.V who is a citizen of Sri Lanka. He was refused a resident card as a family member of an EEA national pursuant to the provisions of the Immigration (European Economic Area) Regulations 2006 ("The EEA Regulations). The legal argument and reasons of the refusal accordingly were that the Mr S.V "has not provided satisfactory evidence to establish that his sponsor is currently exercising Treaty Rights in the United Kingdom and refused the application under regulation 6 of the EEA Regulations. The Respondent also argued that "the appellant had submitted a German passport for his sponsor, a marriage certificate, employer's letter and wage slip, but he has not submitted any evidence to show that the sponsor was currently exercising Treaty Rights. Appeal was heard by the IJ and directed the appellant to provide employer's letter who was at that tine travelled abroad. In a week time the appellant provided and he was then granted residence card. The determination was based on regulation 6 and 19 of the EEA Regulations 2006 and not based on article 8 of the ECHR.

Issue of a residence card

(1)-The Secretary of Sate must issue a residence card to a person who is not an EEA national and is a family member of a qualified person or of an EEA national with a permanent right of residence under regulation 15 on application and production of a valid passport and proof that the applicant is such a family member.

(2)-The Secretary of State must issue a residence card to a person who is not an EEA national but who is a family member who has retained the right of residence on application and production of a valid passport and Proof that the applicant is a family member who has retained the right of residence.

Case study 47

This case is about four appellants: Mrs J. S., Mrs V. R.; Miss B. R.; and Miss H. R. The first appellant is a citizen of India. The second appellant is her daughter, a citizen of Germany. The third appellant is the second appellant's daughter, a German citizen. The fourth appellant is also the second appellant's daughter, and is a German citizen. In reality the second appellant is the main appellant, as the other appellant, as the other appellants' applications have been refused in line with hers. The appellant appealed against the respondent's decision to revoke her registration certificate with reference to Regulation 20(2) of the Immigration (EEA) Regulations 2006. The appeal was brought under the provisions of sections 82(1) and 84(1) (d) of the Nationality Immigration and

Asylum Act 2002 on the grounds that the Decision breaches her rights under the Community Treaties in respect of residence in the United Kingdom (EEA). The case was refused based on the grounds that no evidence was submitted to show that the appellant was exercising Treaty Rights in the United Kingdom. In addition, the council tax bill submitted showed that she was in receipt of council tax benefit, which is a public fund *[sic]*. She therefore failed to demonstrate that she was a qualified person and her Registration Certificates therefore has been revoked with reference to Regulation 20(2) of the Immigration (EEA) Regulations 2006." The IJ allowed the appeal on the basis that the main appellant was a part time worker and therefore qualified under regulation 6 of the EEA regulations 2006. although the appellant worked 7 hours in an infant school she was medically unfit and was accepted by the IJ that the non EEA family member established article 8 of the ECHR and she also satisfied regulation 7 of the EEA Reg and therefore to be granted residence card.

Case study 48

This case is about Ms. E.R. a citizen of Sri Lanka. The Appellant a Sri Lankan national arrived in the UK on February 2010 with a visitor's visa valid for a period of six months which expired on 19 July 2020. He applied for a Residence Card as conformation of a right of residence under European Community Law as the mother of an EEA national exercising Treaty Rights in the UK. The Appellant's son is a German citizen evidenced by his passport. The main appellant was a part time student and part time worker and was exercising treaty rights in the United Kingdom. Home office refused the application on 21 October 2010. In this case the Home Office asserts that the Appellant failed to demonstrate that she was genuinely dependent upon her EEA family member and nor that the decision represents a breach of Article 8 of ECHR. At the appeal the IJ applied the relevant law in this context and by reference is set out in the Directive 2004/38/EC and the Immigration (European Economic Area) Regulations 2006. In the assessment of the Judge, according to all the evidence presented to him, it was clear that the Appellant was a family member of the EEA national exercising Treaty Rights in the UK within the provisions of Article 2(2) (c) of the Directive 2004/38/EC and Regulation 7 of the Immigration (European Economic Area) Regulations 2006. In these circumstances the Appellant qualified for a Residence Card under Regulation 7(1) of the 2006 Regulations. The Judge also found that the Appellant was a member of the EEA national's household under the provisions of Article 3(2) (a) of the Directive and qualifies for a right of residence. The appeal was allowed under the EEA regulations 2006.

Case study 49

Mrs. M. M, Mr. L. V. N, Master N. N, Mss M. N and Master N. N applied for registration certificate and residence card as Mrs MM is a Sri Lankan citizen and all others are EU nationals. Application for Registration certificate and Residence Card as a confirmation of a right to reside in the UK, seeking to qualify for Residence Card according to the EEA Regulations. The Applications were refused and further reasons given in an Explanatory Statement accompanying the Decision made by the Respondent. The present appeals are against such refusals since a successful appeal has been lodged with reference to the relevant Immigration Rule set out at Regulation 20(2) of the Immigration (EEA) Regulations 2006.The appellants' documentation contained in the Record of Proceedings was extensive and original documents were produced in respect of each of the claimed employment and were retained by the Appellant following their favourable consideration with copies on the file by the Immigration Judge. The decision was made that the Respondent was not in accordance with the law and the Appeals were therefore allowed. The appellants were issued with registration certificate and residence card.

Case study 50

The first Appellant Mrs. S. V is a citizen of Germany. The second Mr A. V is a citizen of Sri Lanka. The first Appellant applied for a registration certificate as an EEA national exercising Treaty Rights in the UK. The second Appellant applied for a residence card as a family member of an EEA national exercising Treaty Rights in the UK. The Applications were refused on 22 December 2009. The reasons for the Respondent's decisions to refuse the application are that he had written to the representatives of the two Appellants requesting valid passports or identity cards for the two children and evidence that the first Appellant was exercising Treaty Rights in the UK. However, at the date of the decision of the Respondent he had not received a

Tamil Welfare Association (Newham) UK Presents

"Kara" Tamil New Year

Cultural Night

01.05.2011

Programme

✪ **Vocal:** Junior Students of TWAN Fine Arts Academy
Presented by **Smt. Suganthy Srinesa**
Group 1: Minusa Letchumikanthan, Simsan Letchumikanthan, Matheeban Baskaranathan, Janusha Kalatharan, Vinusha Kalatharan, Kajani Raveendran, Pree Sivakumar, Saumiah Suntharamoorthy, Preyantha Paskarathasan.

✪ **Violin:** Students of TWAN Fine Arts Academy - Presented by Sri **Vijay Venkat**
Sangeetha Sangar, Swarathmiha Janarthanan, Pree Sivakumar, Matheeban Baskaranathan, Salvatharshini, Harish Thayaparan

✪ **Bharatnatyam:** Junior Students of TWAN Fine Arts Academy
Presented by **Kalaimamani Smt. R. Somasundaram**
Vinayakarsthuthi: Jyotsa Mony, Garnigha Vasanthakumar,Varjitha Karumaretmvarjitha, Bavisia Mahadevan, Asmitha Vigneswaran, Keciha Tambu, Kirusha Bhvan, Niveda Jeyakumar

Deepa Dance: Ashvina Uruthiramoorthy, Bavishya Murugathas, Thenuka Kamalanathan, Siraja Nisaanth, Shubeena Roxaparanan, Bavisha Thayalan

✪ **Robot Medley** by TWAN Fine Arts Bollywood batch - Choreographer **Marshida Usman**
Juniors: Shanath Suthakaran, Shannel Sooriyakumar, Rochelle Piratheekaran, Karene Sivaganeshan, Praveen Nimalaraj, Athiree Sivakumar, Lathisan Mahadevan, Charan Kokulakumar, Sinthuram Seethamohan, Sujan Senrasan, Jathusa Selvarajan
Seniors: Rohan Piratheekaran, Hannah Koneru, Pree Sivakumar, Revika Vickeneswaran, Lukshan Sharvaswaran, Sujay Baskaranathan, Matheeban Baskaranathan, Sivakumar Kabilan, Ashandhan Aravinthan, Sanjayan Aravinthan, Diantha Sivalingam, Benarthan Benedict, Sujiven Jeyaratnam, Saranth Veerasingam.

✪ **Miruthangam:** Students of TWAN Fine Arts
Presented by **Sri. A. N. Somaskanda Sarma**
Harish Thayaparan, Kireuben Kamalarajan, Keeran Kamalarajan, Ashvin Koneru, Tharujan Sivarajah, Matheeben Baskaranathan

✪ **Guitar and drums:** Students of Fine Arts - Presented by **Thayalan**
Guitar: Guru Nitheesh Kumar Amirthalingam, Hemdey Nitheesh Kumar Amirthalingam, Ganesharupan Loganathan, Lavanyah Logananthan, Benarthan Benedict, Jathushan Baheerathan,
Drums: Heiragan Ravikaran, Joshua Aruntharan.

✪ **Abinaya Paadal dance:** Lakshana Nanthagiri, Evelyn Arokiyanathar, Jadee Sunassee, Sarujaa Selvarajah, Thusika Tharmarajah, Rishalee Baladevan.

✪ **Amman Dance:** Niruja Uthayakumar, Satvika Mishra, Lakshana Subendran, Nivirtha Koneswaran, Sharmiga Subendran, Kevinshna Srigaran.

✪ **Kollywood Medley** by DANCE LAB (Girls Batch) - Choreographer **Marshida Usman**
Flora Stanislaus, Niromila Nadarajan, Pooranima Letchumanan, Zineerah Usman, Manisha Jayabalan, Vrindha Venu, Amy Miranda, Sumaya Miah, Araniya Soosapillai, Bruntha Ravendratagore, Ahirtha Arunasalabavan, Keerthana Vignesvarahasan.

✪ **Vocal:** Students of TWAN Fine Arts Academy
Presented by Smt **Suganthy Srinesa**
Group2: Preyenha Elango, Ragavi Mohan, Jabitha Premathasan, Thugitha Premathasan, Gowsica Pushpanathan, Shankeetha Shankar, Sruthi Selvan, Malaviga Gopalakrishnan, Harish Thayaparan

✪ **Tamil Kuththu Medley** by DANCE LAB (Mix Batch) - Choreographer **Marshida Usman**
Aazil Ahmed, Alexandre Stanislaus, Akhil Joi, Flora Stanislaus, Nilesh Nair, Niromila Nadarajan, Poornima Letchumanan, Zineerah Usman.

✪ **Dance:** Presented by Day Center Members
Thanushan Alaguras, Thivagar Alaguras, Thagshanen Thillairajah, Lukshan Sharvaswaran, Revika Vickeneswaran,
Mrs. Thiripurasundary Ganesharatnam, Mrs. Saraswathy Murugesu, Sivahamy Nadarajah

✪ **Bharatnatyam:** Senior Students of TWAN Fine Arts Academy
Presented by **Kalaimamani Smt. R. Somasundaram**
Jathiswaram: Samiya Sivasuthan, Dasika Thavayogananthan, Arjuni Anpalagan, Ovani Seerungum, Anjali Dhalipala, Abisha Jeevarajan.

✪ **Veena:** Students of Fine Arts Academy – Presented by **Smt S. Sritharan**
Group 1: Jathurshika Vickneswaran, Nilani Jeyakumar, Neaka Jeyakumar, Sahana Kannappan, Kajana Ketheeswran, Mathini Thiraviyarajah, Tharneyake Shanmukarajah, Shayini Raveendran.
Jalatharangam: Bharathigneyan Sritharan
Vocal: Shivani Sathiyalingam, shivaabairavi Sritharan
Group 2: Mayuri Thiraviyanathan, Nikashini Sritharan, Banusha Kandasamy
Vocal: Bathusa Kanthasamy, Sanjeeka Gangathevan.
Jalatharangam: Karthika Mahendran

✪ **Aadipaduvom:** Junior Students of TWAN Fine Arts Academy
Presented by **Kalaimamani Smt. R. Somasundaram**
Souwmya Sivakumar, Kavitha Karthibanathan, Sineha Sivasothy, Manusha Sathiedra.

✪ **Kollywood Dance** by Little Lions Dance Club - Choreographer **Marshida Usman**
Akshay Asok Kumar, Schion Saliv, Zaheen Usman, Roshan Kandasamy, Abinaya Kandasamy, Archana Arunasalabavan, Manesa Vimalathasan, Oviyah Ravikumar, Harine Pushpanathan.

✪ **Bollywood Dance** by DANCE LAB - Choreographer **Marshida Usman**
Flora Stanislaus, Niromila Nadarajan, Pooranima Letchumanan, Zineerah Usman, Aazil Ahmed, Alexandre Stanislaus, Akhil Joi, Nilesh Nair, Manishah Jayabalan, Vrindha Venu, Amy Miranda, Sumaya Miah, Araniya Soosapillai, Bruntha Ravendratagore, Ahirtha Arunasalabavan, Keerthana Vignesvarahasan.

✪ **Cinema songs** by **Thayaseelan group**

✪ **Tamil Cinematic Dance** by DANCE LAB (seniors) - Choreographer **Marshida Usman**
Aazhil Ahmed, Alexandre Stanislaus, Flora Stanislaus, Niromila Nadarajan, Pooranima Letchumanan, Zineerah Usman.

✪ **Aadalum padalum** by **Bala group**

மலர்ந்துள்ள 'கர' புதுவருடத்தை முன்னிட்டு

தமிழர் நலன்புரி சங்கம் (நியுஹாம்) ஐ.ரா.

பெருமையுடன் வழங்கும்

பல்கலை இரவு

01.05.2011

-: நிகழ்ச்சிகள் :-

✪ **வாய்ப்பாட்டு: TWAN** நுண்கலைக்கூட கீழ்ப்பிரிவு மாணவர்கள்
தயாரித்து வழங்குபவர் **ஸ்ரீமதி சுகந்தி ஸ்ரீநேசா**
பிரிவு 1: மினுசா லக்ஷ்மிகாந்தன், சிம்சன் லக்ஷ்மிகாந்தன், மதிபன் பாஸ்கரநாதன், ஜனுஷா கலாதரன், வினுஷா கலாதரன், கஜானி ரவிந்திரன், பிறீ சிவகுமார், சௌமியா சுந்தரமூர்த்தி, பிரியந்தா பாஸ்கரதாசன்.

✪ **வயலின் இசை: TWAN** நுண்கலைக்கூட மாணவர்கள்.
தயாரித்து வழங்குபவர் **ஸ்ரீ. விஜய் வெங்கட்**
சங்கீதா சங்கர், ஸ்வராத்மிகா ஜனார்த்தனன், பிறீ சிவகுமார், மதீபன் பாஸ்கரநாதன், செல்வதர்சினி, ஹரீஸ் தயாபரன்.

✪ **பரதநாட்டியம்: TWAN** நுண்கலைக்கூட கீழ்ப்பிரிவு மாணவர்கள். தயாரித்து வழங்குபவர் பரதநாட்டிய கலைமாமணி **ஸ்ரீமதி ரு. சோமசுந்தரம்**
விநாயகர் ஸ்துதி: ஜோட்சா மணி, கர்ணிகா வசந்தகுமார், வர்ஜிதா கருமாரிவாஜிதா, பவிஷியா மகாதேவன், அஸ்மிதா விக்னேஸ்வரன், கெச்சிகா தம்பு, கிருசா பவன், நிவேதா ஜெயகுமார்.
தீப நடனம்: அஸ்வினா உருத்திரமூர்த்தி, பவிஷியா முருகதாஸ், தேனுகா கமலநாதன், சிரஜா நிசாந்த், சுபீனா றோக்சபாரனன், பவிசா தயாளன்.

✪ **ரெபோட் மெட்லி: TWAN** நுண்கலைக்கூட மாணவர்கள்
தயாரித்து வழங்குபவர் **ஸ்ரீமதி மர்ஷீடா உஸ்மான்**
கீழ்பிரிவு: சனத் சுதாகரன், சனெல் சூரியகுமார், றொஷெல் பிரதீகரன், ஹரிணி சிவகனேசன், பிரவீன் நிமல்ராஜ், ஆதிரி சிவகுமார், லதிசன் மகாதேவன், சரன் கோகுலகுமார், செந்தூரன் சீதாமோகன், சுஜன் சின்ராசன், ஜதூஷா செல்வராஜன்.

மேற்பிரிவு: ரோஹன் பிரதீஹரன், ஹன்னா கொனேறு, பிறீ சிவகுமார், ரேவிகா விக்னேஸ்வரன், லக்ஷன் சர்வேஸ்வரன், சுஜெய் பாஸ்கரநாதன், மதீபன் பாஸ்கரநாதன், சிவகுமார் கபிலன், அசாந்தன் அரவிந்தன், சஜ்சயன் அரவிந்தன், டயந்தா சிவலிங்கம், பெனர்த்தன் பெனடிற், சுஜீவன் ஜெயரெத்தினம், சரந்த் வீரசிங்கம்.

✪ **மிருதங்கம்: TWAN** நுண்கலைக்கூட மாணவர்கள்.
தயாரித்து வழங்குபவர் - **அ. ந. சோமாஸ்கந்த சர்மா**
ஹரிஸ் தயாபரன், கிருவன் கமலராஜன், கீரன் கமலராஜன், அஸ்வின் கோனேறு, தாருஜன் சிவராஜா, மதீபன் பாஸ்கரநாதன்.

✪ **கிட்டாரும் ரம்ஸ் : TWAN** நுண்கலைக்கூட மாணவர்கள். தயாரித்து வழங்குபவர் **ஸ்ரீ. தயாளன்.**
கிட்டார்: குரு நிதீஸ்குமார் அமிர்தலிங்கம், ஹெம்டே நிதீஸ்குமார் அமிர்தலிங்கம், கணேஷரூபன் லோகநாதன், லாவண்யா லோகநாதன், பெனர்த்தன் பெனடிற், யதூஷன் பகீரதன்.
ரம்ஸ் வாத்திய இசை: ஹெய்ரகன் ரவிகரன், ஜோஸ்வா அருன்தரன்.

✪ **பரதநாட்டியம்: TWAN** நுண்கலைக்கூட கீழ்ப்பிரிவு மாணவர்கள்
தயாரித்து வழங்குபவர் - பரதநாட்டிய **கலைமாமணி திருமதி ரு. சோமசுந்தரம்**
அபிநய பாடல் நடனம்: லக்ஸனா நந்தகிரி, எவ்லின் ஆரோக்கியநாதர், ஜேட் சுநஸி, சருஜா செல்வராஜா, துசிகா தர்மராஜா, றிசாலி பாலதேவன்,
அம்மன் நடனம்: நிருஜா உதயகுமார், சாத்விகா மிஸ்ரா, லக்ஸனா சுபேந்திரன், நிவிர்தா கோணேஸ்வரன், சர்மிகா சுபேந்திரன், கவின்சனா ஸ்ரீகரன்.

✪ **கோலிவுட் நடனம்:** 'டான்ஸ்லெப்' நடனக் குழு மாணவர்கள்
தயாரித்து வழங்குபவர் **ஸ்ரீமதி மர்ஷீடா உஸ்மான்**
புளோறா ஸ்ரனிஸ்லோஸ், நிரோமிலா நடராஜன், பூர்ணிமா லட்சுமணன், ஸெனீரா உஸ்மான், மனிஷா ஜெயபாலன், விருந்தா வேணு, அமி மிரான்டா, சுமயா மியா, ஆரணியா சூசபிள்ளை, பிருந்தா ரவீந்திரதாகூர், அகிர்தா அருணாசலபவன், கீர்த்தனா விக்னேஸ்வரஹாசன்.

✪ **வாய்ப்பாட்டு: TWAN** நுண்கலைக்கூட மாணவர்கள்
தயாரித்து வழங்குபவர் - **ஸ்ரீமதி சுகந்தி ஸ்ரீநேசா**
பிரிவு 2: பிரியெங்ஹா இளங்கோ, ராகவி மோகன், ஜபிதா பிரேமதாசன், துகிதா பிரேமதாசன், கௌசிகா புஸ்பநாதன், சங்கீதா சங்கர், ஸ்ருதி செல்வன், மாளவிகா கோபாலகிருஷ்ணன், ஹரீஸ் தயாபரன்.

✪ **தமிழ் குத்து மெட்லி:** 'டான்ஸ்லெப்' நடனக் குழு மாணவர்கள்
தயாரித்து வழங்குபவர் - **ஸ்ரீமதி மர்ஷீடா உஸ்மான்**
அஸில் அஹமத், அலெக்ஷான்டர் ஸ்ரனிஸ்லோஸ், அகில் ஜோய், புளோறா ஸ்ரனிஸ்லோஸ், நிலேஷ் நாயர், நிரோமிலா நடராஜன், பூர்ணிமா லெட்சுமணன், ஷினீரா உஸ்மான்.

✪ நடனம்: **TWAN** மூத்தோர் நிலைய உறுப்பினர்கள்
தனுஷன் அழகுராஸ், திவாகர் அழகுராஸ், தக்ஷனன் தில்லைராஜா, லக்ஷன் சர்வேஸ்வரன், ரேவிகா விக்னேஸ்வரன், திருமதி திரிபுரசுந்தரி கணேசரத்தினம், திருமதி சரஸ்வதி முருகேசு, திருமதி சிவகாமி நடராஜா.

✪ **பரதநாட்டியம்: TWAN** நுண்கலைக்கூட மேற்பிரிவு மாணவர்கள். தயாரித்து வழங்குபவர் பரதநாட்டிய கலைமாமணி ஸ்ரீமதி **ரு. சோமசுந்தரம்.**
ஜதிஸ்வரம்: சௌமியா சிவசுதன், தசிகா தவயோகநாதன், அர்ஜுனி அன்பழகன், ஓவானி சீரங்கம், அஞ்சலி தலிபாலா, அபிஷா ஜீவராஜன்.

✪ வீணை: **TWAN** நுண்கலைக்கூட மாணவர்கள்
தயாரித்து வழங்குபவர் - **ஸ்ரீமதி ஸ்ரீதரன்**
பிரிவு 1: ஜதுர்சஷிகா விக்னேஸ்வரன், நிலானி ஜெயக்குமார், நியகா ஜெயக்குமார், சஹானா கண்ணப்பன், காஞ்சனா கேதீஸ்வரன், மதினி திரவியராஜா, தர்னேயாக் சண்முகராஜா, சாஜினி ரவீந்திரன்,
ஜலதரங்கம்: பாரதிநேயன் ஸ்ரீதரன்
வாய்ப்பாட்டு: ஷிவானி சத்தியலிங்கம், சிவபைரவி ஸ்ரீதரன்
பிரிவு 2: மயூரி திரவியநாதன், நிஹாஷினி ஸ்ரீதரன், பானுஷா கந்தசாமி,
வாய்ப்பாட்டு: பதுஷா கந்தசாமி, சன்ஜீகா கங்கதேவன்.
ஜலதரங்கம்: கார்த்திகா மகேந்திரன்.

✪ **பரதநாட்டியம்: TWAN** நுண்கலைக்கூட கீழ்ப்பிரிவு மாணவர்கள்

தயாரித்து வழங்குபவர் - பரதநாட்டிய **கலைமாமணி ஸ்ரீமதி ரு. சோமசுந்தரம்**
ஆடிப்பாடுவோம்: சௌமியா சிவகுமார், கவிதா கார்த்திபநாதன், சிநேகா சிவசோதி, மனுஷா சத்திஜேந்திரா.

✪ **கொலிவுட் நடனம்:** 'லிட்டில் லயன்ஸ்' நடனக் குழு மாணவர்கள்.
தயாரித்து வழங்குபவர் **ஸ்ரீமதி மர்ஷீடா உஸ்மான்**
அக்ஷய் அசோக்குமார், சகின் சலிவ், ஸகீன் உஸ்மான், ரோஷன் கந்தசாமி, அபிநயா கந்தசாமி, அர்ச்சனா அருணாசலபவன், மனிஷா விமலதாசன், ஓவியா ரவிகுமார், ஹரிணி புஸ்பநாதன்.

✪ **பொலிவுட் நடனம்:** 'டான்ஸ்லாப்' நடனக் குழு மாணவர்கள்
தயாரித்து வழங்குபவர் **ஸ்ரீமதி மர்ஷீடா உஸ்மான்**
புளோறா ஸ்ரனிஸ்லோஸ், நிரோமிலா நடராஜன், பூர்ணிமா லெட்சுமணன், ஷின்னீரா உஸ்மான், அஸில் அகமத், அலெக்ஷான்டர் ஸ்ரனிஸ்லோஸ், அகில் ஜோய், நிலேஸ் நாயர், மனிஷா ஜெயபாலன், விரிந்தா வேணு, அமி மிரான்டா, சுமயா மியா, ஆரணியா சூசைப்பிள்ளை, பிருந்தா ரவீந்திரதாகூர், அகிர்தா அருணாசலபவன், கீர்த்தனா விக்னேஸ்வரஹாசன்.

✪ **சினிமா பாடல் : தயாசீலன் குழுவினர்**

✪ **தமிழ் சினிமா நடனம்:** 'லிட்டில் லயன்ஸ்' நடனக் குழு மாணவர்கள்.
தயாரித்து வழங்குபவர் - **ஸ்ரீமதி மர்ஷீடா உஸ்மான்**
அஸில் அஹமட், அலெக்ஷான்டர் ஸ்ரனிஸ்லோஸ், புளோறா ஸ்ரனிஸ்லோஸ், நிரோமிலா நடராஜன், பூர்ணிமா லெட்சுமணன், ஷினீரா உஸ்மான்.

✪ **ஆடலும் பாடலும்: பாலா குழுவினர்**

response to that request and the principal application by the first Appellant had been refused. As a result, the applications by the second Appellant and the separate applications by the two children were also refused. The Immigration Judge in view of the evidence from the first Appellant a total of 19 original payslips, the Judge was satisfied that these were most probably original documents which accurately set out the first Appellant's situation. There is no dispute that she is now a German national and she ahs established that she is a worker in the UK as well as she qualified as a person in a accordance with the provisions of paragraph 6 (1) of the 2006 Regulations. Therefore the appeal was allowed.

Case study 51

This case is about Mr. RP a citizen of Sri Lanka who applied for a Residence Card as an "extended family member", but his application was refused. The Appellant is the cousin of the Sponsor's wife. The Sponsor is a German citizen who is resident in the United Kingdom exercising Treaty Rights. The Appellant applied for a Residence card as "an extended family member" of an EEA national exercising Treaty Rights in the UK but his application was refused. The grounds or reasons for the refusal of this case are that, the Appellant having been issued a residence Card as conformation of his Right of Residence in the UK as the family member of an EEA national, and his EEA family member was not exercising Treaty Rights in the UK, the Appellant, in the view of the Respondent had provided insufficient evidence of his relationship. He therefore ceased to be the family member of a qualified person. In conclusions, a Residence Card was issued on the basis of that relationship. The Immigration Judge was satisfied that the claimed relationship existed and found that the relationship between the Appellant and the Sponsor/Sponsor's wife was as claimed. He found also that the Appellant has satisfied the requirements of Regulation 8 (2) of the EEA Regulations. He finally found according to the evidence before him that the Appellant has discharged the burden of proof and the reasons given by the Respondent do not justify the refusal. Therefore Respondent's decision is not in accordance with law and applicable Immigration Rules. The appeal was allowed.

EU Community Law and Domestic Welfare

This section covers the relationship between the various rights to reside under the Treaty and the question of whether a person is eligible for welfare benefits and tax credits. It also covers the co-ordination of benefits under Regulation 1408/71/EEC. Social security legislation regulates access to welfare benefits in a different way from homelessness and housing legislation. However, it is important not to assume that eligibility for social assistance in one area means that a person will be eligible for assistance in the other area. The co-ordination rules have a significant impact in the area of social security for example, whereas ECHR rights may be useful in the housing context. The right to reside test however is a useful starting point for both housing and benefits and there is considerable cross-over.

Conditions and Criteria for state benefit Entitlement

Definition of a person who is entitled to State Benefit

The rules of entitlement to State Benefit work by provision that a person from abroad is treated as if s/he is not liable for rent payments. 'Person from abroad' means a person who is not *habitually resident* in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland. Such a person is not entitled to Housing benefit while resident is.

A Resident or 'Habitually resident' person means a person who has a right to reside as (a) person with an initial right of residence for up to three months, or as (b) a person with a right to reside as a person seeking work or as a jobseeker or family member of such person. A person is not a person from abroad and is entitled to Benefits if s/he qualifies under the following rules. A person is not a person from abroad (rg 10(3) B) if s/he is or falls under these rules: a worker; a self-employed person;a person who retains a status referred to in paragraph (a) or (b) pursuant to Article 7(3) of the Directive;a person who is a family member of a person referred to in sub-paragraph (a), (b) or (c) within the meaning of Article 2 of the Directive;a person who has a right to reside permanently in the United Kingdom by virtue of Article 17 of the Directive (i.e. where permanent residence has been acquired other than by 5 year

route);A person from an A8 state who is treated as a worker for purposes of Regulation 6(1) 2006 EEA Regulations or a person from an A2 state who is treated as a worker for the purposes of Regulation 6(1) 2006 EEA Regulations)

It is important to remember for instance that for Housing Benefit purposes, a person who is entitled to income support, employment and support allowance (ESA) or Pension Credit is also not considered to be a person from abroad. This is a particular important point for a job-seeker from another EEA state who is expressly eligible to receive income based jobseeker's allowance.

EU LAW AND UK HOUSING LAW

This session considers eligibility for housing benefit and homelessness assistance for EU citizenship and EEA nationals and their family members.

Housing and Homelessness under domestic UK Legislation

The Provision of temporary accommodation by a local authority to homeless persons is governed by Part VII of the Housing Act 1996 ("the 1996 Act"). Part VI covers the allocation of permanent social housing. The eligibility criteria for the two are virtually the same. For ease of reference the eligibility provisions applying to EU citizens are considered in relation to the homelessness rules. The provision comprises sections of the Homeless Code of Guidance on European applicants in: Annex 11: European Groupings (EU, A8, EEA, and Switzerland); Annex 12: Rights to reside in the UK derived from EC law; Annex 13: Worker Registration Scheme.

Application Process and consideration

When an applicant applies for assistance under homelessness provisions of Part VII of the 1996 Act, the local authority must decide whether s/he is eligible for assistance taking into consideration the date of application and the circumstances of his/her status. An EU national arguing they have the right to reside because they are currently working, that will be the relevant date.

EEA nationals with specified type of right to reside are workers, self-employed people, certain people with of permanent residence and their dependants. They are not subject to the habitual residence requirement. Other EEA nationals with the right to reside for other reasons which includes those who have retained the right to reside or are an extended member, they must be habitually resident to qualify.

EU LAW COMMUNITY CARE AND HEALTH CARE

This section covers the provision and access to community care services, one of today's most complex human rights issues. Under the provision rules EU nationals must either be a qualified person or assistance must be needed to avoid a breach of their EU or Human Rights.

Some migrants including EU national and EU refuges are not eligible for community care, some homelessness services and asylum support, unless it is needed to avoid a breach of their EU or ECHR rights (Ref: Schedule 3 Nationality Immigration and Asylum Act (NIAA) 2002, s54). Schedule 3 of the NIAA Act 2002, s54 does not prevent the provision of service to the extent that it is necessary to avoid a breach of a person's ECHR rights or human rights under the European Community Treaties (para.2(3)). However, where EEA nationals without leave to remain in the UK are not working or self-employed, it is necessary to consider whether they are a qualified person/ exercising another Treaty right (see Session 3), and whether support is needed to avoid a breach of their human rights.

Local authority Duty to Assess

It is a duty of a local authority to carry out a community care assessment when it is aware that a person may be in need of community care services which it has a power to provide. It is crucial to stress upon the fact that there is no direct 'person subject to immigration control' exclusion from the right to a community care assessment under s47.Residents of Switzerland or an EEA country visiting the UK who are 'insured' under their country's health system and their family members, are entitled to all necessary treatment, both primary and secondary care.

The Importance of EU rights outside of Directive 2004/38/EC

Two very important aspects of such rights outside the Directive:

The possession of EU rights is highly material to questions of whether a person may be lawfully detained under the UK Immigration Act 1971, whether he or she may be admitted to the UK or have their removal or deportation arrested, and whether the Secretary of State ought to recognise a right to reside even if the right in question does not confer an entitlement to the forms of documentation mad available under Directive 2004/38/EC and/or the Immigration (European Economic Area) Regulations 2006.

Homelessness, housing and social security:

In the fields of homelessness, housing, social security and social services law provide examples of assertions of EU rights to reside, recognised or rejected, where recognition of such EU rights would confer an advantage or entitlement to the individual in question. The case law from these fields reminds the immigration lawyer or adviser of the scope of EU law and its rich potential.

The Provision for EU Rights and UK Law obligations

It is worth recalling two domestic statutory provisions:

First, section 2 of the European Communities Act 1971, which provides for EU rights arising directly under EU law and for the Implementation of EU obligations in the domestic law of the United Kingdom. Section 2 provides, as material:

General implementation of Treaties

(1) All such rights, powers, liabilities, obligations and restrictions from time to time created or arising by or under the Treaties, and all such remedies and procedures from time to time provided for by or under the Treaties, as in concordance with the Treaties are without further enactment to be given legal effect or used in the United Kingdom shall be recognised and available in law, and be enforced, allowed accordingly; and the expression "enforceable EU right" and similar expressions shall be a referring to one to which this subsection applies.

(2) Subject to Schedule 2 to this Act, at any time after its passing Her Majesty may by Order in Council, and any designated Minister or department may by order, rules, regulations or scheme, make provision-

(a) for the purpose of implementing any EU obligation of the United Kingdom under or by virtue of the Treaties to be exercised; or

(b) for the purpose of dealing with matters arising out of or related any such obligation or rights or the coming into force, or the operation from time to time, of subsection (1) above;

And in the exercise of any statutory power or duty, including any power to give directions or to legislate by means of orders, rules, regulations or other subordinate instrument, the person entrusted with the power or duty may have regard to the objects of the EU and to any such obligation or rights a aforesaid.

OTHER BENEFITS

However, provisions Similar to the Housing Benefit Regulations exist in relation to other benefits such as: Council Tax Benefit/Income Support/Employment/Employment and Support Allowance and Pension Credit...etc.

1. Income Based Jobseekers Allowance

The Jobseeker's Allowance Regulations 1996 SI 1996/207 also contain similar provisions, except that in addition, a right to reside as a person seeking work or as a jobseeker can confer eligibility for that benefit where a person is habitually resident. NOTE: this will not benefit A8 or A2 nationals unless they are exempt from registration or authorisation.
NOTE: a former EU worker can have the right to claim IS as a 'jobseeker' whilst claiming income support as a lone parent. See ref: CIS/1842008, [2009] UKUT 287 (AAC)

2. Child Benefit

For Child Benefit the provisions are different: under Section 146 (1) of the Social Security Contributions and Benefits Act 1992 no child benefit shall be payable to in respect of a child or qualifying young person for a week unless he is present in Great Britain in that week. But a child or qualifying young person who is temporary absent from Great Britain shall be treated as being in Great Britain during, among other things, any period during which that person is absent by reason only of his receiving full-time education by attendance at a recognised establishment in an EEA State or in Switzerland.

3. Tax Credits

1. In respect of Tax Credits, a person needs to be present in the UK in order to be eligible.

2. In respect of Working Tax Credit, a person shall be treated a s being ordinary resident if he is exercising in the UK his rights as a worker under Regulation 1612/68/EEC as amended by the Directive, or s/he has a right to reside in the United Kingdom under the Directive.

3. For Tax Credit purposes, a qualifying right to reside includes the initial right of residence and residence as a worker.

4. Contribution-based Jobseeker's Allowance

There is no right to reside test for this benefit. However, a person does have to have paid the requisite number of national insurance contributions or to have had such contributions credited. It is a work related benefit. A person must be present in the UK or treated as present.

5. Incapacity Benefit

There is no right to reside test for this benefit. However a person does have to have paid the requisite number of national insurance contributions or to have had such contributions credited. It is a work related benefit. A person must be present in the UK or treated as present.

6. Retirement Pensions

There is no right to reside requirement however a person must have made the relevant contributions. For a person present in the UK, category A, B and D pensions are calculated in the normal way, even where not ordinary resident. See section 113(1) Social Security and Benefits Act 1992.

Category D Pensions: there is additional requirement that a person must be *ordinary resident* in Great Britain and resident in Great Britain for a least 10 years in any continuous 20 years period ending on or after the person's 80th birthday.

7. Maternity Allowance

There is no right to reside condition. Nor is the benefit dependent on the record of national insurance contributions. A person must have been employed or self-employed for a minimum period before the expected birth, earning a minimum threshold amount.

8. Industrial injuries benefits

There is no right to reside test for the disablement benefit, reduced earnings allowance, retirement allowance, constant attendance allowance, and exceptional severe disablement allowance. But the claimant must meet conditions - an accident must rise out of and in the course of an employed earner's employment and a disease must be prescribed in relation to an employer's earner's employment, whilst in GB.

9. Attendance Allowance, Disability Living Allowance, Carer's Allowance and Incapacity benefit for incapacity in youth

For Attendance Allowance, Disability Living Allowance, Carer's Allowance and incapacity benefit for incapacity in youth, a person must be present in Great Britain, ordinary resident in Great Britain and have been in Great Britain for 26 weeks in the last 12 months. There is no right to reside test.

10. Statutory sick pay and statutory maternity, paternity and adoption pay

There is no right to reside test but the claimant must be an employed earner in Great Britain for national Insurance purposes, or employed in an EEA State (before or after Accession) other than the UK so that if s/he were so employed in Great Britain, he would be an employee for the purposes of the benefit in question (and further that the UK is the appropriate country), There is a right to reside test for the health in pregnancy grant.

11. Social fund

There is no right to reside test. Regulated social fund include Sure Start maternity grant, Funeral expenses payment, Cold weather payment and winter fuel payment. Discretionary social fund payments are: community care grant, budgeting loans and crisis loans.To qualify for a social fund payment a person must be in receipt of certain qualifying benefits which contain residence or presence rules.

Right of residence of family members and the landmark decisions in respect of right of residence:

On the 23rd February 2010 the European Court of Justice decided the cases of Maria *Teixera* (C-480/08) and *Ibrahim* (C-310/08). These cases were references from the UK court of appeal which asked for a preliminary ruling. In *Ibrahim* the children has started the education while the EEA national was a worker and qualified person. The EEA national subsequently ceased to be a worker and left the UK. His children were by that time in education in the UK. His wife and children remained in the UK, but were not self sufficient and remained on benefits. The court held that the children could remain in education; they were not required to show that they were self sufficient. Similarly for the parent who was their primary carer and remained with them. Texiera in similar terms but there the couple divorced, both remaining in the United Kingdom. Again it was found that the child was entitled to remain in education and the parent who was the primary carer to remain with them, despite not being self sufficient and the parent not being in a position to step into the shoes of the qualified person on whom she had previously depended and requiring social assistance. The right of the child continues as long as she is in education. The right of the primary carer parent ceases when the child reaches the age of majority, unless the child continues to need the presence and care of that parent for the child to be able to pursue and complete his/ her education.

The most frequent problems encountered are post divorce of civil partnership where the UK border agency demands evidence that the estranged partner is a qualified person, which the estranged is only too happy to withhold.

UNDERSTANDING SCHENGEN VISAS: THE NEW COMMUNITY CODE ON VISAS

The Schengen Visa aims at making traveling between its European member countries much easier and less bureaucratic. With this the visa holder can travel to any (or all) member countries using one single visa, thus avoiding the hassle and expense of obtaining individual visas for each country. The Schengen visa is a "visitor visa". It is issued to citizens of countries who are required to obtain a visa before entering Europe. The purpose of the visit must be leisure, tourism, or business. Upon the issuance of the visa, the visa holder is allowed to enter all member countries and travel freely throughout the Schengen area. A Schengen visa allows the holder to travel freely within the Schengen countries for a maximum stay of up to 90 days in a 6 month period

Applicability

According to Article 3 of the Regulation Community Code visas apply to Nationals of third countries and they are required to hold an airport transit visa when passing through the international transit areas of areas of airports situated on the territory of the Member State and in urgent cases, of mass influx illegal immigrants, individual Member Sates may require nationals of certain third countries other than those referred to in paragraph 1 to hold an airport transit visa when passing through an international transit areas of airports situated on their territory. Certain categories are exempted from availing schengen visa.

General Basic rules of lodging a Schengen Visa application

When lodging an application the applicant shall present an application form, a travel document, photograph, fingerprints, visa fee, supporting documents and where applicable, produce proof of possession of adequate and valid travel medical insurance.

Article 23(1) applications shall be decided within 15 calendar days of the date of lodging an application which is admissible in accordance with Article 19 of the Regulations. However, that date may be extended up to a maximum of 30 calendar days in individual cases.

Issuing of a Uniform Visa

This visa valid for the entire territory of the Member States and this visa is provided if an the

applicant proves the need or justifies the intention to travel frequently and/or regularly due to his occupational or family status, such as business persons, civil servants engaged in regular official contacts with Member States and EU institution, representatives of civil society organisations travelling for the purpose of educational training, seminars and conferences, family members of the citizens of the Union, family members of third-country nationals legally residing in Member States and seafarers. The applicant also needs to prove his integrity and reliability, in particular the lawful territorial validity, his economic situation in the country of origin and his genuine intention to leave the territory of the Member States before the expiry of the visa applied for. A visa may be issued for one, two or multiple entries. The period of validity shall not exceed five years. In the case of a transit visa, the length of the authorised stay shall correspond to the time necessary for the purpose of the transit. And without prejudice to Article 12(a), the period of validity of the visa shall include an additional 'period of grace' of 15 days

Issuing of a visa with limited territorial validity

This visa is valid for the territory of one or more Member States but not all of them. A visa with limited territorial validity shall be issued exceptionally, in the following cases and conditions when the Member State concerned considers it necessary on humanitarian grounds, for reasons of national interests or because of international obligations or when for reasons deemed justified by the consulate, a new visa is issued for a stay during the same six-month period to an applicant who, over this six-month period, has already used a uniform visa or a visa with limited territorial validity allowing for a stay of three months.

A visa with limited territorial validity shall be valid for the territory of the issuing Member State. It may exceptionally be valid for the territory of more than one Member State, subject to the consent of each Member State. If the applicant holds a travel document that is not recognised by one or more but not all Members States, a visa valid for the territory of the Member States recognising the travel document shall be issued. If the issuing Member Sate does not recognise the applicant's travel document, the visa issued shall only be valid for that Member Sate. When a visa with limited territorial validity has been issued in the cases described in paragraph 1(a), the central authorities of the issuing Member Sate shall circulate the relevant information to the central authorities of the other Members Sates without delay by means of the procedure referred to in Article 16(3) of the VIS Regulation.

Issuing of an Airport Transit Visa

An airport transit visa shall be valid for transiting through the international transit areas of all the airports situated on the territory of Member States. The period of validity of the visa shall include an additional 'period of grace' of 15 days and multiple airport transit visas may be issued with a period of validity of a maximum six months. This visa is valid only for transiting through the international transit areas of the airports situated on the territory of the Member State concerned.

An individual might be refused this visa if they present a travel document which is false, counterfeit or forged, does not provide justification for the purpose and conditions of the intended stay, does not provide proof of sufficient means of subsistence, both for the duration of the intended stay and for the return to his country of origin or residence, or for the transit to a third country into which he is certain to be admitted, or is not in a position to acquire such means lawfully, has already stayed for three months during the current six-months on the territory of the Member States on the basis of a uniform visa with limited territorial validity; a person for whom an alert has been issued in the SIS for the purpose of refusing entry, if they are considered to be a threat to public policy, internal security or public health or to the international relations of any of the Member States, in particular where databases for the purpose of refusing entry on the same grounds and if there are reasonable doubts as with regard to the supporting documents submitted by the applicant.

Right to appeal

Applicants who have been refused a visa should have the right to appeal. Appeals shall be conducted against the Member State that has taken the final decision on the application and in accordance with the national law of the Member State. Member States shall provide applicants with information regarding the procedure to be followed in the event of an appeal. The processes of visa refusal appeals rights must be lodged at in country Member States' Immigration Tribunals. Legal advice/assistance, direction and guidance must be given by immigration lawyers, solicitors and professionals. This also includes specialised and accredited Human and Community Rights centres like our organisation.

REFUGEE CONVENTION AND ASYLUM

The Tamil Welfare Association's (Newham) heart of services lies in assisting the Tamil asylum seekers and refugees from Srilanka. The main reason Tamils are seeking asylum is their persecution by the Sri Lankan government and this is because of their ethnicity and political opinion. Going back to History, prior to the British colonial system, Sri Lanka was constituted by two separate kingdoms which the British amalgamated into one country on their arrival.

When they left in 1948 without safeguarding any minority rights problems of political persecution and human rights violation started. Due to the lack of balance of power in the civilian society and within the political system, the political struggle started along with armed conflicts. Because of this political situation, Tamils continued to struggle up to the year 1983 when the Government started to use military force to persecute young Tamils breaching their humanitarian, civilian and political rights.

Due to the situation as explained above, Tamils started to seek asylum back in 1984. In April/May 1985 those Tamils who came to the UK and claimed Asylum did not need any visa arrangement. People could claim asylums at the port were detained, few of them got deported but most were released with temporary admission. Subsequently they started to share experiences with newly arrived people. This facilitated the formation of the Tamil Welfare Association also known as TWAN.

During these 25 to 26 years of services, TWAN faced many challenges and achievements with regard to Asylum cases. In the year 2010 the organisation provided 728 clients with advice while 35 clients' cases were represented. The British government very often talks about war crimes and serious concerns about human rights situation in Sri Lanka, yet there is a few claims succeeding under domestic law requirement. Those unsuccessful cases, facing deportation or uncertainty are failed asylum seekers go through the hardship of their claims in the UK. They are called as illegal entrants, economical refugees, bogus asylum seekers or refugees etc. Whoever meets the UK's threshold, are called refugees and given permission to live in this country.

Under the UN Refugee Convention, many Tamils are eligible to be refugees, but after the UK Refugee law interpretation only few are deemed to that status. Due to this narrow interpretation, the European Court of Human Right (ECHR) intervention is required when Tamils refugees are facing deportation. In the past few years Tamils refugees successfully prevented from removal under Rule 39 of the ECHR.

THE REFUGEE CONVENTION

The Geneva Convention was drafted in the aftermath of the WWII. In addition to this, the UN which had been established since 1945 to ensure that horrors of the Second World War never happened again established the Universal Declaration of Human Rights in 1948. This formed the basis and gave rise to the body of international human rights instruments that were developed subsequently.

The UN Charter sought to give every individual the right to certain inalienable fundamental freedoms and rights which each individual's government had to respect and guarantee. These rights include amongst others: the freedoms and rights to seek asylum as it was enshrined in Article 14 of the UN Charter. Following the Charter several international instruments guaranteeing the fundamental freedoms and rights of individual citizens were being drafted, such as the ICCPR. The Geneva Convention on Refugees is another such important instrument and is actually part of the same family of Human Rights Laws and shares a common theoretical basis.

In Europe at the same time in 1950, the Council of Europe established the European Court of Human Right (ECHR). But the Geneva Convention on Refugees sought to draft a Convention centred on the rights of an individual refugee, and aiming for a universal applicable definition in 1951.

Definition of a Refugee

According to UNHCR a refugee is a person who owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his

nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country.

An individual is excluded from the Refugee definition altogether if the person's fear of persecution that, that person is not a refugee if they have 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; have committed a serious non-political crime outside the country of refugee prior to admission to that country as a refugee; if a person has been guilty of facts contrary to the purposes and principles of the United Nations.

According to the convention the benefit of the current provisions may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convinced by a final judgment of a particular serious crime, constitute a danger to the community of that country.

The components in the definition are crosschecked by the authorities who scrutinize the applicant. They will be checking through the following facts *Fear:* the fear should be one out of the refugee convention reason and it has to be established beyond reasonable doubt by the applicant.

Well founded fear: a person can be assumed to be having well founded fear of persecution if they have already been the victim of persecution for one of the reasons enumerated in the 1951 convention.

Persecution: the notion of fear means that a person would suffer serious ill treatment either in a systematic manner or in a single incident, where there was no recourse to protection available to that person from those in power.

Serious harm: Serious harm is when States derogate from their responsibilities under the international norms of good governance that a person has to flee his/her country in search of surrogate or international protection. Serious harm ranges from detention, torture, threats to life, other forms of verbal and physical abuse, psychological cruelty and threatening telephone calls and letters, to persistent discrimination.

Case study 52

This case is about Mr. S, a citizen of Sri Lanka. He claimed asylum in February 2007 and his claim was refused based on the facts that he was excluded from the protection of the Refugee Convention by Article 1F. TWAN appealed that the Appellant claimed to be a refugee whose removal would breach the UK's obligations under the Refugee or Person in Need of International Protection (Qualification) Regulations 2006 ("the Qualifications Regulations"). The Appellant also claimed that he should be granted humanitarian protection in accordance with paragraph 339C of HC (as amended). He further claimed that his removal would breach the UK's obligations under the ECHR, with particular reference to its Article 3.While submitting his evidence to the Tribunal, the Appellant extensively explained how he got involved in LTTE' activities. As he was promoted to the rank of major, the Appellant also claimed that his job was to spy on civilians who were working for the Sri Lankan Government forces and to arrest them using intelligence from agents within government controlled areas to determine who should be watched while he passed on information to his superiors who then could decide who should be arrested.

He claimed to have arrested 20 people while working for the LTTE under the order of his superiors. He took them to jail and questioned them. At a certain point two of these men were executed. In 2003 he was selected to work as an intelligence agent in government controlled areas. In 2006, as the leader of a group of 4 men, he trained other intelligence men for the Sri Lankan Military Intelligence. In the same year the Appellant claimed to be arrested by the SLA who took away his ID card and took photograph of him, but he escaped. Wile arrested, the Appellant claimed to have been mistreated by the SLA. Based on all the above he claimed that if he is returned, he feared that he would be persecuted by the Sri Lankan authorities due to his involvement with the LTTE and that he would be persecuted by the LTTE for identifying its members to the authorities. The Respondent in his determination did not challenge the Appellant's credibility, but said precisely that the Appellant was excluded from the protection of the Refugee Convention by reason of Article 1F.In his decision making plea the Immigration Judge (IJ) argued that with regard to the Respondent's efforts to persuade him that the Appellant would not be at risk if he was

returned to his country, in his judgement, he found this contrary to the subjective and objective evidence presented before him including the Tribunal's guidance to the case law LP (LTTE area-Tamils-Colombo-Risk) Sri Lanka [2007] UKAIT 00076. For the Judge, a number of risks factors outlined in LP applied to this Appellant's case. He furthermore argued that despite new developments that the situation has deteriorated further in Sri Lanka due to the fact that the ceased fire has officially ended and hostilities have been resumed, he found the position of the Appellant and his involvement in the LTTE has been such as to make him likely to be of significant interest to Sri Lankan authorities on return at a time of heightened conflict. He found therefore that there was a real risk that on return, the Appellant would be identified and detained which in turn would give rise to a real risk of mistreatment in breach of Article 3 under the ECHR. The appeal was dismissed on Asylum grounds, but allowed on human rights grounds under Article 3.

Case study 53

Mr. S.J a citizen of Sri Lanka had appealed against the decision of refusal to grant him asylum. The Appellant also claimed that removal from the United Kingdom would breach the UK's authorities' obligations under the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms. The primary reasons according to the Respondent' arguments for refusing the case were that the Appellant's claim of being a supporter of the LTTE was untrue. The Respondent claimed that in any event the Appellant has never been a member of the LTTE and that he was not aware of his brother' activities for the LTTE as a high profile member; In addition to this the Respondent also noted a letter the Appellant submitted in court also contradicted his account of an interview he had.

The Respondent also argued that the Appellant should be excluded under the operation of Articles 1(F)(a) and/or (c) of the Refugee Convention. Additionally, the Respondent argued the Appellant should also be excluded from the grant of Humanitarian Protection under paragraph 339 D of the Immigration Rules. The Respondent also submitted that there were serious reasons for considering that the Appellant had been involved in war crimes or crimes against humanity and was therefore undesirable to permit to remain in the UK in light of his character, conduct and associations. For the Respondent, the Appellant had aided, abetted or otherwise assisted in a crime's commission or attempted commission, including providing the means for its commission. The counsel in his arguments for accepting and allowing the appeal, according to IJ, the grounds of appeal for this case first of all were that it was contended that there was confusion in the between "war crime" and crime committed in war and that there was a vast amount of leaps document in the evidence contended by the Respondent that the Appellant was a member of a specialised intelligence group, matters which had not been put to the Appellant.. In addition to this, it representatives of the Appellant argued that the Appellant did not know the purpose for which the motorbike was to be used due to the fact in the past, bikes have been borrowed by the organisation and no explanation was given to him. In regards to the term "terrorist" the position was anomalous since the Appellant was prescribed in the UK under the Terrorism Act but as it happened not in Sri Lanka because the LTTE had been un-banned in 2002.

In addition the IJ argued are as follows: the Appellant's house was under surveillance; the Appellant is like to be arrested in Colombo on his arrival; there will be breach of Articles 2, 3, 5, 6 and 7 of the ECHR; the Appellant felt obliged to assist the LTTE in obtaining a motorbike since he was unable to assist them stopping a case against them; he now fears the LTTE as well as the army. The IJ has also accepted that the Respondent's argument that the Appellant should be excluded under Article 1(F) and paragraph 339D, means both that the Appellant was complicity in terrorist activity and is wanted by the authorities. He found that the Appellant would be circulated as wanted and for the category of offence for which the Appellant was wanted the IJ found that there was a real risk that he would suffer serious harm at the hands of the police, intelligence agencies, or army if returned to Sri Lanka.

The Immigration Judge (IJ) conclusions were firstly that the Appellant had been identified as playing a vital part in a bombing outrage in which a number of policemen were killed. He was extremely likely to be identified as an LTTE fifth columnist working for the High Court. The IJ also considered that he did not consider the Appellant would get beyond the airport but if he did, he would be vulnerable, even in Colombo, to being grounded up and arrested the main reasons being

that under PS the Appellant was an exceptional case. Further, there would be therefore no possibility of the Appellant safely relocating within Sri Lanka. On the face of all the above, the Immigration Judge (IJ) concluded that the Appellant would be entitled to asylum or Humanitarian Protection but in the circumstances of his possible participation in crimes against humanity it would be appropriate for the Judge to receive further submissions in regard to possible exclusion. The appeal is allowed under Article 3 of ECHR, the Appellant's asylum claim is excluded under the operation of Articles 1(F)(a) and the Appellant's humanitarian protection claim is excluded under operation of paragraph 339D

MAKING AN ASYLUM APPLICATION

Asylum applications are made at two stages namely during entry at the ports and at later stages in the home office.

On-Entry Application at Port or Port Applicants

People seeking asylum may apply at the air, sea, or train ports on arrival to the UK. The immigration service operates at all ports, monitoring and controlling entry to, and departures from the UK. An application for asylum should be made to an immigration officer, and this normally happens when the Asylum-seeker is examined at the point of immigration control. On entry applications for asylum are 'preferred' by the Home Office. The Home Office takes the view that genuine refugees in fear of their lives in their country will immediately disclose their fears to an immigration officer on arrival in a safe country, like the UK. Indeed the Immigration Rules state that an asylum applicant's credibility can be damaged if they fail to immediately apply for asylum on arrival.
In the practical experiences of TWAN, some asylum seekers make their claim at the port, sometimes willingly, some other times forcefully. If the particular asylum seeker agent advises the claimant to seek asylum at the port, then those claiming asylum at entry port will be interviewed, fingerprinted then released on a temporary basis in most applications. In other occasions however, after the screening interviews, they are detained at Immigration Detention Centres without any valid reasons or explanation. In our opinion this kind of attitude is down to the immigration officer's personal attitude.

If the asylum seeker is detained, the case will be handled by the Home Office officers allocated to that detention centre. In this case, obtaining qualitative legal advice on their choice is limited with regards to the claimant' rights. If the asylum seeker is fortunate enough and released on a temporary admission basis, then his or her case will be taken over by the non-case owner (in accordance with New Asylum Model) In such circumstances, the claimants will be able to seek legal advice based on their own choice and can gather evidence freely to effectively support their claim.

Case study 54

Mr. RK is a citizen of Sri Lanka. He made an application for asylum based on the grounds that he was at risk of being persecuted and ill-treated on return to his country of origin Sri Lanka by the Sri Lankan state armed forces. The reasons he evoked were that he will not receive any protection from the Government of his country because he and his family were taken prisoners by the Sri Lankan government army and he himself got arrested on several occasions. He was also ill-treated by his cellmates and on occasion being the victim of anal rape by one of them as well as facing sexual abuse.

He therefore argued that he was at risk of serious harm so as to be in need of humanitarian protection with reference to paragraph 339C of the Immigration Rules HC 395, under the Geneva Refugee Convention, reference of Articles 2 and 3 of ECHR, and by reference Article 8 ECHR.. The claimant added also by reference to Article 8 ECHR that his removal would be disproportionate. The claimant was taken to Oakington Immigration Detention Centre only for a day while his claim for asylum was being considered. In view of all the evidence in face of the Immigration Judge (IJ), agreed that if the appellant was to leave the airport unharmed, he would not be able to return to his home area nor would he be able to remain in Colombo for the following reasons: "Tamils in Colombo are at increased risk of being stopped at checkpoints, in a cordon and search operation, or of being the subject of a raid on Lodge where they are staying. In general, Tamils who have recently returned to the Sri Lanka and have not yet renewed their Sri Lankan identity documents will be subject to more investigation and the factors listed above. In conclusion, the IJ in the above circumstances, found no material circumstances that militate in

favour of him remaining. The appeal was allowed and RK was granted refugee status.

Case study 55

Mr. BK a Sri Lankan citizen came to the UK and claimed asylum at entry port. His life was under threat by Sri Lankan armed forces. He was trained by the LTTE forcefully. Then he was detained by the armed forces and was taken to military camps specially built from Vanni and people who get involved with the LTTE. The Appellant was with the political wing of the LTTE and collected money from the public - he was fundraising for them. The Appellant was detained for almost one month. He was forced to make a confession and was required by the Sri Lankan army to act as an informer. He was beaten and burnt with hot iron rod. The claimant was scared in his arms. According to Articles 2 and 3 of the European Convention on Human Rights the claimant was subject to inhumane, degrading punishment and ill-treatment by Sri Lankan armed forces. His removal to Sri Lanka would breach his tights under the provisions of the ECHR. Due to the claimant's account of torture, he has been referred to the medical foundation. The case is still on going.

In-country Applicants - Claiming asylum at the Home office

In our experience the number of in countries' applications for asylum is increasing. Even though the applicants came through the ports and made their applications there, such applicants are very often frightened to claim asylum at the ports because of the increase in the criminalisation of the asylum seeker by native immigration officers. Many people also claim asylum at the entry ports get deported to their country of origin while such claimants are unable to challenge Immigration officials' decision due to the lack of eye witnesses to witness of the event or due to the lack of any recorded evidence available. Another reason why asylum seekers do not claim at the ports of entry is that most of the time refugees leave their native countries with forged document due to the fact that they will not be able to leave the country safely if and because they are wanted by their country's authorities or officials.

So when they travel with someone else's passport or travel document, they destroy that document under the instructions of their agent. Asylum seekers who destroy such travel document are prosecuted for this action and sent to UK prisons for at least 3 to 6 months for the offence before they are released on temporary basis and their asylum case considered. Other vital reasons are such as the situations when legal advisers are not present at the ports. In this case some immigration officials do not tape record asylum seeker' claims or initial statements; this in return facilitates immigration officers' interpretation of the evidence which is selectively chosen to process the case. Such evidence to some extent is used against asylum applicants in the sense that those officers find their own evidence more credible. Due to all the above reasons, a large number of asylum seekers are making their claim at the Home Office and not at the ports. This option of asylum application however damages asylum seeker's NASS support and entitlement. People seeking asylum after they have entered the UK may apply for asylum in person at the Home Office. Immigration and Nationality Directorate based at Lunar House in Croydon. They should attend the 'Asylum Screening Unit" (ASU). When they apply for Asylum at the Home Office, they are applying for leave to remain in the UK.

The ASU registers asylum applications:

At the ASU asylum applicants will have a screening interview. In summary they are asked to provide details of their identity, nationality, family members, when they left their country, their last address in their country, the circumstances of their arrival in the UK , what travel documents they used, and which countries they passed through on their way to the UK. Asylum applicants should not be asked question about the substance of their asylum claim.

It is however desirable to always attend the ASU with all asylum applications along with the representatives for the following reasons: firstly it is an intimidating and confusing process and asylum applicants need support. Secondly, officials at the ASU frequently dispute the age and nationality of applicants and this can have serious implications for their asylum claim. Thirdly asylum applicants are sometimes interviewed about substance of their asylum application and should have a representative present.. Fourthly, there is a risk that asylum applicant may be detained and a representative may be able to argue that there is no risk of absconding.

Case study 56

Miss. GS a citizen of Sri Lanka. As the Appellant, Miss GS' father was a bicycle and vehicles repairs person for the LTTE in Sri Lanka. Both the Appellant and her father were very active and involved in fundraising and money collecting activities for the LTTE: her father between 1985 and 1996 and herself between 2004 and 2007. Her problems started one day when a member of the EPDP proposed to her and wanted to marry her. When she refused the man got very angry. She was then accused of helping the LTTE and was questioned by them about her possession of weapons. They then went her house, forced themselves in, searched the house and then brutalised her before threatening to rape and kill her. Since then she started to move from house to house and live to one relative or family member to another. Miss GS travelled and entered the UK with her own passport which included a valid UK Tier 4 Student visa she was refused entry by the Immigration Officer who believed she had used false representation and deception to enter the UK despite the fact that she had her maternal aunt and her two daughters living here in the UK. She feared that not only her life was in great danger because of her activities if she returned to Sri Lanka; she will be forced to marry a member of the EPDP. She claimed asylum. When asked what were her plans he then claimed asylum under the Humanitarian Protection. She was refused asylum based on the following grounds: that she did not qualify under the above rules; due to the fact that she failed to claim asylum before she was issued with an immigration decision to refuse her leave to enter the UK under the Immigration Act 1971 and the Nationality Immigration and Asylum Act 2002. As a result the Appellant behaviour felts under Section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004

However, the Appellant argued that she had claimed asylum in the UK due to her political opinion and that her fear of the Sri Lankan army was due to the very fact that she worked with and for them in the past and also because one of its members wanted to marry but she refused. But UK Immigration Authorities refuted these reasons and found them unacceptable that she had well founded fear of persecution on return to Sri Lanka. According to the UK Border Agency considerations for refusing Miss G. S case, in the light of the above evidence it has been concluded that she has not established a well-founded fear of persecution and for that reason she did not qualify for asylum. The case is still pending and ongoing; this according to her Right of Appeal under Section 82(1) of the Nationality, Immigration and Asylum Act 2002.

SERIOUS HUMAN RIGHTS VIOLATIONS AND IMPUNITY IN SRI LANKA

UNHCR recommendation on asylum seekers from Srilanka in needs for international protection

In the general context of the United Nations High Commission for Refugees (UNHCR) and under the 1951 Geneva Refugee Convention, international refugees who qualify as such by definition of the term "refugee" must be granted refugee status and in so doing their human rights be implemented and protected by all means. Sri Lankan nationals by and large and particularly those from the Northern and the Eastern parts of the country in this context have been seeking international protection as refugees in neighbouring countries and much further across the Globe.

In its position issued in 2006, the UNHCR claimed that the armed conflict between the Sri Lankan Army (SLA) and the Liberation Tamil Tigers of Eelam (LTTE) had resumed after the failure of the Ceasefire Agreement of 2002. In the view of heavy fighting concentrated in the Northern and Eastern regions of the country, the UNHCR position recommended that "claims by asylum seekers from Sri Lanka be examined carefully in fair and efficient refugee status determination procedures and that individuals who met the criteria in the 1951 Convention relating to the status of Refugees ("1951 Convention") and/or its 1967 Protocol be recognised on this basis."

The UNHCR' 2006 position further recommended that, "in view of the situation of generalised violence resulting from the armed conflict in the North and the East, asylum seekers from these regions who did not meet the criteria for recognition under the 1951 Convention, and were not considered to have realistic internal flight or relocation alternative (IFA/IRA) in other parts of the country, should be recognised under an extended refugee definition, where applicable, or otherwise granted a complementary form of protection."

However, in the UK, in the practical experiences and cases of Tamil Sri Lankan asylum applications, the Tamil Welfare Association (Newham) as a community organisation has witnessed a number of cases of Sri Lankan asylum seekers claims – still - being for various evasive reasons that contradict the UNHCR and the 1951 Geneva Refugee Convention principles of the protection of international refugees' rights; a Convention to which the UK is a full signatory. In other words UK' immigration authorities are totally ignoring the UNHCR' recommendation which stipulates that "as Tamils from the North and the East were considered to be at risk of serious harm in all part of the country, UNHCR considered that no IFA/ IRA was available to Tamils from these regions and that all were in need of international protection."

Furthermore, the UNHCR recommended that "IFA/IRA in another part of the country, should be considered under an extended refugee definition, were applicable, or accorded a complementary form of protection due to the extended and reliable evidence of widespread targeted human rights violations against Tamils in and from the North East by the parties to the armed conflict and other paramilitary actors". The UNHCR additionally considered that Tamil asylum seekers from the North of Sri Lanka should be recognised as refugees under the 1951 Convention absent clear and reliable indicators that they do not meet the relevant criteria. However, in the contexts where individual refugee status determination is not feasible to determine the claims of Tamil asylum seekers from the North of Sri Lanka, UNHCR encourages the adoption of prima facie approach.

COUNTRY BACKGROUND INFORMATION AND GENERAL HUMAN RIGHTS SITUATION

The political context of the country situation in relation to its general human rights situation can be referred to the 2006's most significant political development when President Rajapaksa withdrew his Government from the Ceased Fire Agreement signed between the Sri Lankan Government and the LTTE in 2002. This, following escalating hostilities and repeated ceased fire violations that created a situation of precarious security.

However, after the discontinuation of the SLMM and following the end of the Ceased Fire Agreement in January 2008, there has been a significant decrease in independent country-wide human rights monitoring with the most acute gaps in the conflict areas of the North where most UN agencies and NGOs have been unable to maintain any presence since September 2008. As a direct consequence, human rights observers have expressed the view that the monitoring and investigative powers of the national Human Rights Commission (HRC) have been undermined by a serious lack of institutional independence, unwillingness to cooperate on the part of the security forces and insufficient Government support.

In May 2009, the Government of Sri Lanka formally declared victory over the LTTE. This event marked the end of the 26-year non-international armed conflict. The general human rights situation of the country remains that serious violations for human rights continue to be committed by multiple actors in Sri Lanka. In addition to this, the military, police and security forces, the LTTE, the Tamil Makkal Vidulthalai Pulikal (TMVP) and armed factions of other political parties such the EPDP and the PLOTE as well as criminal groups have all been implicated in the high number of abductions, disappearances, killings, extortions and forced recruitments in Sri Lanka.

However, fighting was heavily concentrated in the Northern and Eastern parts of the country where civilians were exposed to widespread insecurity and the risk of serious and indiscriminate harm related to the conflict. Furthermore, in these regions, and throughout Sri Lanka, targeted human rights violations were being committed by State actors and non-State entities. While individuals from each of the three major ethnic groups Sinhalese, Muslim and Tamil, were considered to be particularly at high risk of human rights violations in Sri Lanka.

ARMED CONFLICT AND SECURITY SITUATION

Situation in the North

The armed conflict persisted in the North and escalated progressively since 2008 as the Sri

Lankan Army (SLA) mounted a concerted offensive to take the LTTE-controlled areas. Widespread insecurity and generalised violence resulting from the fighting continue to cause significant displacement within and from the regions. Intense shelling and artillery fire by both sides in civilian areas, including Internally Displaced People (IDP) camps, hospitals, and areas designated by Government as the "safe zones", have resulted in heavy civilian casualties, including children and the elderly.

Throughout the North, targeted acts of violence and human rights violations continue to be committed against individuals of specific profiles by Government forces, the LTTE and other actors. Members of the pro-government Eelam People's Democratic Party (EPDP) and People's Liberation Organisation of Tamil Eelam (PLOTE) have been implicated in extensive and serious violations of human rights, including: extortion, detention, torture, disappearances, and extra-judicial killings both in the North and the East and have acted without impunity. Serious incidents of rape of Tamil women in police or military custody in both regions, including women who are held in Government-run IDP camps, are reportedly occurring. A very significant majority of the reported incidents in the North and the East have involved individuals of Tamil ethnicity.

However, humanitarian access remains a serious concern for the civilians living in the conflict areas in the North. Since September 2008, the UN and almost all other international aid agencies have been prevented from operating in the areas of the North affected by the fighting and as a result humanitarian access has been severely limited. IDPs and other vulnerable groups in the North, who remain heavily reliant on food assistance, have been gravely affected by the limited food supplies. Civilians trapped within the fighting zones have extremely limited access to medical care and supplies. Throughout the North the health crisis resulting from the security situation, aid agencies are calling upon the Government of Sri Lanka to investigate reported human rights abuses and urging the relevant authorities to provide adequate security to civilians in the region. So far, such calls have remained unanswered by Government authorities.

Situation in the East

The situation in the East, is similar to the one in the North were regular incidents of violence, including in areas of returns, have increased the atmosphere of fear and distrust that already existed both between the different ethnic and political groups in the Eastern region and equally between the returnee community and the security forces.

The majority of the reported incidents of human rights violations in the East have specifically involved young Tamil males. However, Tamil civilians, men and women of all ages, have been among those subjected of basic serious human rights abuses and violations. Many of the reported incidents have been related to the anti-insurgency measures implemented by the Sri Lankan Army (SLA) and the STF, which have been associated with significant restrictions on freedom of movement and access to land and livelihoods, arbitrary arrests, mistreatment in detention, sexual assaults, extrajudicial killing and disappearances of Tamils. Targeted cordon and search operations are carried out regularly throughout the East, and are very frequently associated with arrests, primarily of Tamils.

In recent moves the Sri Lankan Government (SLA) has announced plans to step up security measures in areas outside of the immediate conflict area and Colombo. This resulted in increasing the number of military intelligence operatives, deploying Special Forces and Commandos as well as establishing new Army, Navy and Air Force units in the North and East are reportedly part of the special security plan that has been implemented to stop a resurgence of LTTE activities. The direct consequences of such measures are that given the LTTE methods of operation, which include heavy reliance on Tamil civilians, together with the indiscriminate manner in which Government security measures have been implemented against Tamils to date, the proposed measures may prolong, and potentially exacerbate, the vulnerability of Tamil civilians to human rights violations.

Meanwhile, while the immediate impact of the LTTE on civilians' lives in the East has been greatly reduced, the TMVP, which now effectively controls Batticaloa and other parts of the East, is reported to engage in terror and crimes. Incidents of TMVP involvements in abductions, child recruitment, robberies and repression of dissent are widely documented. It is also reported that TMVP forces are responsible for extrajudicial killings, deaths in custody and abductions, which

have apparently been carried out with knowledge and tacit agreement of Government across and within local authorities. Abductions and forced recruitment by the Tamil Makkal Vidulthalai Pulikal (TMVP) group are also reported to have occurred in IDP camps in Batticaloa and Trincomalee.

Intelligence also demonstrates that a series of abductions of young women in the Batticaloa district were believed to be the work of local TMVP cadres. Human Rights Watch reported that 30 abductions took place in Ampara Akkairappatu and Adalachennai divisions of Ampara in September 2008 and that witnesses of many of the abductions sated that they were carried out by armed men in civilian clothes who spoke Tamil suggesting that the TMVP or other Tamil paramilitary groups were responsible.

Security resulting from the activities of criminal groups, many of whom received training from the TMVP and fought against the LTTE alongside TMVP and the SLA who are also often reported to act with impunity, has also affected both Tamils and Muslims in the East.

It is well known and well documented that all ethnic groups in the East who have been displaced by the conflict have experienced difficulties in accessing former land and livelihoods. As a result of ongoing LTTE attacks on Government and civilian targets in the country, which have included suicide attacks on Tamil men and women, Tamils, in particular those originating from the North and East have been under suspicion. This has resulted in a wide scale of arrests and detention of Tamils which have been reported throughout the country. As in the North and the East, they are frequently associated with cordon and search operations and frequently follow bombing or other attacks by the LTTE. Tamils who are without proper identity documents are more likely to be arrested and detained in these operations. Cordon search, roundups and arrests of Tamils - in particular Tamils from the North and East, - are regularly reported in Colombo.

UNHCR eligibility guidelines for the international protection needs of asylum seekers from Srilanka

The UNHCR considers that the current situation in Sri Lanka, in the last twelve months, does not yet warrant cessation of refugee status on the basis of Article 1C(5) of the 1951 Convention. It rather shows and confirms that "all claims by asylum seekers from Sri Lanka should be considered on their individual merits in fair and efficient refugee status determination procedures and takes into account up-to-date and relevant country of origin information." The UNHCR additionally considers that, depending on the particular circumstances of the case, some individuals with profiles similar to those outlined below require a particular careful examination of possible risks. It clearly states that "a claim should not automatically be considered as without merit because it does not fall within any of the profiles identified below, but some of the claims lodged by asylum-seekers from Sri Lanka will require examination of possible exclusion from refugee status."

Specific groups at risk of targeted human rights violations

This section outlines how specific groups of targeted people at risks of human rights violations. For the assessment of the eligibility of Asylum Seekers from Sri Lanka under the refugee definition of the 1951 Convention, the following categories of asylum seekers are considered to be particularly at risk of suffering serious harm because of their individual profile. The groups highlighted below are neither collectively exhaustive nor mutually exclusive.

(i) Persons suspected of having links with LTTE

In the wake of the conflict, almost 11,000 persons suspected of LTTE links were arrested and detained in high-security camps, while over 500 former child soldiers were transferred into rehabilitation. By the end of May 2010, all former LTTE-associated child soldiers were LTTE suspects.

(ii)Tamils originating from the North or the East of Sri Lanka

The significant majority of reported cases of human rights violations in Sri Lanka involve persons of Tamil ethnicity who originate from the North and East. These individuals are at risk within these regions, and in other parts of Sri Lanka, by Government actors, the TMVP and other pro-Government paramilitary groups as well as the LTTE, because of their race (ethnicity) and/or (imputed) political opinion.In government-

controlled areas, Tamils who originate form the North and the East, which are, or have been under LTTE control, are frequently suspected as being associated with the LTTE. For this reason, Tamils from the North and the East are at heightened risk of human rights violations related to the implementation of anti-terrorism and anti-insurgency measures..

iii) Tamils Originating from Colombo and the Western Province

In Colombo there is a large population of Tamils who have been living in the area for generations. Tamils who originate from this region have also been subjected to security and suspicion and are at risk of human rights violations associated with the security and counter-terrorism measures

iv) Women and Children of certain Profiles

The intensification of the hostilities during the last months of the conflict was accompanied in the North and East of the country by an increase in the level of violence against women. Despite the end of the hostilities, there are still reportedly incidents of sexual and gender based violence against women and girls in former conflict areas. Incidents of rape including at the hands of the military, have been reported in the North where a large number of female-headed households are among families being resettled. A significant number of women in IDP camps, as well as former LTTE female cadres in detention centres, have allegedly been raped and sexually assaulted, including by security personnel. There are some reports that women are being trafficked internally and internationally for domestic service and sexual exploitation. Children are also reportedly trafficked internally for sexual exploitation and for forced labour.

REPORTS BY INTERNATIONAL NGOS DENOUNCING SERIOUS HUMAN RIGHTS VIOLATIONS AND IMPUNITY IN SRI LANKA

This section highlights major concerns of human rights violations and impunity in Sri Lanka denounced by well established international human rights organisations through recent and significant reports. The section also outlines evidence of ongoing human rights violations in the country.

Reports by Amnesty International

According to Amnesty International in January 2002, the Sri Lankan Government formally and officially withdrew from the Ceasefire Agreement with the LTTE. As a result the Sri Lanka Monitoring Mission (LMM) departed. Independent accounts of the situation in conflict areas were rare access by the media, the UN and humanitarian agencies was restricted. As a consequence, Sri Lanka was not re-elected to the Human Rights Council in May 2008.

In July, the conflict shifted to the North-Eastern Vanni region, displacing 300,000 people, mostly Tamils, including 30,000 children trapped between Sri Lankan security forces and the LTTE which imposed restrictions on their freedom to movement rights and being used as a result as recruits and labourers. According to the same report, due to these restrictions, displaced populations faced immense hardship including lack of shelter and restricted access to medicine. Tens of thousands of families were forced to live in the open during the rainy season in November. The Government also maintained the closure of the A9 highway, the only land route to the Jaffna Peninsula. As a result, the closure severely restricted access to humanitarian supplies by civilians living in the region and in Jaffna.

i) Violations by Government-allied Armed Groups

Amnesty has evidence that the Sri Lankan Government increasingly used allied groups to carry out its counter-insurgency strategy. At the Human Rights Council session in June the UN Special Reporter on extrajudicial cases or matters expressed concerns about the Government relying extensively on paramilitary groups to maintain control in the East and, to a lesser extent in Jaffna, noting that there was evidence that these groups carried out extrajudicial executions. It is reported for example that the Tamil Makkal Vidulthalai Pulikal (TMVP) operating in the Eastern provinces continued to carry out unlawful killings, hostage-taking for ransoms, recruitment of child soldiers and enforced disappearances. The Eelam People's Democratic Party (EPDP), operating in the eastern provinces were reportedly responsible for unlawful killings and enforced disappearances.

ii) **Abuses by the LTTE**

Amnesty International reports also that the LTTE increasingly carried out targeted attacks on civilians. According to the international Committee of the Red Cross, 180 civilians were killed and nearly 270 were injured in the first six weeks of 2008 in a series of attacks on civilians, buses, railway stations. The LTTE has also imposed a strict pass system, hindering thousands of families from the Wanni region from moving to safer areas. They also sought to ensure that families return to LTTE-controlled areas by forcing some family members to remain behind. The LTTE also pushed those who resisted into forced recruitment into LTTE by holding them in detention centres. Child recruitment increased in LTTE-controlled areas of the Wanni region. According to the organisation, enforced disappearances continued to be part of the pattern of abuse apparently linked to the government's counter-insurgency strategy. Enforced disappearances were reported in the North and East as well as previously unaffected parts of the country including Colombo and the South. Major enforced disappearances took place inside high-security zones and during curfew hours.

iii) Impunity

On the issue of impunity Amnesty International can report that investigations into human rights violations by the military and police stalled and court cases did not proceed as witnesses refused to come forward for fear of reprisals. For example, in April 2010, the International Group of Eminent Persons tasked with overseeing the later Presidential Commission of Inquiry (COI) into 16 cases of serious violations of human rights terminated their mission stating that the COI had not been able to investigate cases in an efficient and independent manner in accordance with international standards. The lack of a functioning witness protection system was further highlighted by COI. In July however, Sri Lanka rejected the recommendation made by at least 10 states during its Universal Periodic Review at the UN Human Rights Council to establish an independent human rights monitoring mechanism, in co-operation with the UN High Commissioner for Human Rights, despite a dysfunctional domestic criminal justice system. This followed the nomination on the 7th of October 2010 of Vinayagamoorthi Muralitharan, otherwise known as Karuna as he was sworn into Parliament as a military commander of the TMVP and previously as a military commander in the LTTE. Karuna is however suspected of serious human rights abuses and war crimes including the abduction of hundreds of teenagers to serve as child soldiers, and the torture, holding as hostages and killing of hundreds of civilians. Yet so far there has been no official investigation into these allegations yet.

Reports from the "Permanent People's Tribunal"[4] (PPT)

The PPT is convinced that from the time the war began in July 2006 through April 2009, according to United Nations internal documents, air raids and the use of heavy weaponry resulted in the death of 116 people per day. British and French mainstream media reported that during the final few weeks of the same period 20,000 Tamil people were killed. There were numerous accusations that Sri Lanka Security forces were guilty of violating the Geneva Conventions on warfare and of having committed gross war crimes and crimes against Humanity. The PPT argues that the charges included the bombing of civilian habitations, hospitals, and government-proclaimed "safe zones" or "no fire zones" by security forces, causing innumerable deaths of civilians, doctors and aid workers. Additionally, the charges also included depriving the population of essential services such as food, water, and health facilities in war zones, and other grave crimes against Humanity. The Tribunal reports that in the immediate months after the war attention shifted to the plight of over 280,000 Sri Lankan Tamils forced to live in internment camps. Densely packed, with inadequate infrastructure to provide safe food, water, sanitation and health facilities, the Government announced that the Internally Displaced People (IDPs) would be kept there until they had been 'screened' fro possible LTTE sympathies. In subsequent weeks, reports poured in of scores of youth disappearing from the camps, having been taken ways by security forces and government-sponsored paramilitary groups. Hundreds are feared to have died. Atrocities carried out by the military relate particularly to civilians, and there is evidence of cluster munitions being dropped by warplanes. Some witnesses that white phosphorous was used in violation of internal law. Several witnesses had seen burn

[4] The Permanent People's Tribunal (PPT) is an international opinion tribunal, independent from any State authority. It examines cases regarding violations of human rights and the rights of the peoples.

marks on wounded civilians. Others believed that indications of napalm were present, and evidence of other incendiary devices has been confirmed by doctors who had cared for hundreds of Tamil civilians wounded in this manner. The sight of hundreds of dead bodies was reported by a number of witnesses. This indicates that in addition to many wounded and the heavy of civilian life, the destruction of civilian infrastructure essential for human wellbeing was common (with women and children among those targeted) in the diminishing areas controlled by the LTTE. Always vehemently denying all wrongdoings on the part of its security forces, the Sri Lankan Government has dismissed all accusations and branded them as attacks on Sri Lanka's sovereignty. It steadfastly refused to permit other media and other organisations both national and international, including UN bodies, to enter and to ascertain the facts by interacting with local people. Today in Southern Sri Lanka, any call to critically examine the conduct of the war and the action of the Sri Lankan security forces in terms of internationally accepted war conventions and human rights standards, is regarded as treason by the Government. Sexual abuse and rape of women by government troops was yet another atrocity repeated throughout the civil war by government military in destroyed villages and in the "welfare villages". This practice - which is in violation of the Rome Statute as a crime against humanity - led to tragedies such as abortions and suicide on the part of victims unable to live with family shame and mental trauma. This policy of targeting also applied to Tamils living outside the conflict zone. Apart from mass deportations, selective terror campaigns were carried out by means of abductions, assassinations, arbitrary arrests, detention, sexual assault and torture. The PPT report concludes that in addition to the above, other atrocities and abuses of Tamils civilians need to be considered. Witness testimony on IDP "camps", or perhaps "concentration camps" as suggested by testimony demand attention. Portrayed by the Government as temporary residential facilities pending the return home or resettlement of those detained within them, the camps were designed as "welfare villages" by the Government. Fifteen such IDP camps were so designated. These camps continue to be in gross violation of the Geneva Convention and the Universal Declaration of Human Rights.

Reports from Human Rights Watch

The following section constitutes a testimony made by a researcher from Human Rights Watch an international organisation for human rights. The report was addressed to members of the Committee of the organisation during a hearing session following a one week investigative visit to Sri Lanka by the researcher of Sri Lanka after the civil war.

(i) Violations by the Sri Lanka Armed Forces

According to the report compiled by the researcher for Amnesty International, after 25 years the armed conflict between the Sri Lankan Government and the LTTE has reached its conclusion. However, this conflict has over the years claimed seventy thousands (70,000) of civilian lives, and has left hundreds displaced for years even decades. Since the fall of the LTTE's administrative centre, in early 2009 civilian casualties in the Northern part of the country have skyrocketed. The latest figures received by Human Rights Watch from independent monitors on the ground suggest that the total number of civilian casualties has now reached 7,000 including up to 2,000 deaths. Added to this are the dire hardships faced by the displaced - insufficient food, medical care, and shelter, whether in the combat zone or government-run interment camps. Amnesty International says that the LTTE's grim practices are being exploited by Government against them and to justify its own atrocities. For example hi-level of officials sustain the argument that that the ethnic Tamil population trapped in the war zone can be presumed to be siding with the LTTE and treated as combatants, effectively sanctioning violations. Sri Lankan forces have repeatedly and indiscriminately shelled areas packed with displaced persons, causing numerous civilian casualties. This includes numerous reported bombardments of a government declared "safe zone" and of the remaining hospitals in the region. In addition to the above, the organisation argues that major concerns of indiscriminate attacks by SLA forces are heightened by reports that they are using multi-barrel rocket launchers. The fact is that Rockets fired from multi-barrel launchers cannot be targeted with sufficient precision to be accurate against military targets, and their broad area effect makes their use incompatible with the laws of war in areas where civilians or civilian objects (such as schools or hospitals) are located. The use of such weapons in populated areas is indiscriminate in

violation of international humanitarian law. Amnesty gathered information from several aid agencies and eyewitnesses on more than two dozen incidents of artillery shelling or aerial bombardments on or near hospitals. Yet in International Law, Hospitals are specially protected under international humanitarian law. And under the Geneva Conventions, hospitals remain protected by unless they are "used to commit hostile acts" that is outside their humanitarian function. Even, then they are only subject to attack after a warning has been given setting a reasonable time limit, and after such warning has gone unheeded. Deliberately attacking a hospital is a crime.

(ii) Violations from the LTTE

The LTTE has deliberately prevented civilians under its effective control from fleeing to areas away from fighting, unnecessary and unlawfully placing their lives at grave risk. As the LTTE has retreated in the face of SLA offensive operations, it has forced civilians to retreat with it, not only prolonging the danger they face, but moving them further and further away from desperately needed humanitarian assistance. And as the area that the LTTE controls shrinks, the trapped civilian population has become concentrated, increasing the risk of high casualties in the event of attack and placing greater strains on their living conditions. Human Rights Watch documented a number of incidents when the LTTE forces fired at civilians who tried to cross to the government-controlled areas, killing and injuring dozens. In a illustrative case, a 35-year-old father of three described how the LTTE cadres had shot at civilians attempting to flee.

(iii) Violations from both sides of the Conflict

During the ongoing fighting in the Vanni region, both Sri Lankan armed forces and the LTTE have committed serious violations of international humanitarian law with respect to the conduct of hostilities. The high civilian casualties of the past months can be directly attributed to these violations. The LTTE has been responsible for deploying their forces within densely populated areas and deliberately firing on civilians to prevent them from fleeing to safety. There is also evidence that the LTTE has used civilians as "human shields."The Sri Lankan forces on the other hand, have committed numerous indiscriminate and perhaps disproportionate attacks consisting of artillery bombardments and aerial bombing. These include attacks on the government-proclaimed "safe zones" and on clearly marked hospitals. Statements by senior officials indicating that civilians who do not leave LTTE-controlled areas are subject to attack and indicative of an intent to commit war crimes.

CONCLUSION

In conclusion, it has been clearly demonstrated that according to the UNHCR specific recommendations that Sri Lankan asylum seekers must be recognised as refugees and given international protection even where the full definition of the term refugee does not apply. Additionally, there is ample and well documented eventful evidence reported by important, well established and trustworthy international human rights organisations like Amnesty International, Human Rights Watch and most importantly the Permanent People's Tribunal (PPT) showing that the current volatile socio-political situation in Sri Lanka still lead to human rights violations and abuses and to a larger extent to gross war crimes and crimes against Humanity. The question however is: why asylum claims from Sri Lanka nationals are still being refused and such refusals contributing to breach of their human rights?

Standard reasons for refusal by the home office

Taking into consideration the country' human rights situation in relations to the specific asylum claims from Sri Lankan nationals, asylum claims cases from Sri Lankan Nationals being refused in the UK are provided with detailed explanations in their refusal letters from the UK Border Agency (UKBA). Such explanations are often very similar. The main reasons they [the UKBA] advance in refusing asylum claims from Sri Lankan people involve both objective and subjective points of evidence.

Objective Evidence

Refusal letters often cite various sources like 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 tight since the end of the armed conflict.

Various sources demonstrate that those Sri Lankan asylum seekers returning from abroad who have had trouble with 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 been previously questioned or detained as the National Intelligence Bureau keeps records of people dating back ten years and now maintaining 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. Such sources can be real and practical refused asylum applications lodged by Sri Lanka Nationals but refused and being appealed in UK courts.

It becomes clear therefore that the problem Asylum Seekers from Sri Lanka are now facing in the UK is on the increase in their failures for asylum applications. UK government agencies in terms of not only implementing the *1951 Geneva Convention*, but also failing to take into consideration the UNHCR specific recommendations in their decisions on each individual case are not helping the situation to change; this despite the continuing hardship Tamil returnee's face back in Sri Lanka. The common grounds for refusal for these claims not only give rise to major concerns about their human rights, but in addition, it raises the question whether the UK Asylum and Immigration Tribunals and Human Rights Courts are in respect of the international conventions they sign up to.

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 the contrary implying 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 mow maintains a computerised database. For example, Tamil asylum seekers with physical scars on their bodies are particularly at risk of detention and possible ill treatment by Sri Lankan security forces as are those who have been previously affiliated with the LTTE. However, additional grounds for refusal can also be taken into consideration.

Common Grounds for Refusals

(i) No fear for Persecution in return to Sri Lanka

The argument of *"fear for persecution in return to Sri Lanka"* is mostly used in UK Asylum and Immigration Tribunals to systematically refuse asylum claims from Sri Lankan nationals based on the fact that asylum seekers in most cases always fail to substantiate their claim and provide enough evidence of *"a well founded fear for persecution"* if they were to be returned to Sri Lanka.

(ii) Being Targeted and singled out by the Authorities

The second but equally most used argument against asylum claims from Sri Lanka nationals by UK Asylum and Immigration Tribunals is the element of claimants being *"targeted and single out"* by Sri Lankan authorities i.e. the army, the police and security forces. In most claims, despite evidence of brutality, ill treatment and torture presented by the claimants in their asylum applications stories, UK Asylum and Immigration authorities counter argument for refusal most of the time is based on the fact that such asylum applicants have not provided enough proof for being "targeted by the authorities," nor being "specifically sought out by the SLA or not being "arrested and being detained by the Sri Lankan army". The asylum claim in this context is therefore rejected due to the lack of justifiable evidence such as physical scars on the body or some form of detention certificates from the SLA.

(iii) Detentions for having Links with the LTTE

Another important common grounds for Sri Lankan asylum claims refusal is *detention for having links with the LTTE during the civil war.* In most cases of such asylum claims refusals, UK Asylum and Immigration Tribunals in their consideration use the argument that applicants' claims for "for being detained for providing goods to an LTTE member is inconsistent with most recent country guidance case TK (Tamils - LP Updated) Sri Lanka CG [UKAIT 00048] sustained in paragraph 75 that: *"during the conflict it was logical in security terms for the authorities to be concerned not just about the LTTE cadres, but also about the sizeable number of persons who were considered likely to aid the LTTE cadres materially by, e.g. supplying them with petrol or food. Post-conflict, however, it is difficult to see why such*

persons would be of a concern." Therefore with regard to the above case law, UK Asylum and Immigration Tribunals consider it not only inconsistent but also that asylum seekers with links to the LTTE have experienced problems from the Sri Lankan authorities; their cases for asylum is thus rejected on that basis.

(iv) Refusal on the basis of Being a Tamil and Residing in Colombo

Following the UNHCR July 2010 recommendations and the assessment of the eligibility of Asylum Seekers from Sri Lanka under the refugee definition of the *1951 Convention*, Tamils originating and residing in Colombo belong to a specific category of asylum seekers considered to be particularly at risk of suffering serious harm because of their individual profile. In Colombo there is a large population of Tamils who have been living in the area for generations, but this does not preserve them from being subjected to security and suspicion of belonging to the LTTE. For this reason, Tamils who originate from Colombo are at risk of human rights violations associated with the security and counter-terrorism measures. Therefore Asylum applications from Tamils originating from Colombo are being refused in the UK on the basis that such claimants have not experienced serious problems from the authorities to cause threat to their lives in return to Sri Lanka. The justification of the use of this argument in asylum claims refusals is based on the fact that whilst residing in Colombo Tamils asylum claimants who claim to have experienced problems from the Sri Lankan authorities have not been subjected to such ill treatments because of claimed LTTE activity. This legal argument is furthermore justified in reference with the findings of the Asylum and Immigration Tribunal case of **"AN & SS (Tamils-Colombo-risks?) Sri Lanka CG [2008] UKAIT 00063"** in the country guidance which states in paragraph 122 that: *"there is no more risk to those who are not high profile opposition activists, or those whom they see as renegades or traitors to LTTE"*; there is therefore little risk to Tamils residing in Colombo and in light of this, Sri Lankan asylum seekers from Colombo are constantly refused asylum in the UK.

(v) Detentions and Reporting to Sri Lankan Police Authorities

The other non-the less important common ground for Sri Lankan asylum applications' refusal by UK Asylum and Immigration Tribunals is *"being freed from detention while reporting Sri Lanka police authorities."* The main legal argument they use in support of this reason is that although asylum seekers have claimed of adhering to weekly police reporting restrictions, *it is not accepted that they would be of interest to the Sri Lankan authorities on their return to Sri Lanka."* Based on such arguments, asylum cases from Sri Lanka nationals are being refused.

(vi) Medical Treatments in Detention for being wounded during the War

One major argument used against asylum seekers from Sri Lanka in consideration for the refusal of their asylum cases is *"receiving medical attention for wounds sustained during the civil war while they were in detention."* Asylum claimants in their presentation of evidence for being detained, tortured and ill treated by the authorities very often show the scars on their bodies and claim to have received treatment during such period. UK Asylum and Immigration authorities reject such claims simply arguing that in most cases that the medical treatment claimants claim to have sought after they suffered from internal pains is considered to be inconsistent with the severity of the injuries they claim to have sustained; therefore in light of these inconsistencies, Asylum and Immigration Tribunals conclude that these events did not occur. The case therefore is rejected on that basis.

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Mr. SM. a Sri Lankan national claimed asylum that he had a well-founded fear of being persecuted in Sri Lanka owing to political opinion imputed to him, namely the support, or lack of support, for the LTTE. The Respondent recognised that the Appellant was not at risk on return to Sri Lanka, in particular in transit through Colombo Airport and en route to his home area in Jaffna in the North and there is no other part of the country in which there is no such risk, and to which how can reasonably be expected to go. The Appellant was trained by the LTTE for one month; he was arrested and detained for 8 days; he was also arrested by the Sri Lanka armed forces for a second time; detained for a third time and released on bail; his mother died on the 01 February 2009. The Appellant had an active role with the LTTE, not merely in supplying them with goods, but in logistical support, namely driving for them; he was

forced to undertake LTTE compulsory training; he is a young Tamil; his brother, on the Respondent's account, was a full member of the LTTE; he was detained by the army, and was released on bail. The appeal is pending consideration and it has not been determined by the IJ.

DECISION MAKING PROCESS BY IMMIGRATION JUDGES

Automatic appeals and time limits with the appeal system

Appeals to the First Tier Tribunal (Immigration and Asylum Chambers) may only be brought against certain Immigration decisions specified in the relevant legislation. The Jurisdiction of the first tier tribunal is restricted to appeals against the decision listed in section 82 (2). NIAA 2002 and the decisions referred to in sections 82 (3A), 83 and 83A of that act, section 40A, British Nationality Act 1981 and in Immigration Regulations (EEA) 2006, SI2006/1003 (as amended). The grounds on which an appeal may be brought against a decision of the Act 2002 are set out in section 84, Nationality Immigration and Asylum Act 2002.

If the decision is not in one of those referred to above, it cannot be appealed against to the First tier Tribunal. This causes particular problem where an overstayer is refused leave to remain (and no decision is made that he or she is to be removed); and where a person is refused an application to vary his/ her leave at a time before his/ her pre existing leave expires (and that leave is not curtailed). In such cases Judicial review may provide a remedy. And in the former case it may be possible to seek judicial review of both decisions to refuse leave and the failure not to make a decision that the person is to be removed.

If the decision is one of those referred to above then it should be considered if the first tier tribunal have jurisdiction to hear the appeal and if yes then can the appeal be brought in country or out of country. Further the grounds under which the appeal has been brought, the evidences that will be considered by the first tier tribunal and the date for the relevant facts on which the first tier tribunal must make its decision also needs to be considered.

Section 88A of the NIAA 2002 precludes appeal against a refusal of entry clearance in points based cases. However, it does not preclude an appeal on human rights or race discrimination grounds.
There is no appeal right against removal directions. There may be appeal rights against a decision that a person is to be removed. However if no such decision has previously been made it may be that the service of removal directions also constitutes notice of the decision that the person is to be removed.

Section 92(4) (a) which permits an in-country right of appeal where the appeal is brought on asylum or human rights grounds, the UK Supreme court has in BA (Nigeria) and PE Cameroon [2009] UKSC7 held that it was not necessary for the Secretary of State to have accepted a fresh claim to have been made in circumstances where the appellant is relying on having made further representations raising asylum grounds in this section. Hence a refusal to revoke a deportation order where the appellant had previously been refused asylum but had applied for the order to be revoked on asylum or human rights grounds could be appealed against and the appeal brought in country.

Appeal time limits

FTT: First tier tribunal and UT- Upper tribunal

Situation	Time limit	Procedure Rule
Appeal to the FTT (out of country)	28 days after the person leaves the UK (if in the UK when the decision is made, and there is no in-country right of appeal)	AIT Procedure rules 2005 rule 7(2)
Appeal to FTT (in country)	10 working days after service of notice of decision	AIT Procedure rules 2005 7(1) (b)
Appeal to FTT (appellant is detained under the immigration acts)	5 working days after service of notice of decision	AIT Procedure rules 7 (1) (a)
Appeal to FTT (asylum Fast Track)	2 working days after service of notice of decision	AIT fast track procedure rules 2005 rule 8
Application to FTT for permission to appeal to the UT (Out of country appeal)	28 days from deemed service of written reasons for decision	AIT procedure rules 2005 rule 24(3)
Application to the FTT for permission to appeal to the UT (in country appeal)	5 working days from deemed service of written reasons for decision	Procedure rules 24(2)
Application to the FTT for permission to appeal to the UT (appellant is detained under immigration acts)	5 working days from deemed service of written reasons for decision	Procedure rules 24(2)
Application to the FTT for permission to appeal to the UT (asylum fast track)	2 working days from deemed service of written reasons for decision	Rule 17 of the Procedure rules 2005
Application to the UT for permission to appeal to UT (out of country)	56 days after notice of refusal of permission sent to appellant	UT Procedure Rules 2008, rule 21
Application to the UT for permission to appeal to UT (in country appeal)	7 working days after notice of refusal of permission sent to appellant. If notice delivered electronically or personally 5 working days	UT Procedure rules 2008 21 (3) aa) (i)
Application to the UT for permission to appeal to UT (asylum Fast Track)	4 working days after notice of refusal of permission sent to appellant. If notice delivered electronically or personally 2 working days	UT Procedure rules 2008 21 (3) aa) (ii)

Application to the UT for permission to appeal to court of appeal(out of country appeal)	38 days after notice of decision or notice of corrected decision or notice refusing an application to set aside decision is sent to the appellant	UT Procedure rules 2008 rule 44 (3b) and 3c
Application to the UT for permission to appeal to court of appeal (in country appeal)	12 days after notice of decision or notice of corrected decision or notice refusing an application to set aside decision is sent to the appellant	UT Procedure rules 2008 rule 44 (3b) (a) (i)
Application to the UT for permission to appeal to court of appeal (appellant is detained under immigration acts)	7 working days after notice of decision/corrected decision/ refusing an application to set aside decision is sent. If sent electronically 5 working days.	UT Procedure rules 2008 rule 44 (3B) (a) (ii)

Threshold and Burden of Proof

The burden of proof in the asylum claims appeals system refers to or is defined as to "discard of any information in the claimant's statement which does not directly assist the law practitioner, legal representative or solicitor in conveying his or her client's claim." It is therefore very essential to remember that the burden of proof of establishing a well-founded fear of persecution always remains with the applicant. This is a very important part in the claimant's statement because the majority of asylum seekers are unable to adduce supporting material evidence (such as an arrest warrant or proof of detention), it is therefore extremely important that written testimony clearly identifies the key root cause of the stated fear of persecution.

In the context of asylum claims made by Sri Lankan nationals, the burden of proof is on the appellant to show as at the date of the hearing that there are substantial grounds for believing that the Appellant is entitled to be granted humanitarian protection in accordance with paragraph 339C of the Immigration Rules and that returning him to Sri Lanka will cause the United Kingdom to be in breach thereof and / or insofar as applicable the decision appealed against is a breach of her protected human rights under the 1950 Convention.

If refused and not entitled to recognition as a refugee, the burden is on the Appellant to show that he or she is entitled to humanitarian protection in accordance with paragraph 339C of the Immigration Rules (enacting the subsidiary protection provisions of the Qualification Directive). The Appellant must thus show that there are substantial grounds for believing that he or she would face real risk of suffering serious harm without sufficient protection.

In case of the prohibition of torture or human and degrading treatment (Article 3 of the Qualification Directive), the burden in the appeal is on the Appellant to show that there are substantial grounds for believing there to be a real risk of a violation of that Article. Section 8 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 on the other hand sets out factors that are to be treated as damaging to an applicant's credibility.

Case study 58

Ms VR, a Sri Lankan national of Tamil ethnicity arrived in the UK in December 2008 and claimed asylum at the airport. On October 2010 she was refused grant to leave to enter. She appealed under S82 (2) (a) of the 2002 Act on the grounds set out at section 84(1)(a) & (g) of that Act, namely that she is a refugee whose removal from the UK would breach the UK's obligations under the Geneva Convention on the Status of Refugees 1951, as codified in the Refugee or Person in Need of International Protection(Qualification) Regulations 2006 ("the Qualification Regulations "). In the alternative the Appellant claims she is entitled to humanitarian protection pursuant to paragraph 339C of the Immigration Rules. The Immigration

Judge not only found that there were substantial grounds for believing that the appellant has sufficient grounds to lodge an appeal, but in addition he recognised the merit of this appeal case in the following words: "she meets the requirements of the Qualification Regulations and alternatively she is entitled to be granted humanitarian protection under paragraph 339Cof the Immigration Rules." Immigration Judge allowed the appeal on asylum grounds and under Article 3 of the ECHR and decided that "as she is a refugee, the Appellant does not qualify for Humanitarian Protection."

Case study 59

Ms NR, a Sri Lankan national applied for asylum in the UK and asked to be recognised as a refugee under the 1951 Geneva Convention relating to the Status of Refugees (Geneva Convention) on the basis that it would be contrary to the UK's obligations under the Geneva Convention for her to be removed from or required to leave the United Kingdom. She claimed well-founded fear of persecution in Sri Lanka. Ms NR's application was refused by the Secretary of state. Grounds for refusal of this appeal case have been made in consideration with the Humanitarian protection under paragraph 339C, Articles 2 and 3 of the ECHR. It has been concluded by the Immigration Judge that not only the burden of proof has not been proven due to the fact that she [the Appellant] would face mistreatment due to her race and due to her (imputed) political opinion, but in addition, she also failed to prove that her claim for Humanitarian Protection was based upon her fear that if she returned she would face a real risk of torture or inhuman, degrading treatment or punishment in the country of return. Additionally, she claimed that removing her to Sri Lanka or requesting her to leave the United Kingdom would be a breach of Articles 2, 3, and 8 of the ECHR. The IJ has accepted that even though the Appellant was far from a perfect physical state of health but saw no reason to imagine that she cannot be properly treated in Sri Lanka the issue of her removal according to him was disproportionate under Article 8.

The removal of the Appellant was therefore entirely proportionate in the overall interests of immigration control. The Judge dismissed the appeal under Articles 2, 3 and 8

Credibility Findings

In asylum cases credibility findings of the Appellant is a key factor if the decision maker is convinced that the Appellant's claim can lead to a positive decision. In our experience, even though the case law exists, it depends on the decision maker's opinion that will influence the final out come of the case. Some decision makers establish the reputation whatever the asylum seeker is telling is a lie. Other decision-makers try to find the reason for the contradicting statement or discrepancy why what the appellant is saying constitutes a lie in accordance with other factors and finding of credibility. If the decision maker makes a negative credibility finding, it rests upon the Appellant to prove the contrary.

Credibility findings are found out during an asylum claim case examination or determination by an Immigration Judge (IJ) in the decision making process. Discrepancies in such a process can be seriously damaging the credibility of an asylum claim story no matter how genuine the story can be. This in return leads to negative decision or out comes. The different elements that constitute the discrepancies for an asylum claim vary enormously from one appellant case to another and are of different nature. They can be of different forms.

The level of education, chronology of key information , any physical proof of evidences, information on personal details , family links and involvement in events, professional or political activities , state of mind or mental aptitude of the claimant, importance of interest of the authorities in the claimant ,personal movement/travel activities ,personal life style and personal character, or upbringing aptitudes are certain credibility findings are based on IJ determinations from real life case scenarios of asylum claims.

Current Country Guidance Case Law: LP and TK Principles

As it can briefly be explained, in country guidance cases (or appeal cases) the Tribunal has both the responsibility for determination, but in addition it has a dual function: like in every case, it must decide the Appeal before the case, but must also seek to identify relevant risks that arise in relation to classes or groups of persons. It does this in two main ways: (1) by identifying one or more "risk categories" (usually when the evidence is suffic-

iently clear-cut to justify a finding that the generality of persons in a particular category are at risk); (2) by delineating "risk factors": i.e. factors of particular significance when assessing risk (a mode usually chosen when the evidence is less clear-cut.

The two illustrative case studies - **LP LLTE area - Tamils - Colombo - risk) Sri Lanka CG [2007] UKAIT 00076** and **TK (Tamils-LP updated) Sri Lanka CG [2009] UKAIT 00049 -** in this brief analysis in addition to constituting landmarks appeal cases in the context of human rights and asylum laws, to a large extent not only sum up such a process of identification, but in addition outline the similarities as well as the differences between the two cases: one still portraying the state of human rights abuses and violations and impunity still going on in Sri Lanka and the other attempting to contradict such events as not taking place. But first, let's highlight the country information.

LP Case (LTTE area - Tamils - Colombo - risk) Sri Lanka CG [2007] UKIAT 00076

The case law of LP (LTTE area - Tamils - Colombo - risk) Sri Lanka CG [2007] UKAIT 00076 has served as a landmark case in terms of Tribunal country guidance case law on Sri Lanka since August 2007. Today the nature of this case continues to specify relevant risk factors for cases concerning Tamils from Sri Lanka. For example, in a judgment of 6 August 2008, *NA v SS* App. no. 25904/07, the European Court of Human Rights (ECHR) considered LP careful detail, reaching very similar findings of act.

The country guidance risk of factors (or principal country guidance issue) is whether Tamils who faced enforced removal from the UK - particularly Tamils from the North or the East of Sri Lanka - currently face real risk on return of adverse treatment at the hands of the Sri Lankan authorities. Such risk factors were outlined and addressed following events which since the military defeat of the LTTE in May 2009 have aggravated the likely approach or perception of the Sri Lankan authorities towards returned failed asylum seekers who are specifically Tamils. In this case (LP [2007] UKAIT 00076 CG), the risk factor is identify whether the Appellant, a national from Sri Lanka who is a Tamil and who is from the North of the country will effectively face a real risk of persecution upon return to Sri Lanka. As in LP and NA case laws the primary focus is on the risk on return to Sri Lanka in Colombo.

CASE SUMMARY

In LP [2007] UKAIT 00076 CG, the Appellant applied for asylum in November 2006 claiming to have entered the UK by air four (4) days previously. In May 2007 the Respondent refused her application. In the determination notified in September 2007, Immigration Judge (IJ) Higgins dismissed her appeal. However the Appellant was successful in obtaining an order for reconsideration. In a decision dated 3 January 2008 Senior Immigration Judge (SIJ) Southern found a material error of law. On 8 April 2008 IJ Mitchell heard her appeal afresh but again her appeal was dismissed. On 11 August 2008 permission to appeal to the court of Appeal was granted. A consent order issued by Longmore LJ ensued on 8 January 2009, remitting her case to the Tribunal.

(i) LP Hearing at the Tribunal and the ECtHR Decision

The Tribunal hearing of the LP case law and the ECtHR decision on NA came up during the periodic peace process in Sri Lanka which had begun to unravel, leading to a deteriorating security situation. A new period of fierce military conflict commenced soon afterwards. This case - new at the time of its hearing - therefore afforded (or offered) the Tribunal the opportunity to look at whether the country guidance given in LP required modification in the light of relative recent new developments. The major development that has taken place of course was that in May 2009, after a protracted civil war lasting 26 years the Liberation Tigers Tamil Eelam (LTTE) was militarily defeated.

(ii) Country Background Information during the Hearing of the LP Case Law

However, the principal focus of the Sri Lankan authorities continued to be, not only Tamils from the North or East as such, but any Sri Lankan person considered to be either LTTE members, fighters or operatives or persons who have played an active role in the international procurement network responsible for financing the LTTE and ensuring it was supplied with arms. The records kept on persons with some history of arrest and detention by the authorities became increasingly complex and rather sophisticated. Greater

accuracy of the records was likely to reduce substantially the risk that a person [meaning *any person*] of no real interest to the authorities would be arrested or detained. Another major development concerned the great number of Tamils in the North being detained in Camps. In a short period of time since this case was heard in October 2007. Media sources have reported a significant change in the situation of those detainees in these camps and since the situation became unclear. It has been considered to remain so for some time.... For this reason, all that was relevant to mention was that the period leading up to May 2009, very large numbers of people, mostly Tamils had been displaced by armed conflict ending up in international-supervised Internal Displaced People (IDP) camps. It goes without saying that such new developments have raised very important concerns on the Government' performance on human rights issues both in the country and within the international community.

(iii) Grounds for Refusal based on Country Guidance and Risk Factors

In LP, the Appellant' application for an appeal case was refused (or dismissed) by IJ Mitchell based on the following determination and reasons that: (1) the Appellant's claim of being suspected of being a member of the LLTE was subjective; (2) the Secretary of State did not accept nor did he put his case based on the fact that the Appellant' claim for fears of being arrested, detained, tortured and mistreated on account of being a Tamil from Vanni and on account of being a suspected LTTE suicide bomber; and additionally on account of having previously been detained and mistreated in Sri Lanka, that she would be socially ostracised and mistreated if returned to Sri Lanka; (3) the Secretary of State also did not believe that the Appellant had a previous criminal record and/or outstanding arrest warrant that could jeopardise her safe return to Sri Lanka; (4) the Appellant did not sign a confession or similar document ; (5) she did not have any scarring (6) and did not have any relatives in the LTTE; (7) the Appellant accepted that she was not asked to become an informer; (8) as a female Tamil, the Home Secretary did not accept that young female Tamils like her will face the same level of risk as young male Tamils if returned to Sri Lanka; (9) because she had an ID card she is considerably less likely to be targeted than those young Tamils without one; (10) concerns of the authorities would appear to centre on those sees as actively involved in procurement activities, not persons perceived as mere supporters or sympathisers; (11) the mere fact of having made an asylum claim abroad will have minimal significance in the mind of the Sri Lanka authorities on return; (12) there was no question the Appellant was not a bail jumper; (13) the EUCHR went to note that the Sri Lanka authorities' particular interest in particular categories of returnees is likely to change over time in response to domestic developments and may increase as well as decrease.

Case Law TK (Tamils-LP Updated) Sri Lanka CG [2009] UKAIT 00049

The TK case law hearing in its nature constituted both another landmark appeal case in the sense that it became an updated version of a precedent case: LP. The case was heard following the political event of the military defeat of the LTTE. In its hearing the Lord Justice Carnwath argued that they did not seek to address the so important issue of risk from the LTTE but rather in light of the military defeat of the LTTE, it was unlikely that this head of risk will play much part in most Sri Lankan Asylum-related appeals for the immediate future.

The decision making process of the case and its determination were similarly based on the country guidance information according to which the main objective was to "decide whether (since LP) Tamils who face enforced removal from the UK, particularly Tamils from the North or East of Sri Lanka, currently face a real risk on return of adverse treatment at the hands of the Sri Lankan authorities. In the TK case law, with regard to the decision making process, both the determination and grounds of refusal as addressed in so doing contradicted the main legal argument of the LP. The LP case law took place during the Sri Lankan civil war ceasefire in 2007, while the TK was heard after the end of the war followed by the defeat of the LLTE.

TK: a Case for an "Error of Law"

In LP the tribunal's decision focused on the issue of risk on return in Sri Lanka precisely in Colombo for a Tamil - or Tamils - whose home area was in the North. The ECNHR in NA case law adopted a similar approach. However, the Tribunal's specific decision on whether LP was at risk in his home area as set out in paragraph 228 of its determ-

ination was quashed by the Court of Appeal and remitted back to the Tribunal to be considered afresh, therefore its observations on risk in the home area cannot be taken as guidance. In light of such decisions and despite the given position in the North of the country - with so many people still in camps, the IJ argued, that not only "they would not venture any generalisations, they do not think that for the generality of Tamils there will be a risk of serious harm from the Sri Lankan authorities in their home area.

Following a throughout review of the same legal arguments upon which LP' decisions were based, the reasons in support of the case for "error of justice" in TK by Senior Immigration Judge (SIJ) H H Storey were stated as follows in his own words: "having found as a fact the appellant has been subject to serious harm in Sri Lanka, at the hands if the authorities, the Immigration Judge was required to identify good reasons for considering that such serious harm would not be repeated: (HC 395) in Judge Storey's assertion that he was satisfied that "risk of that happening again was not a risk that could be properly be categorised as real", was not sufficient. More, it was a material error of law for the Immigration Judge to dismiss the appeal on this basis.

The Material Facts Findings

The argument that it was a material error of law for the Immigration Judge to leave out of account, when assessing whether it could be unduly harsh to expect the appellant to re-establish herself in Colombo, the fact that, on his findings, the Appellant had been detained and ill-treated by the authorities when travelling within Colombo in the past; and in that being the case, the decision of the Immigration Judge to dismiss the appeal could not stand and the Tribunal must substitute a fresh decision to allow or to dismiss the appeal. In so doing the starting point for that reconsideration shall be the findings set out between paragraphs 32 - 40 of the determination of the Immigration Judge.

Internal Flight Option

Internal flight option or "internal relocation" asylum cases constitute some of the most controversial cases in their nature due to the complexity of the determining criteria or facts upon which asylum applications made in the UK are refused and the applicants removed by force or relocated to an unknown area in Sri Lanka. The main legal argument used by UKAIT in justifying such decisions is that "the Court of Appeal find that, in deciding whether it is reasonable to expect the potential refugee to relocate to a 'safe' area of their country, it was not possible to compare conditions in the relocation area with those in the UK." A more sustainable argument even supports the idea that "it is only permissible to compare the conditions in the relocation area with those in the home area. Therefore, the fact that the applicant would not be entitled to the 'basic norms of civil, political, and socio-economic human rights' in the relocation area will not usually be relevant to refugee status, because these hardships are likely to exist throughout the country". For example, the decision in the Sri Lankan case law ***AE and FE v SSHD*** has made this even more difficult for applicants to qualify as refugees where the risk of persecution - for example like in the UK - is limited to their home area.

Facts Findings in *AE and FE v SSHD*

Determination and decision making in the Sri Lankan case law AE itself, mounted to the consideration of the key fact that while it may have been harmful for the applicant's wife to return to Colombo (Colombo being the relocation area) as opposed to staying in the UK, this did not mean that Colombo was not a safe haven as compared to Jaffna (the area of persecution).However the Court in its consideration to the case was in pain to point out that a family in this position might be protected under the ECHR or other exceptional grounds and even though the Court was not specific how this might work, it appeared that the applicants who were at risk of persecution in their home area, and whose return to their country of origin - even to live in the relocation area - will cause them significant detriment (as compared with their position in the UK) might succeed in a human rights claim because the general conditions in the relocation area were no worse than in their home area. The case having been won on refugee aspects, the Home Office is still seeking to appeal the case AE to the House of Lords, because they are unhappy that the Court indicated that some applicants might be protected under the ECHR. The remaining question is: how does such a landmark case law affect human abuses Sri Lanka and the impact it has on asylum claims decisions from Sri Lanka.

TWAN cases Similarities Facts Findings

In terms of internal relocation or the "***internal flight option***" principle applicable to UK asylum seekers' applications from Sri Lankan nationals, a number of cases reflected in based on the same decision making process are reflected into the *Tamil Welfare Association (Newham) TWAN'* experiences. Despite the finding of similar grounds as in the case of **AE and FE v SSDH**, TWAN asylum cases are still being refused in an increased number by UK Asylum and Immigration Tribunals (UKAIT) despite being assessed on the same or similar facts including the same legal principle which stipulates that it would appear "applicants who were at risk of persecution in their home area, and whose return to their country of origin - even to live in the relocation area - will cause them significant detriment (as compared with their position in the UK) might succeed in a human rights claim because the general conditions in the relocation area were no worse than in their home area." The following facts related analysis from a TWAN perspective furthermore illustrates and outlines the difficulties encountered while dealing with such real life scenarios of asylum claims in Britain.

In the experience of the this Human Rights and Asylum law community legal centre for the UK' Tamil speaking population, hundreds of asylum claims cases similar to the one mentioned above including landmark cases such as **TK (Tamils-LP Updated) Sri Lanka CG [2009] UKAIT 00049** and **LP LLTE area - Tamils - Colombo - risk) Sri Lanka CG [2007] UKAIT 00076** - in terms of the common grounds of evidence and facts findings approved by the ECHR in NA v UK and according to which they are determined and decided. Such facts findings according to Immigration Judge J Clarke may still make a person's return to Sri Lanka a matter which would cause the UK to be in breach of the Conventions. Despite all such solid proof of evidence, asylum cases made by Sri Lanka nationals based on 'internal relocation' are still being refused by UKAIT. In the majority of cases the facts findings constitute the Tamil ethnicity, Previous record as a suspected or actual LTTE member or supporter;Previous criminal record and/or outstanding arrest warrant; (iv) bail jumping and escaping from custody; 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 of fund raising; (ix) illegal departure form Sri Lanka; (x) lack of ID card or other documentation; (xi) having made an asylum claim abroad; (xii) having relatives in the LTTE.

In appeal cases supported by TWAN, Immigration Judges' determinations revolve around the fact findings that the Appellants did not provide enough supportive evidence in support of their applications for asylum based on their claims of being entitled to international protection, to humanitarian protection, and their human rights under Articles 3 and 8 of the 1950 Convention.

Case study 60

The Appellant Mr BK a Sri Lankan national arrived in the UK in June 2006 with a six months visit visa valid until January 2007. On December 2006 he applied for further leave to remain in the UK; his application was refused in January 2007. The Appellant returned to Sri Lanka on 13th January 2007 and left again on 30th September 2009. After a series of travelling to India and to an Arab country, He finally travelled by car to Coventry here in the UK and applied for asylum in 15th of October 2009. His application was refused in November 2009. A Removal letter was served to him with directions that he should be removed. He appealed against these Directions under section 82 of the Nationality, Immigration and Asylum Act 2002. In the legal argument or the basis of the refusal of this appeal case, the Immigration Judge in dismissing the appeal did not even take into consideration the facts findings, the country information guidance or the background material of the case supporting events such as: the ethnic conflict in Sri Lanka has been going on since 1983. Although Immigration Judge agreed in his final decision that this background material presented before him indicated instances of disappearances, arbitrary arrest and detention occurred in Sri Lanka, he simply argued that the Appellant was just a simple and illegal immigrant and dismissed the appeal only on this ground.

Case study 61

Mr SS claimed asylum in the UK in February 2008 two years after his arrival into this country. In August of the same year, a decision was made to refuse to grant asylum and on the same day a decision was made to remove an illegal entrant by way of directions under paragraphs 8 to 10 of Schedule 2 to the Immigration Act 1971. The

Appellant's appeal against that refusal was heard by Immigration Judge (IJ) in September 2009. The Appellant was arrested in 1997 on suspicion of involvement with the LTTE after two police officers were shot. He was detained for eight days at a camp which had a video camera at the entrance. He was seriously ill-treated and as a result has visible scarring. While in detention the Appellant confessed that he had passed information to the LTTE. He was released after intervention by a protest and a lawyer on condition that he no further involvement with the LTTE. During the ceasefire, between 2002 and 2006 the Appellant visited his nephews who were lieutenant colonels in the political wing of the LTTE. After the ceasefire broke down in 2006 the Appellant was coerced into helping the LTTE by spying for them and passing on information. He also provided foods. The Appellant cousin and her husband were involved with the LTTE. The Appellant worked with them. One of the Appellant's cousins was killed by the army in November 2007 and her photographs were shown to the Appellant. The army suspected that the Appellant was helping the LTTE and came looking for him. They raided his home, took documents and showed his photographs to neighbours. They also made frequent enquiries. Eventually the Appellant left Sri Lanka illegally. He never had his own passport and the army had seized his identity card. In his determination in reaching his final decision, Duty Judge of the Upper Tribunal (DJUT) or Deputy Immigration Judge (DIJ) has recorded that the Appellant's appeal legal argument was largely based upon her entitlement to asylum status but has failed to satisfy him that he would face either a real risk of serious harm or breach of rights protected by Article 3 of ECHR. The Immigration Judge argued further that in reality the position of the Appellant is that he entered the UK without legitimate expectation of gaining leave to enter or to remain unless he could establish that he was a refugee. He [the Appellant] has known his position to be precarious since arrival and his claim was refused within six months of it being made which according to him represented a reasonable period. Furthermore, the Appellant has had no family life in the UK.

As a result of all the above facts, including some crucial medical evidence, the making of the previous decision was found by the DIJ to have involved the making of an error on a point of law. However, for the reasons given before, he has reached the same decision as the IJ: the appeal was dismissed on asylum, humanitarian protection and human rights grounds.

Case study 62

Mrs KS, Mrs KT (mother) and a dependant child applied for asylum on the basis that they were detained in Vavuniya concentration camps and was released unofficially and came to the United Kingdom on a visitor's visa sponsored by one of the family member. Mrs KS's husband is current detained in Boosa camp in Sri Lanka under the detention order. Their cases were linked and were certainly the case that they arise largely from the same facts. Asylum application was refused and the appeal was made pursuant to sec 82 of the NIAA 2002.

The case for an appeal was made on the ground that the appellants' removal from the UK to Sri Lanka would be contrary to the United Kingdom's obligations under the 1951 United Nations Convention relating to the status of Refugees and the 1967 Protocol thereto (the Refugee Convention). In her determination and findings of facts, Immigration Judge found that all Appellants were of Tamil ethnicity and that the first Appellant and her husband were not involved with the LTTE. The first Appellant was injured in shelling in about April 2009 simply as a victim caught up in violence between the LTTE and the Sri Lanka Army (SLA). She was taken to hospital, released and taken to a refuge camp. She also found that the 2nd and 3rd Appellant were taken to another refugee camp and therefore concluded that the family were separated and did not know what happened to the husband. In overall, the IJ found the cohesion and consistency of the Appellants' evidence with so many discrepancies that she failed to look at the objective evidence brought put before by the Appellants' representatives. In his final decision, he found that the Appellants have no well founded fear of persecution for a Convention or any other reason were they to return to Sri Lanka. For the same reasons, she claimed found no genuine fear of death, torture or inhuman or degrading treatment or punishment or serious (or any) harm upon return to Sri Lanka within the meaning of articles 2 or 3 ECHR or the Qualifications such as to entitle them human rights or humanitarian protection. The 3rd Appellant's article 8 does not arise. She concluded that her findings and determination apply to all applicants. She therefore dismissed the appeal on asylum grounds; she dismissed the

appeal for humanitarian protection and also on human rights grounds.

Case study 63

Mrs SY a Sri Lankan national and her 11 years old son treated as her dependant for this purpose. The applicants came to the UK in 2008 and claimed asylum. Their application was refused. The appellant then reunited with her husband who is an asylum seeker in the UK since 2001. The appellant's husband was represented by different Solicitors. During the appeal time, TWAN had to meet the appellant's husband in order to prepare a supporting statement. There were some inconsistencies between the appellant's claim and her husband's claim. The IJ found some adverse credibility issue and refused the appellant's asylum appeal. However TWAN instructed counsel upon receiving the determination and made application to the first tier tribunal for permission to appeal to the Upper Tribunal which was granted on the basis that the IJ made error of law in concluding his decision. TWAN was not able to assist the appellants for some reasons and the appellant transferred his file of papers to her husband's Solicitors.

HUMAN RIGHTS CLAIM AND ECHR

Human rights act came into force in 2000 and this had converted the rights and freedom given by the ECHR into domestic law. The UK adheres to the European Convention on Human Rights, which prevents them from sending anyone to a country where there is a real risk that they will be exposed to torture, or inhuman or degrading treatment or punishment. If a person does not qualify for recognition as a refugee but able to justify that for humanitarian reasons they should be allowed to stay in the UK then they may be given temporary permission to stay here. An application made according to rule 39 in itself is not a guarantee of suspension of removal. Unless the concerned officer indicates for a suspension of removal it will not be executed by the border agency.

In most cases with people who are claiming asylum their human rights particularly article 3 and 8 of ECHR were breached in their native countries. When decision makers make their decision under the UK domestic law they will consider the human rights claim together with refugees asylum claim. In some occasion when a refugee is excluded from grant to stay in UK humanitarian protection under the human rights act could be claimed under the refugee convention. The relevant article and the human rights issues are

Article 2- Right to life

Article 3- Prohibition of torture, and of inhuman or degrading treatment

Article 4- Prohibition of slavery and forced labor

Article 5- Right to liberty and security of person

Article 6- Right to fair trial

Article 7- Freedom from retrospective criminal legislation

Article 8- Right to respect for private and family life .Home and correspondence.

Article 9- Freedom of thought, conscience and religion

Article 10- Freedom of expression

Article 11- Right to freedom of peaceful assembly and association

The European court of human rights broadly interprets the above mentioned articles while UK courts narrow down their interpretation while making a decision. This results in many cases ending up in European court of human rights. When the appeal rights are exhausted then the asylum seeker or his legal representative will make the application to European court of human rights to protect the individual's human rights.

A Violation is a violation. In the cases of an absolute right, such as article 3, no inference with the right is acceptable. In humane degrading treatment is just as much unlawful as torture. In the cases of balancing rights, such as article 8 the right to family and private life, where inference is permitted, if the inference with the right goes beyond what is permitted and proportionate then it is unlawful.

Some of the important Rights

Article 3

All the rights protected in article 3 are absolute and admit of no derogation in time of war or national emergency. Therefore whether or not the ill-treatment reaches the threshold of severity for torture, a breach is still not allowed.

Article 8- Balancing rights

Examiners' feedback from previous years suggests frustration at candidates' inability to break article 8 and other balancing rights down into their component parts. The test of the House of Lords set out in *Razgar [2004] UKHL* 27 is

1. will the proposed removal be an inference by a public authority with the exercise of the applicant's right to respect for his private and family life?
2. if so, will such interference have consequences of such gravity as potentially to engage the operation of article 8?
3. if so, is such interference in accordance with the law?
4. if so is such interference necessary in a democratic society in the interest of national security, public safety or the economic well being of the country, for the prevention of disorder or crime, fore the protection of health or morals, or for the protection of the rights and freedom of others?
5. if so such interference proportionate to the legitimate public and sought to be achieved?

Case study 64

Mrs NK came to the UK as a prospective student in 2005. While she was studying she had love affair and was just cohabiting with her partner who was an asylum seeker in this country. She subsequently extended her student visa on two occasions. Mrs NK successfully applied for Certificate of Approval and had marriage registration after blessing with one child. Mrs NK's husband has been granted ILR by the legacy unit. Mrs NK's visa was to expire in November 2010. She made application to switch her visa as a spouse of a settled person while she has ample time to expire her leave. The application was refused stating that Mrs NK was not a prospective student after giving birth to her child. The Home Office also applied the case of *Beoku-Betts* and stated that the decision does not prevent the other family members to accompany with the applicant in order to seek entry clearance. On first occasion the Home Office refused without appeal rights. Following that in a couple of days we received another refusal letter with the appeal rights. At the appeal the IJ depended on article 8 and applied *Razgar* principles and the criteria of *Beoku betts*. Mrs NK's husband was a support witness before the IJ. The appeal was allowed on the basis of article 8 of the ECHR and not on the basis of immigration rules.

Case study 65

Mrs PT arrived in this country in January 2009 and claimed asylum after two days at the Home Office. She was in the UK as a visitor on a previous occasion and she returned back to Sri Lanka after she overstayed in this country for some inevitable reasons. Mrs PT's youngest son was recruited by the LTTE forcefully and she has no information about him. Her oldest son was abducted by the unidentified armed group in the eastern part of Sri Lanka. She has only daughter who is widowed and mentally disabled with one daughter and settled in the UK. After making complaint to the Human rights Commission Mrs PT underwent for investigation by the Police and received several threatening calls while she was in Sri Lanka. She was also admitted in the Hospital. Mrs PT sought assistance from her workmate who arranged an agent and Mrs PT was able to leave the country safely with the assistance of an agent. Although she had a passport which was seized by the Police on investigation and she had no documentation to leave legally. After arriving in the UK she approached TWAN and we represented in her asylum application and after refusal appeal. The IJ allowed the appeal on the basis of article 8 and she was granted Discretionary leave for three years. The IJ relied on the case of Razgar and Huang and decided that she must be allowed to reside with her daughter on Discretionary grounds and dismissed her asylum appeal.

Fresh claims

The new asylum model system is making hasty decisions on asylum claims in the expense of quality decision. In most of the cases within three

weeks after claiming asylum the client would have been interviewed and determination of their claim is made on the 4th week. When they exercise their right of appeal their appeal will be heard by the immigration judge within few weeks time. If they are not successful then the appellant's appeal rights will be exhausted in 3 months time. During this process the refugees and their legal representatives try to produce maximum number of documents such as evidence related to applicant's personal fear, medical reports, expert reports and other vital country information. In most of the occasions the time extension request made by the refugee's representatives to the decision makers wasn't accepted and decisions were made quickly. Due to this practice applicants are forced to make fresh claim under the paragraph 353 of the immigration rule as a fresh claim. When this claim is made then the case owners have to make a decision on this fresh claim. If it is refused then there is no right of appeal except challenging by judicial review or making application to European court of human rights. Many people in detention will be people who have claimed asylum, who have had their asylum claims refused, have exhausted their appeal rights, and are being detained for the purpose of removal. The only way in which someone in this position can prevent removal is to make a fresh claim for asylum.

A fresh claim for asylum is defined in the Immigration Rules 353 as "When a human rights or asylum claim has been refused and 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".

The submissions will amount to a fresh claim if they are significantly different from the material that has previously been considered. The submissions will only be significantly different if the content (i) Had not already been considered and (ii) Taken together with the previously considered material, created a realistic prospect of success, notwithstanding its rejection.

Some of the most common circumstances where a person can make a fresh claim include the inability to disclose all the distressful information in the initial meeting, availability of new Documents, Changes in the Law especially in the country guidance and due to new judgments, adverse change in Conditions in the home country and formation of Family life which leads to inability to leave family members.

Fresh claim procedure

There are two ways in which the Home Office will accept a fresh claim. If a person has claimed asylum after March 2007 then their asylum claim will be dealt by one of the New Asylum Model (NAM) teams located throughout the country. In this case the person should submit the new evidence and their representations at the reporting centre. The reporting centre will forward their evidence and representations to their former NAM caseworker or the NAM team who dealt with their asylum application. The NAM caseworker or the team will be responsible for making decisions on the fresh claim. On the other hand if they have claimed asylum before March 2007 they should make an appointment with the Liverpool Further Submissions Unit (FSU) which is managed by the Case Resolution Directorate (CRD) in Liverpool.

It usually takes a very long time for the Home Office to make a decision on a fresh claim. A fresh claim that goes back to a NAM caseworker/team for consideration will usually take less time for decision making. Once a person has made a fresh claim, they will become entitled to NASS support. However, sometimes if a person makes a fresh claim while they are in detention UKBA will make a decision very quickly, almost certainly a decision to refuse. If it is not accepted by the UKBA that the application meets the legal test to be a fresh claim, then the only way of challenging this decision is by Judicial Review.

Credibility

While making fresh claims the credibility factor of the earlier proceedings might be under debate. A case where the applicant was considered wholly credible in the earlier hearing then in that case the fresh claim will make a emphasis on the fact that a decision should be made only after examining the witness in front of a judge before declaring them a liar and claim can also quote that the evidence given on certain events was false and not the whole case. If the client was considered incredible or partially credible in the earlier trial then ways of establishing the claims which were refused earlier need to be focused.

Pre 2nd October 2000 cases

If an applicant has lodged and asylum claim and this was refused before 2nd October 2000 then after all the asylum appeal was dismissed a human rights application could be lodged based on the case of *Pardeepan*. The Human rights situation/ violation was not previously considered by the Secretary of state or by the Special Adjudicator and the new application must promptly deal with the applicant's human rights violations.

Documents necessary to make a fresh claim

The documents that would be needed to assess whether or not someone has grounds to make a fresh claim include Home Office Reasons for refusal letter, Asylum Interview record, Asylum statement, Appeal witness statement and Immigration Judge's reasons for decision and Determination.

Country specific asylum policy

The home office officials refer to the country specific asylum policy Operational guidance notes for making decisions on asylum claims. This document (OGN) provides a brief summary of the general, political and human rights situation in the country and describes common types of claim. They aim to provide clear guidance on whether the main types of claim are likely to justify the grant of asylum, humanitarian protection or discretionary leave.

Further submissions

A further submission is the process of providing additional information through documents to the claim that has been already made. Further submissions should be based on new material, unless there has been a change in legislation, in policy or in case law since the last submission. The new material should be significant that there should be sufficient information in the new material for there to be a realistic prospect of the UK Border Agency or an immigration judge to decide. The new material should be relevant to you, and the further submissions should explain how the material is relevant to your case. Material should not have been available before the most recent decision on your case, whether that decision was an initial decision, an appeal or a decision on previous further submissions, unless there is a good reason why you did not submit the material earlier. Further submissions should be made as soon as is reasonably practicable.

From 14 October 2009, UK Border Agency policy has made the following changes in making further submissions:

- Legacy cases cannot be made by post and these submissions must be made in person by first obtaining an appointment for the claimant to attend the Further Submissions Unit (FSU) in Liverpool.
- New Asylum Model (NAM) cases can no longer be made by post and these submissions must be made in person at a regular reporting event or by making arrangements in accordance with regional policy.
- Both the legacy or NAM cases should now be made on a standard form.

However if a person is unable to travel (illness, disability or detention), judicial review is ongoing, removal directions have been set and an asylum seeker picked through enforcement action are exempted from making an appointment in person.

Interim measures

Under Rule 39 of the European Convention on Human rights the European Court of Human rights may impose interim measures on any State party to the European Convention on Human Rights. Interim measures are essentially urgent measures which are taken to prevent irreparable damage. The applicant must be at imminent risk in accordance with the decisions in the cases. Interim measures are only applied in limited cases for instances where there is a threat to the applicants life in breach of Article 2 or where the applicant is at risk of being tortured in breach of Article 3. In some cases, applications based on a violation of Article 8 can also be made.

The European government does not make notifications on applications made for interim measures under rule 39 of the rules of the court. On the other hand they do inform if an application has been granted. The government is under the notion that current situation in Sri Lanka doesn't warrant harm to the individuals who are being removed. The asylum and immigration tribunal in the case of LP(2007) UKAIT0076 found that being just a Sri Lankan Tamil is not a reason for being persecuted by the Sri Lankan authorities but

a serious consideration was recommended for identifying the various other factors that might be relevant in each case. If European Court of Human Rights grant an interim relief then the government will not remove a person unless the court says so. The European court also is likely to adopt a lead judgment in the case of safety of removal of Sri Lankan Tamils.

In most occasions asylum seekers cases are referred to ECHR under the rule 39. However there are other provisions under which cases can be referred by asylum seekers such as

Rule 40 (Urgent notification of an application)

In an emergency situation the registrar of the ECHR with the president's authorisation has the right to inform the concerned party about the application and the summary of the same without any prejudice.

Rule 41[3] order of cases

The cases that are being dealt at the court are generally based in an order based on the importance and urgency. However the chamber or its president has the right to give attention to a particular case by coming out of that order if necessary.

Rule 54[3] (procedures before a chamber)

The Chamber may at once declare the application inadmissible or strike it out of the Court's list of cases. And on the other hand request the parties to submit any factual information, documents or other material considered relevant, give notice of the application to the respondent Contracting Party and invite that Party to submit written observations on the application and, upon receipt thereof, invite the applicant to submit observations in reply, invite the parties to submit further observations in writing. Before taking its decision on the admissibility, the Chamber may decide, either at the request of a party or of its own motion, to hold a hearing if it considers that the discharge of its functions under the Convention so requires.

Applying to the European Court of Human Rights

There are three key requirements that should be met for applying to ECtHR and that include

1. The person must be a victim of a violation of one or more of the articles of the convention.

2. Before they make an application to the ECtHR they must pursue any proceedings that they could take in the UK that are capable of providing them with an adequate remedy for the breach of their Convention rights.

3. Application to the ECtHR must be made within six months of the conclusion of any court proceedings that they have taken in the UK that could have provided them with a remedy or, if there were no proceedings that it was reasonable to expect them to take, within six months of the alleged breach of their Convention right.

When a person makes an application to the ECHR they will be asked to complete one of the ECHR's application forms. The application can be made by writing a letter to the court with the client's details, the country against which they are making their application, relevant facts and the article or articles of the Convention that they claim have been breached. The letter must be sent to the Registrar of the ECHR and when it has received the letter the ECHR will send one of its application forms to complete. Once the ECHR has acknowledged receipt of the application form it may take some time before you hear anything further. At this stage the ECHR may rule the application inadmissible. The ECHR will not give reasons and there is no right of appeal. If your application is ruled inadmissible then an applicant will not be able to proceed with it.

If it is not ruled inadmissible at this stage, then the application will be allocated to one of the ECHR's four sections. A panel of seven judges from that section will deal with the case. The application will also be communicated to the Government at this stage that is, the Government will be informed. The ECHR will then decide whether the application is admissible. If the ECHR finds your application admissible it will then go on to decide whether there has been a breach of the Convention. The ECHR usually refers to this as considering the merits of the application. At this point you have the right to put in a claim for compensation. When the ECHR has made its decision on the merits of the application, the concerned will be notified of the date on which its judgment will be made public. Once a section of the ECHR has made a final decision on the merits of an application, either party, the Government or

the applicant, can ask to have the application referred to the Grand Chamber. This is the only form of appeal that the ECtHR's rules allow for. The Grand Chamber only rarely agrees to a referral. There is no appeal from a final decision made by the Grand Chamber

The ECHR deals with most cases without holding a hearing; it reaches its decisions on the basis of written representations made by the parties. When the ECHR does decide to hold a hearing this will usually take place before the ECHR has decided on the admissibility of the application, although it may also hold a hearing after an application has been found admissible if it has not already held one.

Case study 66

Mr. VV had entered the country and sought asylum in 1999. The claim was refused after the client was interviewed by the secretary of state in 2001. Subsequently he exercised his right of appeal but the special adjudicator had refused the appeal. The claim for asylum was refused as the authorities were not satisfied that the client was fulfilling the refugee status. The client had claimed that he was arrested for supporting the LTTE but was released later. The authorities gave importance to that aspect and had pointed out that his release is a sign that there is no further threat in the home country. The client had approached us in 2010 as he was not in a position to return to home country and after assessment and on taking up the case the client was assisted in making a fresh claim to explain his status along with the condition of his home country. The organization represented the client and explained in detail the situation of the country and quoted examples of various other cases and the mental health condition of the individual with appropriate documents to substantiate the fresh claim. This claim was accepted and the client was granted with indefinite leave to remain on an exceptional basis outside the immigration rules.

Case study 67

Our client LJ came to the country in 2008 and claimed asylum. Her asylum claim was refused by the secretary of state and an order was placed for her removal subsequently. She appealed against the decision but her appeal was dismissed in January 2009. The client approached us in June 2009 for making a fresh claim and hence the details of her case were collected for making a fresh claim to the European court of human rights. She was a tortured in her country owing to her political stand and was scared to go back to her country as her life was at stake there. The earlier appeals were refused as she couldn't establish that she was affected physically and mentally due to the torture she faced back in her country. In the fresh claim a detailed medical report was produced to substantiate the torture she had experienced already and the mental distress she was experiencing. She was also assisted in establishing the threat that underlies if she happens to return to her home country. The appeal was accepted and decision is yet to be made.

DETENTION AND REMOVAL

Powers to detain

Most are set out in schedules 2 and 3 of the Immigration Act 1971. A person can be detained:

- During examination by an immigration officer to decide whether or not to grant leave to enter
- Pending the giving of removal directions and removal for those refused leave to enter and for those determined to be illegal
- Pending deportation of those served with notice of intention to deport, in respect of whom a deportation order has been signed and those recommended for deportation
- Crew members who overstay pending the giving of removal directions and pending removal or are reasonably suspected of intending to do so.

Further under the UK borders act 2007:

- A designated immigration officer can detain a person for up to three hours at a port if he thinks the person is liable to be arrested by the Police or subject to an arrest warrant. This power can be used to hold anyone, including British Citizens.
- The Home Office can detain a person, who has served a prison sentence, while considering whether the power to make an automatic deportation order applies ands if so whether to make one in the person's case.

Home Office Policy on detention

The Enforcement instructions and Guidance at Chapter 55 set out Home Office Policy on detention. They provide that detention must be used sparingly, and for the shortest period necessary. They set out, that in the cases being dealt with by the Criminal Case Work Directorate is that it is normally appropriate to detain as long as there is still a realistic prospect of removal within a reasonable timescale.

The Instructions summarise the limits imposed on detention by article 5 of the ECHR drawing attention to

- The need to use the power only for the specific purpose for which it is authorised.
- Detention may only continue for a period that is reasonable in all the circumstances for the specific purpose
- The need for the detaining authority to act reasonable diligence and expedition, for example to make a decision or effect removal.

Form IS91R is given to those are detained and sets out an exhaustive list of reasons for detention which include that they are likely to abscond if given temporary admission or release, there is insufficient reliable information to decide on whether to grant you temporary admission or release, their removal from the United Kingdom is imminent, they need to be detained whilst alternative arrangements are made for your care, their release is not considered conducive to the public good and if the official is satisfied that their application may be decided quickly using the fast track asylum procedures

The form goes on to provide for the listing of reasons for thinking that a power to detain applies if they do not have enough close ties to make it likely that you will stay in one place, they have previously failed to comply with the conditions of your stay, temporary admission, they have previously absconded or escaped, on initial consideration, it appears that their application may be one which can be decided quickly, they have used or attempted to use deception in a way that leads us to consider that you may continue to deceive, they have failed to give satisfactory or reliable answers to an immigration officer's enquiries, they have not produced satisfactory evidence of their identity, nationality or lawful basis to be in the United Kingdom, they have previously failed or refused to leave the UK when required to do so, they are a young person without the care of a parent or guardian, their health gives serious cause for concern on grounds of your own wellbeing or public health/ safety and their previous unacceptable character, conduct or associations

According to Enforcement Guidance and instructions unaccompanied children and young persons under the age of 18, the elderly, especially where supervision is required, pregnant women, unless there is the clear prospect of early removal and medical advice suggests no question of confinement prior to this and those suffering from serious medical conditions or the mentally ill could only be detained in very exceptional circumstances

Remedies for detention

Remedies for detention are release on temporary admission, release on Chief Immigration bail, Release on bail by the Tribunal and a finding of unlawful detention leading to release- whether by Judicial review or habeas corpus.

Judicial Review

Since October 2010, new arrangements came into force in respect to asylum claims appeals and their time limits for obtaining judicial review where applicants are detained and subject to enforced removal. Instructions contained in Chapter 44 of the Operational Enforcement Manual (OEM) sets out how to handle appeal proceedings (or lodging); a legal process leading to a judicial review against removal. The instructions in so doing seek to ensure that persons who have been refused asylum and who are subject to enforced removal have sufficient time to lodge an application for Judicial Review. The Appeals lodging process follows 3 different stages.

Stage 1:

On confirmation that the Appellant is seeking leave to move for judicial review, his/her representatives will be advised according to the following different proceedings: (i) That they required to lodge their applications (in complete form) within three Working Days with the Crown Office and to notify Port/Enforcement Office of the Lodging of the application and Crown Office reference within 24 hours of lodging the

application. On receipt of such notification removal directions will be cancelled. (ii) Port/ Enforcement Office will advise Treasury Solicitors who will liaise with Crown Office to ensure that the case is to be put before a judge in the nearest possible date. (iii) No further removal directions will be set until the outcome of the leave to move application is known.

NOTE: Until further notice, removal will normally be deferred for three working days (from the point at which the threat is received) if a Judicial Review is threatened and removal must be cancelled when it is confirmed that Judicial Review proceedings have been initiated. Also until further notice, staff must refer all cases concerning last minute threats or operations for Judicial Review to Operational Support and Certification Unit (OSCU) (Duty Officer 020 8604 1813) who will consider the case under this policy.

Stage 2:

Upon being notified of an intention to seek permission for Judicial Review: (i) the Appeal case must be referred to the office of Operational Support and Certification Unit (OSCU) and no further action must be taken, until the OSCU have provided advice about the case. But, where the Judicial Review (JR) threat is considered by OSCU normal practice will be to defer removal for 3 working days during which time the claimant or his/her legal representatives will be required to lodge a Judicial Review application with both the Administrative Court and the Treasury Solicitors Department. (ii) The OSCU will then consider each case on its individual facts and there may be discretion by the OSCU not to defer removal when one or more JR applications have already been unsuccessful. (iii) The OSCU will notify the appropriate unit in terms of what action should be taken. A written confirmation that the application has been lodged by the claimant or his/her representatives will be required. (iv) On receipt of the notification of the Administrative Office (CO) the reference removal must be cancelled.

Stage 3:

Once the removal has been cancelled the case should be referred to the Judicial Review Unit who will liaise with the Treasury Solicitors department to ensure that the case is put before a judge at the earliest possible date.

It must be noted however that specific arrangements may be put in place for each charter operation, in which case, the case stakeholders will be notified what these arrangements are when the operation is planned. Also, when a threat or notification of an application for Judicial Review (JR) is received and the claimant is to be removed as part of an operation on the charter flight, the case must be referred to the OSCU; the OSCU will still consider allowing the removal directions to stand if the case is abusive and the threat is being used solely to prevent removal.

Case study 68

Mr. AS came to this country and claimed asylum when he tried to depart from this country in January 2010 .With forge passport he was prosecuted for breaching the UK immigration law for 10 months and after completion of 5 months he claimed asylum in may 2010. His asylum claim was refused and appeal was launched in July 2010 and his appeal was heard in November 2010 and he wasn't successful and his appeal rights were exhausted. In the beginning of December he received new evidence from Sri Lanka in support of his past persecution and we made the fresh claim based on the new evidence and in the end of December he was arrested and detained while he attending to comply with his routine reporting procedure. Subsequently his fresh claim was refused and was served with a deportation order. We made the application to the European court of human rights under the rule 39.The court on receiving the application had given the client an application number and had requested for all documents including those from the home office, asylum and immigration tribunal decision and other judicial review and judgment documents. After receiving the documents the European court of human rights corresponded to us saying that they refuse to intervene in the case and suspend the rule 39 subsequently and thus will not stop the removal of the applicant. We launched the judicial review application at the high court and informed the removal section of the UKBA. Despite our effort the client was removed and on his return he was arrested at the airport and taken to CID branch at the fourth floor, Colombo where he was tortured and released after one week on bail. We are continuously fighting for the justice of this client. The complaint made to the European Court of Human rights is pending consideration and TWAN send new evidence confirming that the torture that the applicant is still undergoing

to reporting condition and his life will be at risk by the Sri Lankan state armed forces.

CRIMINAL OFFENCES

A migrant can be guilty of a crime and subsequently imprisoned where they have:

- entered the UK without the leave of an immigration officer or in breach of a deportation order
- obtained entry or remained by means which include deception;
- not produced a passport
- falsified or altered a travel document, stamp, registration card or visa
- breached the conditions of their leave
- overstayed their leave
- failed to comply with an immigration officer's direction to attend for example a medical examination
- failed to cooperate with removal arrangements including filling out forms accurately and completely and obtaining documents
- made a false statement to an immigration officer
- Knowingly or recklessly make a statement to the passport authorities which is false in any material particular;
- Made false representations, caused delay or obstruction regarding asylum support
- obstructing an immigration officer

The maximum sentence on indictment is up to 14 years imprisonment, a fine or both.

Application for variation of leave after entry

Points based system

The points-based system (PBS) was introduced in 2005 for regulating the migration of individuals who want to enter the United Kingdom for employment and educational purposes. It has combined various pre existing work and study routes into 5 tiers and enables the potential migrants to make a successful application. This system enables the government to make decisions based on the labor market situation and on the other hand tries to reduce the abuses in immigration process. The point based system is purely applied to non EEA nationals.This system requires the migrants to satisfy the points assessment as required by the tier for which they are applying before they can get permission to enter or remain in the UK. The points are basically awarded on the basis of the age, aptitude, English language requirement funds and experience in the respective sector in the UK. Sponsors play a major role in the point based system and they need to fulfill the prescribed criteria before sponsoring an applicant. The point based system regulates the sponsors namely employers and educational institutions based on the home office requirements and expect them to hold valid sponsorship license before sponsoring the applicants.

The five tiers that are being introduced based on this system are as follows

Tier 1: highly skilled individuals who are capable of investing, providing employment opportunities or fetch a high grade job on their own in the UK

Tier 2: professionals who have an offer for skilled jobs by sponsors in UK

Tier 3: low skilled workers intending to fill vacancies temporarily

Tier 4: to students who are enrolled in educational institutions in the UK

Tier 5: individuals who immigrate for taking part in the youth mobility scheme or fill in temporary job requirements

Tier 1 visa

If a highly skilled individual wants to work in the UK then he must apply for this visa. An applicant who successfully achieves the adequate points will qualify and they don't require a sponsor. There are four categories under this visa namely

a) *General visa*
b) *UK entrepreneur visa*
c) *UK investor visa*
d) *Post study work visa*

a) General

This visa opens up opportunities for individuals from other countries who are highly skilled and are willing to use their potentials to work in high profile jobs in the UK. They are allowed to enter the country and apply for a job after they arrive here provided; they satisfy all the other

requirements. Eligibility to apply is solely based on successfully achieving points and there is no need for a sponsor.

The applicant needs to prove that they have sufficient English language skills by fulfilling any one of the criteria that include that they are from a country where English is the main language, completed a Master's degree which was taught in English and clearing an English language test that is equal to level C1 of the council of Europe's Common European Framework for Language learning

The client has to score the following points for being eligible to enter UK under this visa.

a) 75 or 80 - **attributes** (age, qualifications, previous earnings, and experience in the UK)
b) 10 - **English language**
c) 10 - **maintenance (funds)**

The Tier 1 General visa is issued initially for a period of three years. If required then by the end of this period it can be extended to a further two years, provided the Tier 1 General Visa extension requirements are met. After this period Indefinite Leave to Remain (ILR) for permanent residency in the UK can be applied.

Investor Visa
This visa aims at allowing foreign nationals to invest in the UK. Unlike the other Tier 1 visa categories this category doesn't require the applicant to have proficiency in the English language as the applicant is unlikely to be working. On the other hand the applicants need to satisfy certain requirements regarding their financial position and assets.

Entrepreneur Visa
This category applies to individuals from other countries with potential to provide employment opportunities for those in the UK. The main requirement for the Entrepreneur visa lies in the amount of money the applicant will be investing in UK and the guarantee that they will be taking control of a business. Those applying for this visa don't need a sponsor but have to fulfill the points. The English language requirements that are imposed on the general category applicants apply here also. The applicants under this visa are restricted to undertake any employment in the UK. It is also an essential requirement of the Tier 1 Entrepreneur Visa applicant to employ a minimum of two people who are settled in the UK either on part-time or full-time basis.

Post Study Work Visa
This category of visa is open for foreign students who have completed their education in the UK. The eligibility criteria and language requirement are same as the general category applicants.

The point's criteria for a Tier 1 Post Study Work Visa are divided into four specific areas and all of these areas must be satisfied for a person to qualify.

***Qualification = 20 points*:** The applicant needs to have successfully completed a course resulting in a bachelor's degree, postgraduate level degree, postgraduate diploma or certificate recognized in the UK or an HND qualification from a recognized Scottish institution.

***Institution = 20 points*:** The educational institution must be either a recognized or listed UK institution or included on the Tier 4 sponsors register.

***Immigration status in the UK during period of study = 20 points*:** The qualification must have been obtained by the candidate whilst in the UK with a Tier 4 Student Visa or as a dependent of another main applicant in the UK.

***Date of award Qualification = 15 points*:** The applicant can gain 15 points if the qualification was obtained within 12 months immediately before the application for entry clearance under the Tier 1 Post Study Work category.

This Visa is issued for two years and an extension will not be possible and is not counted towards the residency requirements or for gaining settled status in the UK but it can be transferred to a Tier 2 Visa.

Summary of tier 1 visa regulations

Summary of tier 1 visa regulations

Type	No of years allowed initially	English language Requirement	Renewable. if yes no of years
General	3	Yes	2
Investor	3	No	2
Entrepreneur	2	Yes	3
Post study work	2	Yes	No

Supportive documents

All the documents provided are expected to be original copies. The applicant must send two recent passport photographs and their passport, along with proof of their qualifications, maternity or adoption-related absence (if relevant), previous earnings, United Kingdom experience, English language, maintenance (funds); and HSMP transitional arrangements (if relevant).Post study workers need to submit their pay slips and bank statements to show that they have worked under a sponsor for the past 6 months.

Fee structure for general and entrepreneur categories

	Fees (by post in UK)	Fees (from outside UK)
Main applicant	£1000	£800
Partners or child under 18 if applying along with the applicant	£500	£800
Partners or child under 18 if applying later or child over 18	£550	£800

The fee for individuals under the HSMP program is lesser.

The fee structure for the post study work permit holders is as given below

	Fees (by post in UK)	Fees (from outside UK)
Main applicant	£594	£474
Partners or child under 18 if applying along with the applicant	£297	£474
Partners or child under 18 if applying later or child over 18	£550	£474

Case study 69

Mr. J S a 28 year old post graduate management student came to us to resolve certain issues concerning his passport in the year 2009. The issue was successfully resolved then and the client again approached us a year later for assistance in applying for his post study work visa. After making the application the UK border agency requested for further information from the clients educational institution to move further and this was communicated to the client immediately. Based on the instructions given the client was able to get a letter from his institution stating his period of study. This was forwarded to the border agency and the client was granted post study work visa which is valid till 2013.

Case study 70

Mr. KB a post graduate student approached us for processing his post study work permit visa. He has initially entered the country in 2008 in student visa and has successfully completed his course and now in 2010 wished to apply for his post study visa as his student visa was about to expire. His application was made duly but the Home Office officials had refused his application on grounds that he had not acquired the necessary points owing to the fact that he was yet to be awarded with his degree. He had the right to appeal and hence the appeal was drafted and submitted to the tribunal with the necessary documents. The tier tribunal heard the case and dismissed it for reasons that the client had not been awarded with his degree at the time of his application which made him ineligible for applying the post study work permit visa.

Case study 71

Mr. T came as a student to the UK in 2010 and approached us in 2011 as his student visa was going to expire shortly and he wanted to apply for a post study work permit visa. After making the application the client was instructed to provide his biometric details and was shortly intimated that he would be provided with a biometric residence permit following the approval of his post study work permit visa.

Tier 2 visa

In tier 2 type of visa extension we mainly deal with the religious workers category of work while the other two categories are not much used by our community or our organisation.

Tier 2 visa applies to people coming to the UK for a skilled job which cannot be filled by a settled worker. An individual interested in applying for this visa must have a sponsor and a valid certificate of sponsorship along with fulfilling the point requirements. The points awarded for the eligibility criteria are based on the educational qualifications; future expected earnings, sponsorship, English language skills and available maintenance funds.

Apart from being able to enter newly into UK, individuals can also switch from other category of visa into this visa on fulfilling the entry requirements. The number of years of stay permitted will be around three years initially and this can be extended to another two years on satisfying the requirements adequately.

There are four categories of Tier 2 workers as listed below

- General
- Intra-company transfer
- Sportsperson
- Ministers of religion

General - this applies to people coming to the United Kingdom with a job offer to fill a gap that is unfilled by the resident labour force in this country. The individuals need to have a sponsor and a certificate of sponsorship and fulfill other point requirements to be eligible. The attributes and the points given are as listed in the table

Attribute	Points
Jobs under shortage occupation list	50
Jobs those which met the resident labor market test	30
Switching from the post study work	30

Apart from this, 10 points each must be scored for both English language skills and maintenance funds.

A sponsor can assign a certificate only if the job is at skill level S/NVQ3 or above, passes resident labour market test and a confirmation the migrant will be paid appropriate salary and allowances.

There is an option under this visa for applicants to enter the country to work in a list of shortage occupations. These are jobs for which there aren't enough residential workers and for a person applying under this category their qualifications and prospective earnings are not given much scrutiny. The main occupations that come under the shortage occupation list as produced by the government includes engineers under various sectors , medical professional including doctors, specialists, nurses, psychologists and other allied medical professional, geologist, teachers ,veterinary doctors and so on.

Intra-company transfer - this applies to employees of multi-national companies who are being transferred to a United Kingdom based branch of the same organisation either on a long term basis or frequent short visits. There are 3 sub-categories of Intra-Company Transfer which includes established staff, graduate trainees and skill transfer.

Sportsperson

This category applies to extraordinary sportsmen and coaches who are expected to make a significant contribution to the development of their sport in the UK. They require a certificate of sponsorship from a licensed sponsor for migrating in this manner. It is also possible for individuals to switch to this category from other categories. The initial duration of stay permitted is for that of 3 years and on extension can extend to another two years approximately. The duration permitted may vary for applicants who switched from other categories.

Ministers of Religion

This category is for those who want to take up employment or roles within a religious organization in the UK as:

- Ministers of religion undertaking preaching and pastoral work
- Missionaries
- Members of religious orders

If the applicant is from outside the UK then he will be able to live and work in the UK for a maximum of three years plus one month, or the time given in the certificate of sponsorship plus one month, whichever time is shorter. A person already in the UK under a different category also can apply to switch into this category. At the end of their period of permission, they will need to apply to extend their stay as a minister of religion if they want to stay further.

The applicant's fee for general, sportsperson and minister of religion applying under tier 2 is as shown in the table below

	Fees (by post in UK)	Fees (from outside UK)
Main applicant	£550	£400
Partners or child under 18 if applying along with the applicant	£275	£400
Partners or child under 18 if applying later or child over 18	£550	£400

The certificate of sponsorship, documents in proof of the required maintenance funds, English language requirement fulfillment documents and is certain cases the details of the employment are essential along with the proofs of identity, passport and photographs.

Switching to tier 2

Individuals under various other categories of visas can switch to Tier 2 general category when they require or desire one. Any person under the Tier 1, Tier 4 and other Tier 2 categories can switch provided they meet the requirements. Nurses,

midwives and other creative and sporting subcategory members form Tier 5 category can also switch to this category. Other significant groups who can switch include dependant partner of a Tier 4 migrant ,students, various student scheme members, business and other sport related visits and postgraduate doctor or dentist. Applicants switching from tier 1Post-study work and few others gain an extra 30 points. While switching from post study work visa it is required that the applicant has worked for at least six months immediately before the date of the application under the sponsor. The application must be only made for the same job which the person was working while applying. If they have not worked for their potential sponsor for at least six months before they apply, their sponsor will have to meet the resident labor market test unless the job is on the shortage occupation list. In this situation the applicant will not be able to claim points for switching from a post-study category, but can claim points if the sponsor has met the resident labor market test.

Case study 72

Mr. KS who was practicing as a priest approached us for gaining an extension or indefinite leave to remain in UK as a minister of religion. He had entered the country as a minister of religion in 2004 with exceptional leave to remain which got over in 2005. His stay was extended till 2008. Limited leave to remain till 2009 was granted on submitting the FLR (O). The settlement application of the client was made through us and the application was refused due to absence of original documents due to certain legal reasons. The client was made to exercise his right to appeal and was duly supported in the process. Subsequently he was granted extension of stay and the organization also handled the extension of leave service for his dependent. Following this he approached us again a year later to extend his visa under the newly introduced transitional arrangements under employment not requiring a work permit category of SET (O) application. All the necessary documents were attached with the application and were forwarded to the home office. They had further requested for fund details and letter from the employer to proceed further. On forwarding those he was issued with the grant for an extended stay.

Tier 3

This visa aims at bringing in low skilled workers to cover temporary shortage. This category has been suspended indefinitely as of now.

Tier 4

This is the visa which is to be used by the students who wish to study in the UK. There are 2 categories under this based on the age group. The applicants in the age group of 4-17 years will have to apply under the child student visa and those in post 16 will have to apply under the general student category. Those who apply are expected to have a secured place at a UK-based institution for full-time study which covers a 15 hours of classroom study per week at least. Students coming under this visa are expected to support themselves without access to public funds, as well as pay for the course and all accommodation and maintenance. The applicants are made to state that they intend to return to their home country after the course is completed. 40 points are necessary for the eligibility and it's attained from the below given categories

Category	Points
Confirmation from a tier 4 sponsor	30
Enough money for fees and daily living	10

It should be noted that a student can't apply before 3 months of the commencement of the course. Students at degree level are allowed to work for 20 hours a week and those doing a lower level to duration of 10 hours.

Switching

Tier 4 (Child) student, Tier 1 (Post-study Work) migrant, Tier 2 migrant, various other students and a work permit holder can switch to this category. Students from Switching from Tier 4 general visa can switch into Tier 1 All Highly Skilled Sub-Categories, Tier 2 Skilled Workers, Tier 2 Skilled Workers (Minister of Religion) while Tier 4 Child Students can only switch into the general Students category.

The length of stay permitted for students is shown in the table below

Course	Duration	Length of stay
Degree level or above	12 months +	Full length of course & 4 months
Degree level or above	6 months +, less than 12m	Full length of course & 2 months
Pre-sessional Course	Less than six months	Full length of course & 7 days
Short Course	Less than six months	Full length of course & 7 days
Below Degree level	12 months +	Full length of course & 4months
Below Degree level	6 months +, less than 12m	Full length of course & 2 months
Post grad docs/dents	Max of 3 years	Full length of course & 1month

Students are granted leave to enter the UK for completing their course at a specified institution taking into account the time needed to conclude affairs and attend graduation. Changing from one course to another at the same establishment is possible while changing a sponsor or obtaining a UK tier visa extension and it will be processed after lodging a further application.

A tier 4 applicant who has permission to stay less than 6 months cannot bring with them their dependent or partner. Dependents of students who are doing a course below degree level are not allowed to work unless they hold a separate visa permitting such a thing.

	Fees (by post in UK)	Fees (from outside UK)
Main applicant	£550	£255
Partners or child under 18 if applying along with the applicant	£275	£255
Partners or child under 18 if applying later or child over 18	£550	£255

The main documents that are required for this application is the letter from the sponsor, maintenance fund related documents and the documents to prove the identity.

Case study 73

Mr. K had approached our organization for extension of his student visa. He had entered the country in 2009 and his visa was valid till early 2011. He wanted to extend his visa as his course was going to run for two more years. Our organization verified his documents and made an application to the home office. On applying a letter from the border agency was received intimating the arrival of the resident card in a week's time and the client was issued with the biometric resident card valid till 2013 in the next week. On arrival the client was handed over the card and was asked to verify the personal particulars in the card.

Case study 74

Ms KN came to us to seek help in processing her COA application initially in 2007. After sending the application home office had contacted us requesting for further information and affidavits and other relevant documents related were forwarded to the home office. Unfortunately the home office rejected the application owing to the immigration status of the partner. Later the client came in contact with us for extension of her tier 4 student visa in 2010 and her file was reopened. Her application was forwarded and she was given an appointment to obtain a foreign national ID.

She was issued with a biometric residence card following it. When this expired she lodged an application for extension of her student visa with our guidance. This was rejected for the reasons that the maintenance fund was not adequate. As she had evidence that she indeed has the required funds we assisted her in appealing against this refusal. A notice of hearing was received shortly and the client was duly informed. She was assisted in submitting the witness statement and the other required documents namely the bank statements and wage slips for the hearing. The case is ongoing.

Case study 75

Mr. N P approached us for extending his student visa along with the visa request for his dependents. He has entered the country in 2009 with a student visa valid till 2010. In the mean course due to his ill health the client had to take a break in his college and was in need of extension till 2011 to complete the course. We made an application on behalf of the client with the relevant documents. The home office considered the form invalid due to issues with the amount of fees submitted. Later the prescribed fee and the other instructions as given by the home office were followed and the application was resent and this time the client got his visa successfully.

TIER 5

This visa is designed to accommodate two different groups of people immigrating to the UK on a temporary basis namely workers who cater to a varied group of specific temporary employment opportunities and those who participate in the youth mobility scheme

The points that are allotted for a tier 5 sponsor

Category	Points
Confirmation from a tier 5sponsor	30
Maintenance funds	10

Tier 5 (Temporary Worker) has five categories:
Creative/Sporting: (12 months Maximum): UK visa applications can be made by creative artists, sportspeople or entertainers provided that a sponsor has been organized. Sponsors must be able to confirm that applicants pose no threat to the domestic workforce and will engage only in the specified activity.

Charity Workers: (12 months Maximum): This is for people coming to the United Kingdom to do voluntary, unpaid work for a charity. Sponsorship from a charity or benevolent organization is required for applicants entering the UK through this route. Sponsors must be able to demonstrate that the activity is directly relevant to the organization and that it will not be a permanent one. Charity workers should be doing only voluntary work and shouldn't get involved in any paid work. The field work they are doing should be directly related to that of their organisation. They are not entitled to any pay other than certain reasonable expenses.

Switching in and out of this category is not allowed.

Religious: Under this category religious workers excluding ministers of faith may visit the UK provided they are sponsored by the respective faith community. Duties may include preaching, pastoral and non-pastoral work. Religious workers are allowed to stay for a maximum of 24 months. This category also permits the applicants to make a multiple entry within the allowed time period. This needs to be again taken care of by the sponsor. If the length of stay allowed happens to be less than 6 months then they cannot travel within the time period more than once without further permission. In general rreligious workers are allowed to preach, carry out pastoral work as well as non-pastoral work. It is also expected that the religious worker does a work which is of same nature of his work in the overseas. They are also expected to work in a religious order with community which involves a permanent commitment like a monastery or convent.

Switching in and out of this category is not possible.

Exchange: (12 months Maximum): Entering the country as part of an accredited exchange, development or knowledge sharing scheme is

permitted subject to sponsorship by the organization running the scheme is question.

International Agreement: (12 months Maximum): This is for people coming to the United Kingdom under contract to provide a service that is covered under international law.

All applicants under Tier 5 (Temporary Worker) need a sponsor. The maximum duration of leave under this visa is 24 months and switching to other tiers is not permitted.

Youth mobility scheme

This is being used by sponsored young people from Australia, Canada, Japan, Monaco and New Zealand who wish to experience life in the United Kingdom. The applicant's government acts as their sponsor. Successful applicants will be free to do whatever work they like during their stay in the United Kingdom, except for self-employment and other few. The visa expires in two years and could not be extended further. The applicants under the visa are not allowed to switch and cannot bring in their dependents.

The tier 5 applicants need to pay £190 for processing their application. An additional £190 is charged for their dependents. One of the main documents that need to be submitted by these category applicants along with the proof of identity and others is the certificate of sponsorship.

OTHER TYPE OF VARIATION OF LEAVE APPLICATIONS

FLR (O)

This form is to be used by a general visitor, nurses or midwives qualified outside the UK and those who have been on a long stay and few other categories to extend their stay in the UK. A person or their partner who has been here for 10 to 14 years lawfully but has not passed the English language test can also use this form. Dependents namely partners and children below 18 years can be included in the form and it is to be noted that general visitors are not allowed to bring their dependents according to the immigration rules.The concerned must be in the UK to apply, and they must apply at least four weeks before their permission to stay in the UK ends.The fee for applying under this category is £550 for the applicants and £275 for dependents through postal service.

Case study 76

Mr. T B had entered UK in the year 2009 as a minister of religion and was practicing as a priest and came to us in 2010 as he wanted to extend his visa. The required information from the client was collected and it showed the problems in extension of visa under earlier category due to the certain new requirements in the current systems. Due to changes in the new system his sponsor was expected to have a license number which was not the case when he entered the country initially. The client was properly explained about the poor rate of success of his application and however we took the required steps for extending his visa with the FLR (O) form and tried our best to explain the client's situation to the home office. Although he and his sponsor were genuine due to changes in the immigration law they failed to produce the license number which the home agency wanted very strictly. His sponsor was actually in the process of getting the required license but couldn't get it in the required date as the new system was enforced in a very short time. Owing to the above mentioned reason the client was refused extension of visa.

FLR (M)

A spouse or partner of a person settled in the UK can use this form to extend their stay in the UK. Children under 18 years can apply along with the main applicant. An individual who can apply for an indefinite leave but due to a problem in obtaining English knowledge and live in UK test can also apply under this category. Any personal reasons of the clients can also be a reason for using this form instead of SET (M).The prescribed fee for applying through post under these criteria is £550 and for each dependent child another £275 is charged.

Case study 77

Ms T S had approached us in 2010 for applying an extension of leave to remain in the UK as a spouse of a person settled in UK. She had initially entered the country in 2009 as a student and got married to a person in UK and was looking forward to extend her stay as his spouse. This would allow the client to extend her stay as a partner of a person

settled in the UK and receive a biometric document. After sending the application with the required documents the home office had requested for further details as proof for the couples cohabitation. Tenancy agreement and other documents showing that they were living together were forwarded subsequently. She was then given an extension of leave to remain on discretionary basis. The home office had decided so, on the basis that her husband had only limited leave to remain in the UK.

Case study 78

Mrs. NK approached us regarding her extension of leave to stay in the UK after getting her certificate of marriage successfully through us. She had initially entered the country in 2009 as a student and had married a person who has permission for an indefinite leave to remain in the country. She wanted to extend her stay as his spouse. On applying using the FLR (M) the home office had not only refused to extend her leave to remain but also cancelled the leave which was granted already as a student. The reason stated for the same was that she was not attending to college after utilizing her student visa to enter the country. With our assistance she appealed to the tribunal on grounds that her husband fulfils the criteria for extending her stay and also pointed out the health concerns which prevented her from attending the college. She has also stressed upon the fact that neither her husband can go with her to her home country owing to the fear of prosecution he faces. Following this she was granted a limited extension of leave on discretionary basis.

Case study 79

Mrs. K M approached us for extending her leave to remain in UK in 2010. The client wanted to extend her leave to remain further as a spouse of a person who is in UK. They were married in 2001 and had 2 children. She came to UK in 2010 from Canada in visitor visa which was valid for 6 months time. The client was refused extension of stay for reasons that she was in the country only for a period of 6 months and the inability to produce the required English language test certificate. However she had the right to appeal and it was exercised with the appropriate support given by our organisation. In the appeal her husband's financial status was clearly established to substantiate that he could take care of the family and along with that the difficulties faced by her without her husband in a foreign country were highlighted. The current health condition of the client's husband due to absence of his family members was also stressed upon in the appeal. The tribunal had accepted the appeal and the case is still running. The client has been granted permission to remain in the country till a decision is reached by the tribunal.

SET (O)

This form is used for applying indefinite leave to remain in UK by clients under a number of categories. Everyone except post study work permit visa holders under tier 1 category tier 2 migrants, work permit holders, employment not requiring a work permit, HSMP migrants, business persons, long residency and other few form the group who can apply for indefinite leave to remain using this form. This application is also used for covering categories which are not covered by other forms.

This form can be used by the individual, their partners and children under 18 years and cannot be used for claiming asylum or protection. The partners of clients who apply owing to their long period of stay are not eligible to apply as dependents under this category.

The qualifying period for applying under this category is generally 5 years but 4 years for certain HSMP category and 8-10 years for clients staying for a long period of time. There is no qualifying period for a bereaving partner who is applying under this category. The applications should be made before the expiry of their current visa and not before 28 days of their qualification period. The fee for processing this application for the dependent alone is £972 and an additional £486 for each child who is applying along through postal service.

SET (M)

This application is to be used by the spouses or partners of a person already settled in the UK for indefinite leave to remain. The children below 18years can also apply along with the main applicant. One more criterion for applying under this category is that the applicant should have stayed in the country as a partner with a leave to enter or remain for 2 years. It is also required for all individuals with some exceptions in the age

group of 18-64 years for a proof of English language or a pass in life in UK test. The application should be mad before the status of the current stay expires and not before 28 years of the qualifying period.

The fee for processing this application for the dependent alone is £972 and an additional £486 for each child who is applying along through postal service.

Case study 80

Ms E S requested our assistance in 2010 to obtain leave to remain in UK as a spouse of person settled and present in the UK. She had entered the country in 2008 as the spouse of a person settled here and had completed two years of probationary period and had approached us as she was then eligible for claiming an indefinite leave to remain. Her application along with the supporting documents was duly forwarded to the home office and following this client was granted leave to remain successfully.

Case study 81

Initially in 2008 the client Mrs. P T had utilized our services in getting her visa. She had initially entered the country in the spouse visa. In 2010 she contacted us again for processing her request to settle in the country as a spouse. The client was eligible as she had fulfilled the criteria of 4 years stay with her husband in the UK and wanted to continue further their relationship as man and wife. The client was assisted in making her SET (M) application appropriately and following this the home office had granted her indefinite leave to remain without any issues.

SET (F)

This form is to be used by children or adopted children under 18 years whose parents or relatives are present and settled in the UK and parents, grandparents or relatives of a person who is of 18 years or above and settled in the UK. One more important criterion is that the child who is applying should be in the UK for using this form. This form also doesn't allow any dependents to apply along with the main applicant. If there are any dependents then they should apply separately. The prescribed fee for these criteria is £972 by post for children or adopted children.

Case study 82

Ms N J had contacted us earlier for extending her visa in 2008. At that point of time she was not issued with an indefinite leave to remain as her mother had not been settled and she had not failed to complete her life in UK test. She approached us again in 2010 to get the leave for indefinite period as a dependent of her mother. As her mother had settled in the UK she was eligible for applying as her dependent using the SET (F) form. Unfortunately the application was not processed as the home agency was in the process of changing the fees structure and application format. The new procedure was followed while submitting the application the next time. Following this the client had received her leave to remain in the UK indefinitely.

SET (DV)

If a person who has entered or has 2 years of extension for remaining as a partner in UK becomes a victim of domestic violence then they can use this form for applying for indefinite leave to remain in UK. Any children they have under the age group of 18 years also can apply along with the applicant.

Any person who will fall under the below given categories may apply

- If they are given permission to come to the UK for up to 27 months or to extend their stay for two years as the partner; and
- If they were still in that relationship at the time when they came to the UK or extended their stay as a partner; and
- Produce evidence that the relationship has broken down permanently as a result of domestic violence.

It is advised by the authorities that it is better if the applications were made at the earliest for the purpose of safety of the client and the evaluation of the case by the authorities with ease. The clients when applying under this category are also requested to provide adequate evidence to prove that they are victims of domestic violence. The charge for making application under this category is £976 for the applicant and an additional £486 for each dependent.

Case study 83

Mrs. C T initially came to UK in 2006 as a spouse of a British citizen. She couldn't extend her stay to indefinite period as she couldn't sit for the life in the UK test in 2008. In 2008 she extended her visa till 2010. The couple were blessed with a daughter

in the in 2008.Lately the couple didn't share a good relationship and this had resulted in domestic violence followed by the child and mother being sent away from the home. The client had contacted us in this situation and the organisation initially made arrangements for accommodating her in a safe place with the help of the council. Following this keeping her future in mind the caseworker decided to make a SET (DV) application for extending her visa. The client was explained about the uncertainty dwelling in the outcomes as she was not in a position to submit many required documents because most of those where with her husband and he was not ready to handover those to her. While making an application these reasons were quoted for the unavailability of certain documents. The officials were requested to consider her FLR (M) application which was made in 2008. Along with that steps were taken to obtain a British passport to the child as her father was a British citizen. As the documents required couldn't be produced the home office didn't proceed with the request. Steps were taken to get the marriage certificate from the father through his solicitor. In the meantime based on the Supreme Court summary which states that a British child's non citizen parent cannot be removed the next action is to be taken.

Certificate of approval for marriage -COA

This form is used for applying for a certificate of marriage or civil partnership in the UK. This form should be used by individuals under immigration control and those who entered the country with limited leave to enter or remain. The individuals need to be in the UK for applying. This enables the register to approve their intention to marry or stay as partners. A person applying for this must have made an entry for more than 6 months and has a period of at least 3 months remaining while they apply for this category. The client needs to be of 21 years of age or above to be entitled to the rights as given by the immigration rules for the purposes of claiming leave to remain as a spouse. The fee for this application is suspended in 2009 and hence there is no need to pay for this application now.

Case study 84

Ms N V had sought our support in getting her certificate of marriage in 2010. She had initially entered the country in student visa and got married to a person who was a dependent of an EEA national. He had the residence permit card and both fulfilled other criteria for lodging an application. Unfortunately her application was refused as she had mentioned married while answering the query of her marital status in the application form. According to her culture and tradition she considered herself married after the religious ritual that was performed before they started living together as man and wife. The officials here being unaware of the traditional values held by the client considered that she was married to a different person earlier and had refused the application. The client was informed and was made to make a new application based on the procedures followed in UK. Following that the application was processed and her marriage was certified.

HDPL

HPDL form is used to apply for extension or indefinite leave to remain in the UK by an individual who was refused asylum in the UK but were given one of the following namely **exceptional leave to remain**, discretionary leave to remain and humanitarian protection. There is no fee for making this application, but the considered person must be in the UK while applying. The application needs to be send not before 28 days of their permission to stay in the country expires. Dependents of the applicants can also apply along with children under 18 years of age. Children over 18 years need to apply separately.

Asylum seekers will be granted with 4 or less years of limited leave to remain in the initial stages. The concerned person is eligible for applying for indefinite leave to remain after this period. If somebody was recognised as a refugee after being on exceptional leave and had fulfilled 4 years irrespective of the status of leave to remain then they are also eligible to apply for indefinite leave to remain.

Exceptional leave to remain is granted to certain individuals on the basis of very compelling or compassionate circumstances. This is executed after satisfactory evidence that the applicant is not considered by the asylum act but strongly fulfils the criteria that the individual is likely to face some adversity on returning to his home country.

Discretionary leave is granted to individuals with certain reasons and who had been denied

international protection earlier. This is granted to individuals to avoid breach of certain articles in the law, children, medical cases, severe humanitarian conditions and other cases where refusal may lead to breach of human rights. This can be applied for an initial period of 3 years.

Humanitarian protection is granted to a person who when sent back to the home country might undergo death penalty, unlawful killing or torture and other degrading treatment. They are granted leave for a period of 3 years. This is not offered to criminals and others who are guilty of any unlawful behavior.

Case study 85

Master R had initially contacted us in 2010 for the purpose of extension of his visa. The client had initially entered the country in 2007 and had sought asylum. He was not granted refugee status but was granted a discretionary leave to remain in UK till 2011.He had successfully completed 3 years of stay in the UK and expressed his fear in returning to his country fearing persecution. His application was rejected unfortunately as the details furnished by the client were not substantiating his refugee status as far as the officials were concerned. On the other hand the home office had granted the client with a limited leave of 1 year on discretionary basis.

Case study 86

Master S T had requested for our service back in 2008 when he had entered UK and wanted to seek asylum. His application was processed then but he was not granted refugee status then and instead allowed to remain for a six months period on a discretionary basis. Following this in 2009 he had contacted us again to extend his stay to indefinite period using the HDPL application. His claim was refused as his nationality was in a disputable status and he had failed to show that his return to the home country would definitely lead to prosecution according the authorities. However his right for further appeal was exercised and he was helped in the process. The immigration judge had refused and hence again the case has been taken to the upper tribunal. The case is on the go and his appeal is still in progress.

TRAVEL DOCUMENT

A travel document is a document that can be used to travel outside the United Kingdom if a person cannot use a passport issued by his own country for that purpose. A person can apply for a travel document only in certain special circumstances. There are four types of travel document, depending on the circumstances and the status of that particular person in the United Kingdom. Individuals who have a limited or unlimited leave to remain in the UK can apply for a travel document provided their stay is being granted for a period of for more than 6 months. The group of people who can apply include:

1. Refugees who have been granted asylum
2. A stateless person
3. Individuals with indefinite leave to remain
4. Individuals exercising humanitarian protection
5. Individuals who have granted leave on exceptional and discretionary basis

The first category of persons are eligible for a travel document that is called as a conventional travel document and it is in blue colour, the second category people are eligible for a stateless person's document which will be in red colour and travel document issued for the last three categories documents will be black in colour. With a red document the holder can travel to any country and with the other two other types the holder is restricted from traveling to the country from which asylum is sought. If a person is in UK and a citizen of any country then they can apply for a one way document. Those who can't use the passport provided by their country can apply for a certificate of travel. Children less than 16 years need to apply for a child travel document and those of 16 years and above may apply using an adult travel document application. A travel document is accepted in a number of countries only when if it is valid for a period of 6 months at least. Hence before applying for one a person should have his stay extended if it happens to be less than 6 months.The charges for claiming a Convention travel document, Stateless persons' document and One-way document is £77.50 for adults and £49 for children. The Certificate of travel costs £220 for adults and £138 for children.

Case study 87

Mrs. S D had sought our support in 2006. Then she had instructed us to assist her in getting her granted indefinite leave to remain in the UK. She had initially entered the country in 1997 and had

been granted leave to remain on discretionary basis. Further she wanted to apply for indefinite leave to remain. The organization assisted her in the process and she was granted indefinite leave to remain subsequently considering her as an exceptional case owing to her 9 years of stay in the country mainly. In 2010 she came in touch with us again for the purposes of obtaining a travel document. The authorities have refused her application on basis that she needs to prove that her passport application has been refused. As a matter of fact the country of origin of the client had asked for certain documents like her birth certificate for processing her passport application. Client was unable to provide those as she her documents were destroyed in war. Hence she couldn't get her passport and because of this they had refused her travel document also.

Case study 88

Mrs. K had instructed our organization to get her travel document in 2010. The client had entered the country in 2006 and was granted with a refugee status in the year 2008. As she fulfilled the criteria and had produced the necessary documents she was provided with the travel document.

PBS (Dependents)

If a family member of a migrant who has entered the country under the point based system wants to extend their stay then they need to apply with this form. The entry clearance will see to that the leave to remain ends with the time period allotted for the main applicant. The applicants are allowed to switch if they satisfy the required criteria. The dependents are not entitled to any public funds and are not permitted to practice as a doctor or a dentist unless they fulfill certain criteria.
The applicant and the dependent should of 18 years and above while entering the country. The conditions and the fund requirements vary for the various tiers in the point based system.

TOC

A need for TOC application arises when a person who has limited leave to remain wants their permission confirmed in another document. It is mainly done due to the fact that a new passport has been obtained. Currently it is required to apply for a biometric card along with this application. Any dependents partner or spouse can apply using this form. An amount of £200 is charged for individuals on applying through post and £600 for premium service. An extra amount of £50 pounds is charged for dependents for applying through post and £150 if done through premium service.

The supportive documents that are necessary for applying a TOC include passport of the applicant and dependents if any, police registration certificate if requested, if the passport is lost then the police report, utility bills, proof of identity and home office document showing the permission granted for limited leave to remain.

Case study 89

Mr. K sought our help in endorsing his visa details on his new passport. The client has been issued with a residency card as a dependent of an EEA national in 2010 which is valid till 2014.He had obtained a new Sri Lankan passport in 2010 and wished to transfer his visa details in the new passport. The client was asked to resubmit the application as the home office had made changes to the fee. On resubmitting the client was given an appointment for getting a foreign national ID. Unfortunately the application was refused without further explanations stating that the appropriate application wasn't submitted. The organisation is currently in the process of identifying the reasons behind the refusal.

Case study 90

Mr. M requested our services for endorsement of his visa in a new passport. The client had entered the country as a student in 2010 and in the process of applying for his provisional license his passport got lost. Hence a need has aroused for endorsing the visa details in the new passport he has acquired. He was given an appointment for the biometric card and subsequently the visa endorsement.

NTL

This application form is used by individuals who wish to transfer their passport details into a new or a replaced passport with a no time limit stamp. This is applicable to individuals who have indefinite leave to remain in the country. Along with them their dependents also should apply. The fee for making this application comes around £200 per individual and an additional £50 is charged for each dependent who is applying along with

them through postal service. If applying through premium service then £600 is the charge for a single client and there is an added amount of £150 for each dependent who is applying along. The supportive documents that are essential for getting a NTL stamp are the passport of the applicant and dependents if any, if the passport is lost then the police report, utility bills, proof of identity and home office document showing the permission granted for indefinite leave.

Case study 91

Mr. S had been our client from 2006, when the organisation had provided the client with the assistance required in his immigration. They had actually entered the country in 1997 and were granted indefinite leave to remain from 2009. In 2010 the client came to us again for transferring his visa details in a new passport. As the client was eligible and all the documents were submitted appropriately the clients NTL application was considered and the visa details were endorsed in the new passport.

Case study 92

Mrs. S instructed us in 2010, for endorsing her visa details in her new passport. She had been granted indefinite leave to remain in this country from 1999. Currently her passport has expired and she wanted to endorse her visa details in the new passport. After forwarding the necessary documents the home office had successfully sent back her endorsed new passport shortly. The client was informed of the same and she was duly handed over with all her original documents.

Case study 93

Mr. J instructed us for getting a NTL on his new passport in 2009. His immigration history and background information was collected for the purpose. He had been granted ILR from 2011. After forwarding the necessary documents there was no response for 6 months following this and hence the organisation made an enquiry on behalf of the client. In the mean time as the client wanted to travel to his home country and a time period of one year had lapsed since the time of NTL application the support of the member of the parliament was sought. The home office on the other hand had refused the application in April 2011 stating that a refugee cannot travel with his passport and needs to avail a travel document for that purpose.

ENTRY CLEARANCE VISAS

The entry clearance visa system brought lots of changes in recent years in a way restructuring the entry visa system and have more effective control. In our experience the making application is become harder because entry clearance visa system is dealt by the agents. It is the procedure that is used to make a decision in allowing a person to enter the UK. For certain applicants it's mandatory while for the others it is not so. Non visa nationals are those who do not require a clearance when they are visiting for a period less than 6 months. An applicant for entry clearance must have a valid passport or any other document establishing identity and nationality. For entry clearance appropriate fees needs to be paid for each category as prescribed and the applicants are also expected to submit their biometric details.
There are three types of entry clearance based on the vignette of the corresponding country as given below

- Visa
- Entry clearance
- Family permit

Visitors

A visitor is someone who wants to enter and be in the UK for a short period, for reasons like visiting friends and family, to do business, to do a short course of study, to have private medical treatment. A visitor in order to enter into UK need to show that

1. Intent to stay not more than six months
2. Leave UK at the end of their visit
3. Have enough money to support themselves
4. Don't intend to take paid or unpaid employment

General visitor (VAF1A)

If someone wants to come to the UK as a tourist or to visit friends they should apply as a general visitor using the VAF1A application from. To visit the UK under this category then they must satisfy the below given category and they should substantiate that

- they are intending to visit the UK for no more than six months
- they intend to leave the UK at the end of their visit
- they have enough money to support themselves and live in the UK without

working or needing any help from public funds

While submitting an application documents that are essential to substantiate all the above mentioned factors need to be provided.

Family visitor (VAF1B)

A family member who stays outside the UK and wish to travel to the UK to visit a family member can use the form VAF1B to enter the country as a family visitor. The family members who can come under this category include the following relationship

- Spouse, father, mother, son, daughter, grandfather, grandmother, grandson, granddaughter, brother, sister, uncle, aunt, nephew, niece or first cousin
- Spouse's father, mother, brother or sister;
- The spouse of a son or daughter;
- Step father, stepmother, stepson, stepdaughter, stepbrother or stepsister; or
- A person with whom an individual has lived as a member of an unmarried couple for at least two of the three years before the day on which your application for entry clearance was made.
- Children adopted under an adoption order recognized in UK law
- Civil partners

Case study 94

Mr. K approached us for bringing his father in law to UK under family visitor visa in 2009. The application was rejected by the UK home office as they weren't sure of the fact that whether the father in law intends to return to his home country. The authority weren't satisfied with the documents submitted regarding the financial status of the applicant. The organisation assisted the client in appealing against this decision. The application form, and other necessary documents namely the witness statements were drafted with due care by the assistance. They tried to stress upon the fact that the client has a family and business to run back in the home country and will return before the intended time period. All the efforts were in vain as the appeal was dismissed on the same grounds.

Case study 95

Mr JS instructed us in 2009 to assist him in bringing his mother in law in family visitor visa. The application was forwarded to the visa agency along with the verified documents and the prescribed fee. As the client had fulfilled the criteria and the application was satisfactory his application was approved and his mother in law was granted six months family visitor visa.

Case study 96

Mr B M approached us in 2010 and requested our support in removal of the curtailment of the immigration of his mother in law. It was found that his mother in law was granted with multiple entry visa valid till 2011 in 2009 but she was refused entry in 2010 when she came to visit her family. The reason was that the statement that she used saying that she is coming to the country for taking care of children was misunderstood by the authorities to be employment sake. Hence her entry was refused then and her family was also not interviewed then regarding this. It was stated that an appeal couldn't be made against his. The organisation understood the genuineness in the case and aided the client in appealing for a judicial review. The client was assisted in establishing their side in a clear manner. Following this the judiciary removed the restriction on the client in entering into the UK.

VAF1C- business

Any person who is employed abroad but wishes to visit the UK for short periods to undertake business related activities may apply as a business visitor with the VAF1C form. A business visitor is expected to follow the following instructions to gain this visitor visa

1. they have to be based in abroad and do not intend to transfer their base to the UK, not even temporarily
2. they are allowed to receive their salary from abroad
3. they are expected not be involved in selling goods or services direct to members of the public
4. they shouldn't be replacing someone in the UK
5. they are not supposed to be coming to do work placements or internships

Film crew, representatives of overseas news media, academic visitors, visiting professors, secondees from overseas companies, religious workers, advisers, consultants, trainers or trouble shooters **and** *persons undertaking specific, one-off training can travel under*

this category. Apart from the above mentioned those intending to carry out various other permissible activities can also utilize this visa and enter as business visitors.

VAF1D- Student

This category is designed for those who wish to undertake a short course of study whilst visiting the UK. A student visitor is not entitled to stay for more than 6 months and they will not be able to extend their stay. A student visitor will not be able to work part-time or undertake work experience or a work placement. A student visitor needs to meet the main requirements of the general visitor rules and must be able to show that they have been accepted on a course of study at an educational establishment which holds a Sponsor Licence or accredited by a UK Border Agency.

VAF1E- Academic

If a person on sabbatical leave from an overseas academic institution who wishes to make use of their leave to carry out research here or an academic taking part in formal exchange arrangements with United Kingdom counterparts; or an **eminent senior** doctor or dentist coming to take part in research, teaching or clinical practice can apply with the VAF1E form and enter the country as a academic visitor. The maximum permitted stay under this category is 12 months. In addition the visitor must not receive funding for their work from any United Kingdom source,not engage in any work other than the academic activity ,not be filling a normal post or a genuine vacancy, not intend to take employment in the UK,intend to leave the UK at the end of your visit, be able to maintain themselves and any dependants without having recourse to public funds and be able to meet the cost of their return or onward journey from the UK.

VAF1F- Marriage

People coming to the UK to get married or to register a civil partnership must get a visit for marriage or visit for civil partnership visa. For this they will need to show evidence that they plan to enter into a marriage or civil partnership during the period for which they are granted leave. Once they are both in the UK then they will need to give official notice of their marriage or civil partnership at a designated register office.

VAF1G- Medial treatment

A person who needs medial attention in UK and wishes to take it as private medical treatment can apply using this form. For this purpose they are expected to show that they

- have made suitable arrangements for the necessary private consultation or treatment;
- have enough money to bare the expenses for the treatment
- have enough money to support themselves and live without any help from public funds
- intend to leave the UK at the end of the treatment

They may also be asked to provide the documents regarding their condition and confirmation of arrangements and evidence that they can afford. If the person needs to stay longer than six months to complete their medical treatment then they can apply to the UK Border Agency for getting an extension.

VAFIH- Visitor in transit

A person will need a visa to pass through the UK on the way to another country if they are a visa national, are a direct airside transit visa (DATV) national or hold a non-national, including refugee, travel document. For this purpose the VAF1 H visa is used.

The requirements to be met by a person seeking leave to enter the United Kingdom as a visitor in transit to another country are that he is in transit to a country outside the common travel area, has both the means and the intention of proceeding at once to another country, is assured of entry there and intends and is able to leave the United Kingdom within 48 hours. A person seeking leave to enter the United Kingdom as a visitor in transit may be admitted for a period not exceeding 48 hours with a prohibition on employment and it will not be extended on any grounds.

VAF1J -Sports visitor

If a sports person wants to take part in a specific event, tournament, or series of events as individual competitors or as members of an overseas team they can use this visa. This also allows amateur, individuals visiting for making personal appearances and in trials, visiting for short periods of training. A member of a technical support or

an officer involving the sports activity can also apply under this category.

VAF1K- Entertainer

The entertainer visa has been designed for those coming to the UK for a short time to take part in certain major arts festivals, music competitions and charity events.

The individuals under the following category also may utilize the entertainer visa

- a professional entertainer coming to take part in a music competition
- an internationally famous person coming to the UK to take part in broadcasts or public appearances, provided they are not being paid
- coming to the UK for an audition provided this is not performed in front of an audience
- an amateur entertainer seeking entry as an individual performer for a specific engagement
- amateur entertainers seeking entry as part of a group, such as a choir or youth orchestra coming for a specific engagement
- a professional entertainer taking part in a charity concert or show where the organizers are not making a profit and you are receiving no fee
- an amateur or professional entertainer taking part in a cultural event sponsored by a government or recognized international organisation, or at a major arts festival
- a member of the technical or support staff of amateur or professional entertainers, who are attending for the same event
- an official attending the same event as the entertainer

VAF2 - Employment

Individuals seeking entry clearance for permit-free employment can apply using this VAF2 form. Permit free employment involves certain types of work for which there is no need for permission to undertake and under this are included sole representative of an overseas company in the UK, representatives of overseas newspapers, news agencies and broadcasting organizations and dependants of any of these workers. The applicants under this category need to fulfill the English language requirements.

VAF3A- Prospective student

An individual is allowed to come to the UK as a prospective student for up to 6 months if they intend to undertake studies in the UK but have not completed all the arrangements for your course of study. They should have a clear idea of the type and purpose of the studies and should already have been in touch with educational institutions in the UK. A vague intention to study for qualifications or to enter an unspecified university or other institution is insufficient. Applicants must be able to show that they will start their studies within 6 months of arrival in the UK. Sometimes they will be able to provide evidence of the starting date in a letter of acceptance or prospectus giving details of the course

VAF3B- student dependent

A prospective student's husband, wife or civil partner and any of their children under 18 can come to the UK with them while they make arrangements for their studies. It is required that the prospective student makes sure that they adequately accommodate and support their dependents without working or needing any recourse to public funds.

Case study 97

Mrs S K instructed us for gaining entry clearance for her son as her dependent. The client entered the country in 2010 as a student in the UK with limited leave to remain till 2011. We also learned that her husband's whereabouts were unknown. She wanted to bring her son to live with her as her dependent. Hence the VAF3B form was considered essential for applying the entry clearance. The authorities have refused entry for her son as he couldn't give the details of his father. The client was further supported in lodging an appeal against this decision in all means. The case is yet to be resolved and the hearing is ongoing.

VAF4A -Settlement including family reunion cases

If a person wants to join their husband, wife, civil partner, fiancée, proposed civil partner who is present and settled in the UK then they may use this form for the settlement purpose. They may use this service if

- they are legally married to each other or are in a civil partnership

- they both intend to live together permanently as husband and wife or as civil partners
- they have met each other before
- they can support yourselves and any dependants without any help from public funds
- they have suitable accommodation
- neither of them are aged under 21 years

If the applicant and their husband, wife or civil partner have been living together outside the UK for four years or more, and meet all the necessary requirements to stay permanently in the UK, then they may be granted indefinite leave to enter. Otherwise the permit will be provided for a period of 2 years and on proving that the relationship is steady subsequently their stay will be extended. The necessary requirements include showing that the applicants has the necessary level of knowledge of the English language and life in the UK.

Case study 98

Mr T wanted to apply settlement visa for his wife and 2 children to enable a family reunion and that was the reason why he approached us in 2010. He had entered the country in 2007 and had sought asylum and had attained a refugee status in 2008. The application was declined stating the reason that the relationship with his family members was not clearly established. He was assisted in appealing against this decision. Steps were taken to assist the client in getting the DNA test. Following this the tribunal granted clearance for entry of his family members. Even after this the visa couldn't be processed as the decision taken was not corresponded to the home country of the family members. The organisation intervened by contacting the officials in the home office and requesting them to communicate the same to the respective authorities. This helped in passing through of the information to the appropriate authorities. The client was informed about the outcome and was asked to proceed to the reunion.

VAF4B - Returning resident

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. They will qualify if:

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

If they have been away from the UK for longer than two years, they will still qualify to return to the UK as a returning resident but if a person has been away from the UK for more than two years, then they must apply for a visa using this VAF4B Form.

VAF5 - EEA family permit

Family members of an EEA national should get an EEA family permit if they want a visa to travel to the UK or if they are coming to live with them in the UK permanently. This can be applied using the VAF5 form. The EEA national can bring their partners, children, parents and grandparents as family members with this option.

Case study 99

Mr DB instructed us to get her spouse an EEA national family permit visa in 2008. Based on her request the necessary details were collected and she was explained about the procedures. She was mainly expected to show that she would be able to bear the financial burden, accommodation and full care of the family member once he arrives. Hence her pay slips, tenancy agreement and other documents to substantiate those were also given the due importance in verification and submission. As the documents and the application made was appropriate the family member was granted entry clearance subsequently.

Case study 100

Our client Mr G A requested our services to get clearance for his mother to settle in UK as a family member of an EEA national. The client had entered the country to work in 2007 from Germany. He had been granted with a residency certificate in 2009. He was working and had appropriate accommodation arrangements. He was asked to bring the supportive documents and they were verified. The visa was refused for reasons that certain documents were not adequate. The client went ahead and exercised his right to appeal with our assistance. The clarifications made during the appeal were satisfactorily replied by the client and his mother was granted with the entry clearance.

VAF6 -Direct airside transit

A Direct airside transit visa can be applied using this VAF6 form and it can be booked if a person has booked an onward ticket from the UK for travel within 24 hours of their arrival, and there is no need to change airport in the UK, have all the correct documents and if there is no need to pass through the UK's immigration control. This visa is valid for six months. The possessor of this permit can use it to travel through the UK as many times as they like during that time, as long as their passport and visa for the country that they are travelling to will still be valid after the transit visa runs out. The visa will only be valid for entry to the UK if the person meets these conditions each time you travel through the UK.

VAF7 - Right to abode

The right of abode means that a person is entirely free from United Kingdom Immigration Control. Those who have the right to abode do not need to get permission from an Immigration Officer to enter the UK and 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.

A person applying for entitlement of right to abode needs to use this VAF7 form.

VAF8A - Overseas territories

An individual will require this visa if they need to travel to any of the British overseas territories. Anguilla, Bermuda, British Antarctic Territory, British Indian Ocean Territory, British Virgin Islands, Cayman Islands, Falkland Islands, Gibraltar, Montserrat, Pitcairn, Henderson, Ducie and Oeno Islands, St Helena and St Helena Dependencies, South Georgia and South Sandwich Islands, Sovereign Base Areas of Akrotiri and Dhekelia and The Turks & Caicos Islands are the overseas territories that require this sort of permit.

VAF8B- Commonwealth territories

This form needs to be used to gain entry clearance to one of the commonwealth countries.

Fees required

In general for short term visitors the application fee is £76 while it is £265 if the stay is for as long as 2 years, it is £486 if the stay is for 5 years and if it's for 10 years long then £702 is charged.

Agent system

UK visas are now being operated by other commercial agencies in various countries. It aims at helping the applicants of UK visa to reach for services in their surrounding especially in highly populated countries. These agencies operate with high profiled professional specially trained for this purpose. The trained staff in the centers deal with all sort of visa enquires and applications. The main duty of these agencies is to collect the biometric information as prescribed, to check for the required supportive documents, collect the relevant fees and to provide information about the application process. On the other hand this agency is not responsible for any decision making or clarification regarding the application process. The collected documents are forwarded to entry clearance officers by these agents and it's their role to make a final decision.

Generally it takes a minimum of 30 working days and a maximum of 60 working days with some exceptions for the UK border agency to take a decision on appropriately submitted application.

British Nationality

Members of our community who were settled in UK and wish to become a citizen of this country approach us to get advice and assistance to make a nationality application. Approximately 8 to 10 files are being processed under this category by our organisation every month. Funding for this work in the past was mostly covered by the legal service commission's civil legal aid. However last year we faced funding cut on this nationality matter by the legal service commission stating that nationality application service is straight forward and there is no need for legal representation or advise and therefore they ceased to fund nationality matter related files of our clients. We objected the legal service commission's view and submitted the legal issues engaged on those file. However we were not fully successful in reversing their decision. Fortunately we are receiving funds from the London council which will help us to overcome the financial burden caused by the legal service commission funding cut.

British citizens are the individuals who have the right to live in the country permanently and are free to leave and enter the UK at any time.British citizenship covers six different forms of British nationality as defined by the British Nationality act and they include

- British citizenship
- British overseas citizenship
- British overseas territories citizenship
- British national (overseas)
- British protected person
- British subject

British nationality is defined in law and whether a person has a claim to British nationality or not can be determined by applying the definitions and requirements of the British Nationality Act 1981 and related legislation to the facts of an individuals date and place of birth and descent.

Acquisition by birth or adoption

According to the British nationality act a child who is born to or adopted by parents who are British citizens will be automatically entitled to British citizenship. This applies even if either parent is settled in the United Kingdom.

Acquisition by descent

A person who is born outside the United Kingdom shall be a British citizen provided at the time of birth the child's parent was a British citizen by descent and they were outside the United Kingdom for fulfilling their duties in relation to the community service or crown service of the United Kingdom.

Child registration

Children who are born in the UK but cannot become UK citizens by birth or descent can register while they are minors and can become one on fulfilling the criteria if they require. To register as a British citizen a person must be born in the United Kingdom on or after 1 January 1983 or be 10 years of age or over and must have spent no more than 90 days outside the United Kingdom in each of the first 10 years of your life.MN1 application is used for this purpose and the child must be under 18 years of age on the day the application is received by the authorities. 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. A child born in the UK to parents who were not British citizens is entitled to register when the parents are settled or when they become British citizens. There are some exceptions for who should be making use of this application for registration. There are various categories of children who are eligible for the registration of British citizenship as discussed below.

Children born in the United Kingdom

a) Children born in the United Kingdom to parents who are now settled in the United Kingdom

b) The child will have an entitlement to register under section if they were born in the United Kingdom on or after 1 January 1983 and lived in there for the first ten years of their life.

c) Illegitimate children of British citizen fathers

d) Children who do not come under other sections and whose parents are applying for British citizenship

e) Discretionary basis - children born in the United Kingdom to parents who are not settled in the United Kingdom and are not British citizens

The other categories under which children will be granted citizenship are as namely those adopted abroad by parents who are British citizens, who are born before 1 July 2006 whose father is a British citizen but not married to their mother, Children of a parent in designated service or community institution service ,citizenship, Children ,Children born abroad to parents who are British by descent and who are now living in the United Kingdom ,Children born abroad after 13 January 2010 to a parent who is in the armed forces and in other cases where it is considered to be in the child's best interests to be granted British citizenship .

Fees and documents required

The fee for a single child to be registered is £540 and in the case of 2 children it is £810.

The main documents which are to be produced are the child's birth certificate, the child's travel document; or the child's driving license, building society or credit card statements issued to the child in the last six months, evidence that the child was

born abroad to parents who are British citizens, the child's birth certificate showing the parents' names, the British parent's birth certificates and the British parent's passport. In case of adopted children then the evidence that the child was adopted abroad by British parents. Evidence that can be produced by children living in the United Kingdom includes the birth certificate, passport and their parents' marriage or civil partnership certificate.

Case study 101

Mr. MT entered this country in 2000 and sought asylum. Following him his son came in 2008 and in 2010 February his wife and daughter had also joined. In August 2010 Mr. M T was granted with indefinite leave to remain with his dependents. In November 2010 he had instructed us for applying for British citizenship for his dependent children. Following that child registration applications of his son and daughter with the required documents were forwarded to the home agency. The home office had rejected the application on the basis that none of their parents are British citizens. They also had made it clear that the case shouldn't be considered on discretional basis also. Following this our organization wrote to home office explaining the length of stay of the concerned children and to reconsider the decision. The home office had rejected our request and had further advised that the clients can get their citizenship if either of their parents acquires one or through naturalization once they are above 18 years.

Naturalization

Naturalization is a process in which a person who is not born in a particular country acquires its citizenship and nationality on fulfilling certain criteria. If a person is aged over 18 and has been living in the United Kingdom for the last five years or three years if that person is married to or a civil partner of a British citizen then they may be able to apply for naturalization as a British citizen. Applications for naturalization are made using application form AN.

Eligibility

The requirements for applying for naturalization process are aged 18 years or over, having a sound mind, Intending to continuously live in the UK, or to continue in Crown service, the service of an international organization of which the UK is a member, or the service of a company or association established in the UK, ability to communicate in English, Welsh or Scottish Gaelic , sufficient knowledge of life in the UK, good character and fulfilling the essential residential requirements.
Residential requirements

The residential requirements that must be fulfilled by an applicant include being a resident in the UK for at least five years, present in the UK five years before the date of their application, not spent more than 450 days outside the UK during the five-year period, not spent more than 90 days outside the UK in the last 12 months of the five-year period and not been in breach of the Immigration Rules at any stage during the five-year period.The residential qualifying period is calculated from the day when the application reaches the concerned authorities.

Immigration time restrictions

A person must be free from immigration time restrictions when they apply for naturalization. Unless they are married to or the civil partner of a British citizen, the concerned person should have been free from immigration time restrictions during the last 12 months of the residential qualifying period. If a person has been granted indefinite leave to remain (ILR) in the UK, then they will be considered to be settled here provided that they have not been away for two years or more since they received ILR. The applicant must have been in the UK legally throughout the residential qualifying period.

Good character requirement

A good character requirement must be met by anyone applying for British nationality unless they are under 10 years old when making the application; or if they 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).The authorities will consider a person to be of good character if they show respect for the rights and freedom of the United Kingdom, have observed its laws and fulfilled their duties and obligations as a resident. The concerned authorities will also check with the police and may contact other government departments as part of their character check.
Financial background

A client will be verified whether if they pay income tax and make National Insurance contributions. The authorities may ask HM Revenue & Customs for confirmation of this. Self Assessment Statement of Account needs to be sent if the concerned person doesn't pay income tax through PAYE. If a person has been declared bankrupt at any time they should give details of the bankruptcy proceedings. Their application is unlikely to succeed if they are an undischarged bankrupt.

Criminal record checks

Criminal record checks will be carried out on all applications from people aged 10 and over. An applicant must provide details of all civil proceedings which have resulted in a court order being made against then. They must also provide details of all unspent criminal convictions.

Sound mind requirement

An individual will be considered to be of sound mind if he/she has the ability to make their own decisions. The sound mind requirement is sometimes referred to as the full capacity requirement. In some circumstances discretion is used when deciding if an applicant must demonstrate that they are of sound mind. If a person is applying for naturalization on behalf of someone who is not of sound mind and for whom they are responsible, then they should complete the form as far as possible. They should highlight any areas that cannot be completed and should explain why it would be in the applicant's best interest to be naturalized. As a part of the application they should provide with evidence of the applicant's medical condition and the fact that they are in the concerned persons care. This should include documentation proving the care arrangements.

Exemption of language and life in the UK

If a person is 65 or over, or has a long-term physical or mental condition that prevents them from learning English or being tested on their knowledge of life in the UK, then they may not need to meet either the language requirement or the knowledge of life in the UK requirement. Physical or mental illness will not automatically exempt a person from fulfilling this requirement. If the illness responds to treatment, then they will be expected to prepare and meet the requirement. Exemption is considered only if a particular mental or physical condition prevents a person **permanently** from learning English or about knowledge of life in the UK and need to provide proper evidence from the doctor. A person will not be exempted on grounds of illiteracy and for merely staying in the country for a long time. People are not exempted from the test on the basis of their qualifications, or the fact that they are from an English-speaking country. If required even a person who was given exemption during settlement will be asked to take a test during naturalization.

Spouses claiming British citizenship

A spouse of a British citizen who is applying for a citizenship is expected to be of age 18 or over, of sound mind, and to be capable of communicating in English, Welsh or Scottish Gaelic to an acceptable degree, to have sufficient knowledge of life in the United Kingdom, of good character, the husband, wife or civil partner of a British citizen, meet the residential requirements and the husband, wife or civil partner is in Crown or designated service outside the United Kingdom. In order to demonstrate the residential requirements for naturalization a spouse of a British citizen will need to have been resident in the United Kingdom for at least three years, have been present in the United Kingdom three years before the date of your application, have not spent more than 270 days outside the United Kingdom during the three-year period, have not spend more than 90 days outside the United Kingdom in the last 12 months of the three-year period and have not been in breach of the immigration rules at any stage during the three-year period

European Economic Area nationals and Swiss nationals

If a person is a national of a country in the European Economic Area (EEA) or Switzerland, or family member of such a person, then they will automatically have permanent residence status if they have exercised EEA free-movement rights in the UK for a continuous five-year period ending on or after 30 April 2006. There is no need for them to apply for leave to remain but are expected to have held permanent residence status for 12 months before applying for naturalization. If they have been outside the UK for six months or more in any one of the five years of the residence period, they will have broken your residence with some exceptions. If a person leaves the UK for a

continuous period of two years or more, then they will lose their permanent residence status.

Fees and documents required

The applications are charged £836 if they are applying alone and £1294 if they are applying as a couple.

As an evidence of their identity the applicants need to provide their passport, nationality identity card, Home Office travel document, Home Office entitlement card, Home Office application registration card, birth certificate, photo driving license, bank, building society or credit card statements issued in the last six months. Evidence of knowledge of English and of life in the United Kingdom also needs to be submitted. It can be certificate of progression from one English for Speakers of Other Languages (ESOL) level to another, with a letter from the college confirming that they have completed an ESOL with citizenship course or a letter confirming you have passed the life in the UK test, stamped and signed by the test supervisor; confirmation that they have met this requirement in order to obtain settlement.If exempted from knowledge of English and life in the United Kingdom requirement then they should provide evidence from your doctor that it is not a temporary condition.

Applications made on the basis of residence in the United Kingdom should have Evidence of lawful residence during the residential qualifying period.Evidence that they are free from immigration time restrictions are also a must.
European Economic Area and Swiss nationals should provide the Evidence of their nationality through their passport; or nationality identity card and the Evidence of exercising treaty rights for five years through P60 tax certificates, an employer's letter confirming employment, a benefits letter confirming job seekers' allowance claimed; a benefits letter confirming incapacity benefit claimed or documentary evidence confirming pension received.

A self-employed/business person should provide evidence from HM Revenue and Customs confirming that they have paid tax over the relevant period. Students should provide a letter from the educational establishment confirming that they were enrolled on a course of study throughout the qualifying period and evidence that they have comprehensive insurance cover for them and their family members.

For an applicant who is self-sufficient their bank statements and evidence that they have comprehensive sickness insurance cover for them and their family members is required. If the applicant is retired then they should provide evidence that they are receiving a state pension. If someone has been unable to work due to ill health, then a doctor's letter or medical report confirming that is essential.If an application is made on the basis of marriage or civil partnership to a British citizen then they should provide their partner's passport or birth certificate and their marriage or civil partnership certificate. Documents like HM revenue and custom self assessment if not PAYE arrangements is required for applications made from self-employed people

Case study 102

Mr. CT came to this country and claimed asylum in December 2000. His asylum claim was refused but he was granted exceptional leave to remain in January 2002. Subsequently he was granted indefinite leave to remain in June 2007. In august 2008 Mr. CT approached us to get advice and assistance to make a citizenship application. In the end of 2008 we made the naturalization application and in January his application was refused stating that he is not a good character while he was in Srilanka in view of his involvement in political activity whilst he was in srilanka. The refusal letter had quoted the information that was produced by the client during his interview for claiming asylum back in 2001.During the interview held then the client had reported that he was a supporter and member of the LTTE and later became a member of the organization and was continuously supporting the members of the organization. He had also mentioned that he was arrested by police and detained by the army before he left the country. The home office had also pointed out the absence of all these facts in the citizenship application. Based on the above reasons the home office stated that the client is not of good character and based on that had rights to refuse his application.

The home office was requested to reconsider the decision but as there was no response an appeal was made to the judicial review counsel. The appeal was made on the grounds that it was assumed by the home office that the client was

aware of the activities of the LTTE and he was not given any chance to explain his side. Further it was also specifically made clear that the client was not involved in any matter to be called as a person of not a good character after coming to the UK. Hearing for the case was refused and after discussion with the counsel the application was renewed for hearing. The grounds of hearing were based on the facts that the client was not actually involved in any war related crimes although his organization would have and more over the client was not given an opportunity to defend his side and claim that he is of good character. The fact that a number of other persons who were involved with the LTTE are now being naturalized was asked to be given a consideration before refusing the clients naturalization application. The case hearing is ongoing and a decision is yet to be made by the judicial review after the hearing.

Case study 103

Mrs. SS came to the country in 2002 and claimed asylum fearing prosecution as she was an active member of LTTE in the black tiger wing. Her asylum claim was refused and her appeal rights were exhausted. However she was unable to return to Srilanka and she made fresh claim including human rights. Based on this claim she has been granted indefinite leave to remain in 2007. She sought help from us in late September 2009 to make an application form for naturalization. Her application was approved in 2010 and she obtained citizenship.

Case study 104

Mrs. MS came to the country in 2002 and claimed asylum. Her claim was refused and all her appeal rights exhausted until 2005 when she was granted indefinite leave to remain. In 2010 she approached us for applying for British citizenship. Her application was refused on two grounds. The client was claimed to have breached the immigration laws and didn't satisfy the residency requirements for the citizenship application. The prescribed five years of residence was calculated by them from the time when she was granted ILR and was found to be inadequate. Further it was advised that the application can be made after completing the required time period or as a spouse if her husband becomes a British citizen. The applicant's period of stay in this country with temporary admission was not taken into account by the home office while in many of other cases it was considered and those people were granted citizenship. The client was also denied any rights to appeal against this decision.

Case study 105

Mrs. PK had initially entered the country in the year 1998 and had received ILR status in the year 2000. In 2010 she had requested our services to enable her get a British citizenship. While considering her application the authorities weren't satisfied that she fulfilled the 5 year residential period. Actually the client was away for a month in the starting of the prescribed period and hence her application was refused. They had further advised on the time frame from when she is considered eligible and hence asked her to redate the application. Due to postal delays which led to delay in communicating this to the client she couldn't respond to the authorities in the prescribed time frame. Hence after a few months interval we made the changes required and forwarded the documents again to the home office. The organization made sure that the condition of the client and the reasons for the delay with regard to the earlier application were clearly communicated to the home office. Following this she was granted British citizenship.

Case study 106

Mr. and Mrs. S J had been our clients earlier and in 2010 they approached us for claiming British citizenship. Mr. S J had initially entered the country in 1993 and sought asylum in 1998 and was granted indefinite leave to remain in 2009. After submitting the necessary documents the home office had requested for further details about the accreditation status of the college through which the clients had got their language and life in UK test qualified certificate. The college couldn't produce the details that were requested in the allocated time period and hence the home office rejected the application. The home office made it a clear that if in future if required a new application needs to be made and the fees paid by the client was not refunded. Subsequently a new application was made with all the requested documents and this time the application was accepted and the clients were granted citizenship.

Right to appeal

When a person is denied of citizenship due to some reasons then he will duly informed by the

concerned officials prior to making of an order of the decision. He is also granted the right to appeal against the decision to the first tier tribunal or the special immigration appeals. A decision taken by the first tier tribunal is permitted for a further appeal in the upper tribunal and from there to the court of appeal.

LEGACY CASES

People who claimed asylum in the United Kingdom before the 5th March 2007 were considered by the Home Office Legacy Unit as decided by them in a priority basis. Most of TWAN clients who were accommodated by the Home Office in Sec 4 accommodations and who completed 12 years residence in the United Kingdom were granted Indefinite Leave to Remain by the Legacy Unit. But the other people who wait for their decision still depend on the Home Office Policy Decisions. The decisions of the pending applications may influence the decision of the collision Government to cap immigration cases. According to Home Office policy the legacy cases has to be fully dealt by July 2011. To expedite the decisions, the home office sometimes takes unfair decisions to refuse the applications on general grounds. Home office also often fails to disclose full reasons for refusal. At this situation we are unable to challenge the decision and the people suffer from backlog decisions as a result of the unfair decisions by the Home office. People who have no criminal convictions and fall within the exceptional category, believed that they would be considered favorably by the Home Office. But once they receive negative decision we find it difficult to challenge these cases as there are no substantive reasons disclosed with the refusal letter.

The following table of the Home office Legacy section clearly shows that which cases are falling under the exceptional category and the basis of Home Office decisions:

Exceptional circumstances Case Type	Explanation
Criminality	If there is evidence from the case records that the claimant has a criminal conviction then the file **should be sent immediately** to the Criminal Casework Teams in CRD (LCT2 and 5) for them to deal with quickly.
The case is subject to a court action	If a person sees a Court judgment that requires the BIA to take action on a specific case you should expedite it and make a decision **quickly**.
Suicide risk	All threats of suicide or self-harm should be assessed carefully. UK's obligations under Articles 3 and 8 of the European Convention on Human Rights (ECHR) and their obligations under section 6 of the Human Rights Act 1998 must be taken into account.If medical evidence has been provided to indicate that the claimant is likely to commit suicide or to harm themselves, they should look at all the circumstances and consider what steps can be taken to minimise that risk. These steps may include expediting the case. A claim that a delay in reaching a decision will lead to a risk of suicide or self-harm will not always result in a grant of leave or warrant a decision being made. A case should be assessed on the basis of its individual merits. Reference should be made to the existing guidance on dealing with cases where suicide is threatened.

Undertaking previously given to the constituency MP or in a JR case	A case should be expedited if the Border and Immigration Agency (BIA) have given an undertaking to consider or to make a decision on a particular case and this has not been done and a Senior Caseworker agrees.
Medical treatment required abroad	A case should be expedited if there is medical evidence that the claimant or dependants are suffering from a medical condition that is serious and If not treated abroad would be life-threatening or have a significant impact on that person's quality of life

In the other situations people still submit their further submissions to the Home Office, Liverpool Further submissions Unit in respect of asylum and Human rights. The Landmark decisions of *BA (Nigeria) and PE(Cameroon)* has to be considered by the further submissions Unit when taking decisions that if the decision is negative the right of appeal should be given to the applicant to appeal the decision in the First Tier Tribunals. We are still unclear whether the Liverpool Further Submissions Unit will amalgamate the cases with the Croydon Legacy Unit or not. Further decisions of our clients and when challenging the decisions, it will make clear of what is the real situation of the Legacy Unit.

Case study 107

Mr. V V a Srilankan national of Tamil ethnicity entered UK illegally in April 1999 and claimed asylum on the basis of his well founded fear of persecution as he was suspected to be supporting the LTTE in Srilanka. His appeal was heard and dismissed by the adjudicator in October 2001. Subsequently his appeal rights were exhausted. However he was to unable to return to Srilanka due to various reasons and he made the human rights application in the middle of 2002. This application was considered after 8 years by the home office in November 2010. He was asked to attend for an interview in Liverpool legacy case work unit and subsequently was granted indefinite leave to remain in the UK.

Case study 108

Mr. MK came to this country in April 2002 and claimed asylum, it was refused in May 2002 by the home office. In October 2002 his case was heard by the adjudicator and he wasn't successful with his appeal either and subsequently his appeal rights got exhausted. As he feared to return to Srilanka he made the fresh claim including human rights claim in middle of 2003 and he was asked to report monthly at the Becket house in London. He complied with his reporting routine. He was asked to attend an interview at Liverpool legacy unit in July 2010 and in the beginning of January 2011 legacy case work unit of Liverpool refused his fresh application. His application was refused as they found that the further submissions made were not significantly different from the previously considered material and hence it didn't amount to fresh claim. The letter of refusal also explained about the voluntary return program with other relevant detail as usual.

Although the final judgment was different for the above mentioned cases actually there wasn't much difference between the nature of the two cases apart from the length of stay of the applicants in the UK. Mr. VV stayed in UK for around 12 years while the second applicant Mr. MK stayed in this country for around 9 years.

Other projects

Over the years the organization adapted well to the needs of the community and was able to provide timely services to the community within the available resources. Supporting the victims of racial harassment, summer play project for refugee children, holiday trips for senior citizens and single parents, employment initiative projects, advice and representation for Tamil detainees, race relationship improvement projects, outreach services, ESOL along with computer skills for the elders were the main projects we carried out successfully in the past. Some of these projects are still being required by our community members and once we secure the necessary resources we can restart these projects. There are some other projects which are being run by TWAN for the welfare of the community members under various sectors as given below.

Fine arts education

Our organization conducts fine arts class during Sundays from 9.30 am to 2.30 pm in little Ilford

school for the benefit of the Tamil community children. Eminent volunteers who are experts in the field train the children with utmost dedication. Classes are being conducted for Miruthangam, Tabla and Guitar, Veena, Bharata Natiyam, Violin, Karnatic Vocal, Bollywood dance and Yoga. This acts as a chance for the community to revive the cultural and traditional heritage of the Tamils. There are very few chances as such for the Tamil community in the UK to keep a hold on their ancient tradition and hence these sort of classes act as a boon to aspiring children. These fine arts classes aim at developing the skills of the children in the Tamil community and at the same time engage them in meaningful leisure activities. The community members are considering it as a golden opportunity to learn an art which is close to their heart and culture. Around 220 children benefit out of this program.

Day centre for senior citizens

TWAN is running a Day centre in Manor Park for Tamil senior citizens residing in that surrounding and is open throughout the year. Around 120 individuals are benefited by this service and a vast majority of them are found to utilise the services throughout the year. On an average 60 of our senior citizens attend the day centre on a given day. It acts as an outlet for the elderly who don't have any other recreational facility at their home and act as a common place to share their feelings with people from their own community. During this time many purposeful activities are undertaken by the members including health workshops, seminar, mild physical training, reading and other such activity. They have their lunch together once a week and engage themselves in various group recreational activities. It also comprises of a dance group which enthusiastically participates in various cultural activities around London. They also meet in the public library to share their reading passion. Day centre project is being funded by the city bridge trust.

Supplementary education

TWAN organizes supplementary classes for Mathematics, Science and English subjects at Little Ilford School from 9.30 am to 2.30 pm on Sundays by our experienced and qualified volunteers for the needy children of the Tamil refugee community. The children are in need of such a requirement as they are in a new country and forced to follow a new educational system and hence face a lot of issues relating to the adjustment. Apart from this due to refugee experience the children are highly traumatized and find it very difficult to concentrate and perform well at school. There are also some occasions in which the children had missed around 1 to 2 years of their schooling owing to their refugee experience and hence need additional support to cope up with the school activities in the UK. Moreover children from disadvantaged families have very less support for their academics at home and benefit out of this program to a greater extent. Even the council of Redbridge has realized the benefits of this program as they are aware of the issues of the refugee children and the manner in which it affects their studies. Apart from this the parents of children who take part in this classes also benefit out of the program as they get a better understanding about the problems and the needs of their children. Parents also get a chance to know about our services through this and thus seek help as and when required. Thus the mission of our organization reaches a number of ears through these sorts of programs. On the whole 47 students benefit out of this program and out which 20 students are attending the science class, 15 of them mathematics and 12 of them English classes.

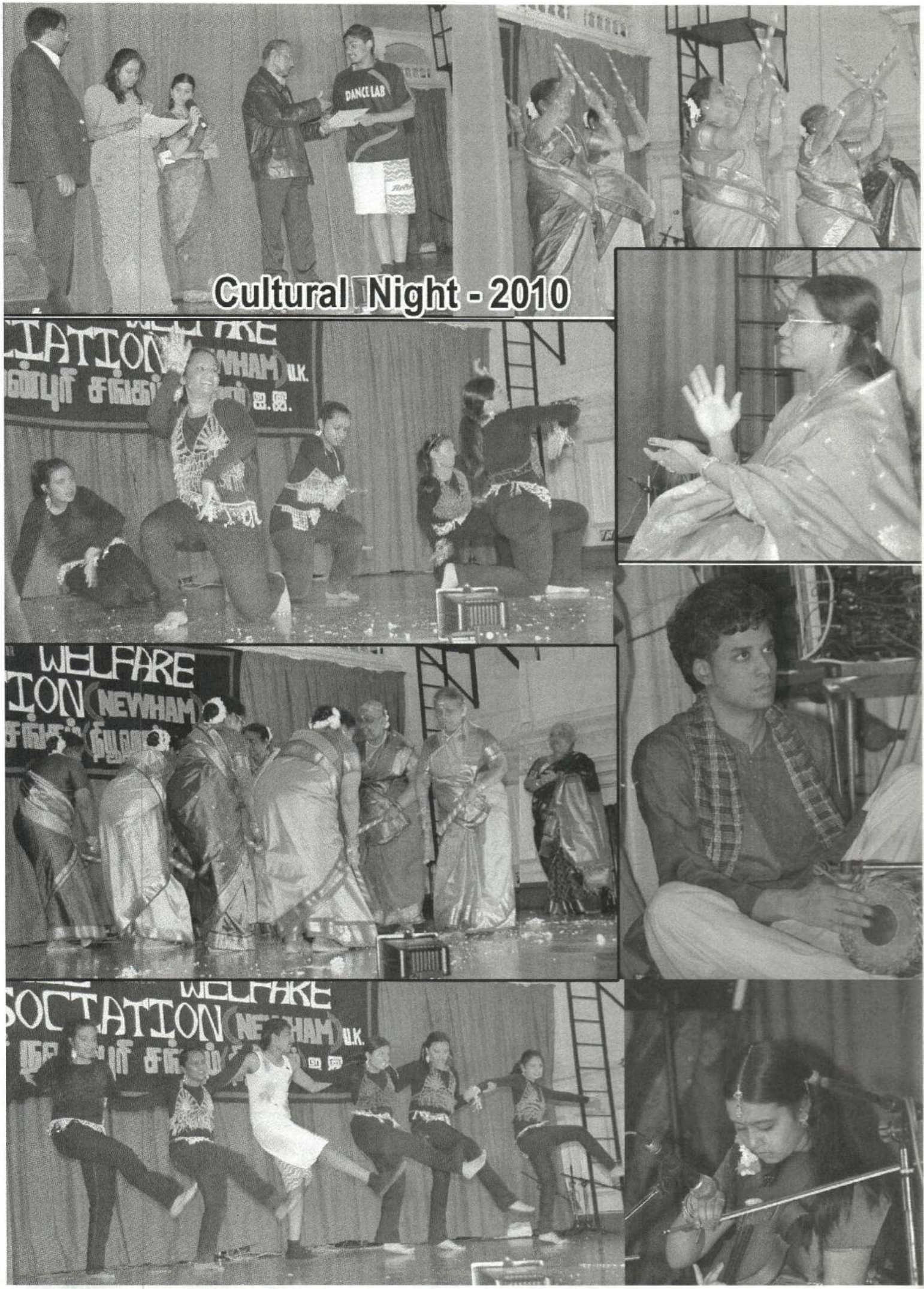
As a community organization we provide interpretation and translation services if it's appropriate and if time permits. The interpretation is mainly done by us at the office or over the phone and in some occasions by outreach when a partner organization or other similar service providers like us are involved. The translation services are mainly done by us for official documents such as birth, death and marriage certificate etc

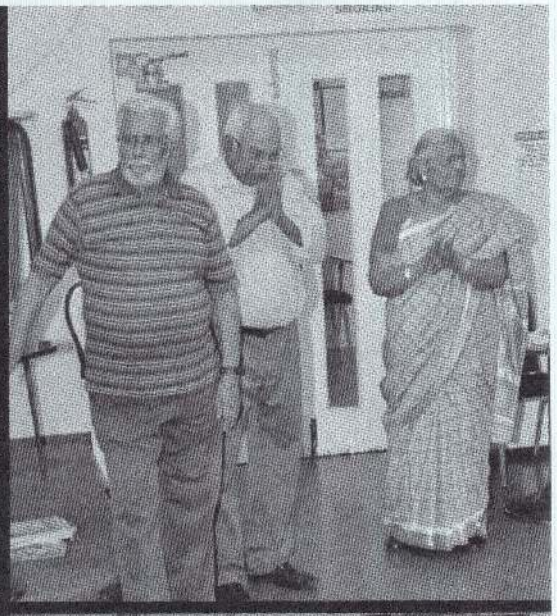
One of our other successful projects is the summer holiday play scheme for the refugee children and this is not being run this year because we haven't been awarded with funding for that project. We also carry out other related community development projects like influencing the policy, influencing the development and positive decision making by the officials campaigning for the organization in issues relating to the Tamil community.

The organisation has acquired part of the office building premises currently and is intending to buy the first floor of the office building in the near future. This will provide the organisation with a permanent infrastructure to deliver its services even if it fails to secure funding in the future. The organisation then can deliver the vital services alone with the support of volunteers in its premises itself without much trouble. The building will remain as an abode of support and service for ever to the Tamil community in east London. The organisation has achieved only part of its objectives successfully and it will continue to work to tap the necessary resources to achieve its other goals. On the whole TWAN is working towards the transformation of the life style of Tamil community in UK into a reputed one as soon as possible. ❑

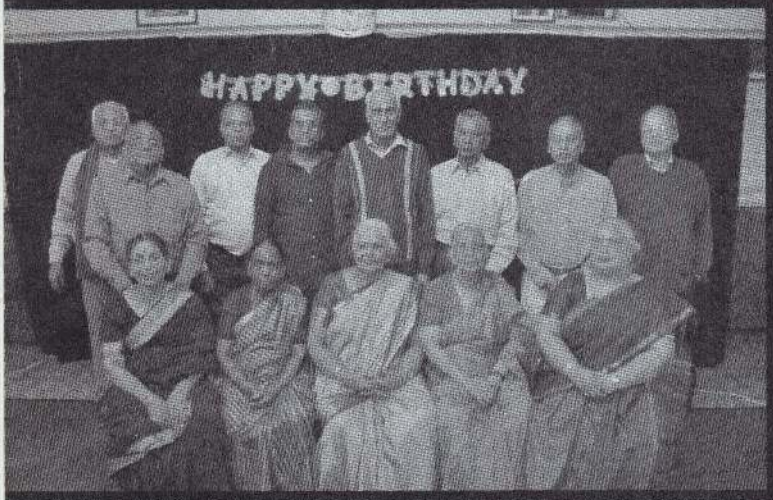
Cultural Night - 2010


Cultural Night - 2010
TAMIL WELFARE
ASSOCIATION NEWHAM U.K.


DANCE LAB
Cultural Night - 2010
WELFARE
NEWHAM
U.K.

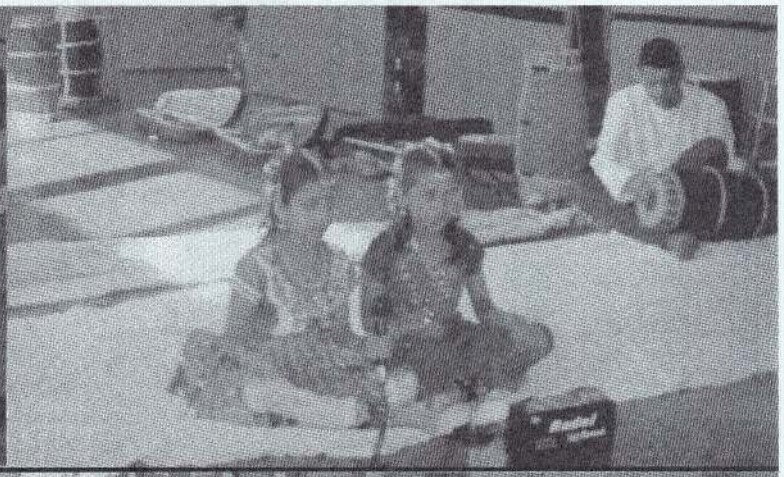


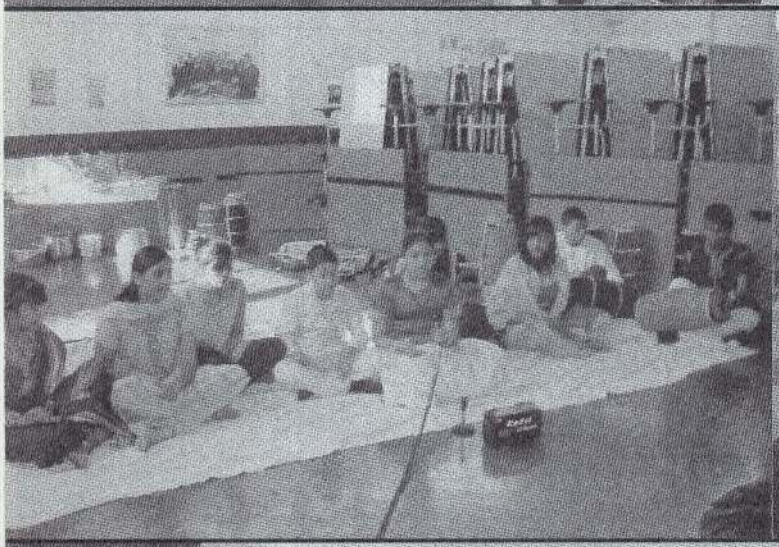
ELDER'S BIRTHDAY

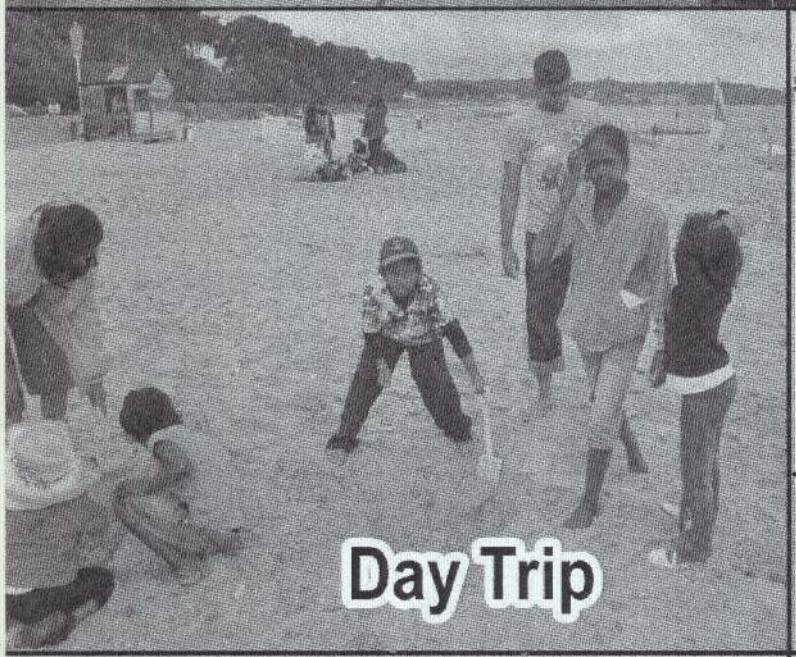


Cultural Night - 2010


Fine arts Clases






Day Trip

Acknowledgment

We are expressing our sincere gratitude to

The founder members of this organisation and those who served as committee members i n the past 25 years to build and run this organisation successfully

The members, supporters, users and well-wishers of this organisation for understanding the organisation when it faced with difficulties and for providing timely support in various ways

Newham Council who supported us immensely during the set backs that we faced initially and for aiding always in the smooth running of the organisation

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Advice UK,BAN Consortium, RAMFEL, NCVO, Redbridge CVS, Newham Work Experience Team, University of Westminster, Redbridge Business Education Partnership, Newham Voluntary Sector Consortium, North east London Network, Refugee council, ICWI,LASA,ILPA,BID& CLT

Glory Community Accountancy Project, Little Ilford School & Manor Park Community Centre, Advanced Accounting Practice

Contributors for the annual report
Lakshmis Jewellers, East London
Cakes & Bakes
HITECH Empire Limited
DANCE LAB
and Selvam Printers

DANCE LAB

Want to see yourself or your child dance like a superstar?
Then Join **Dance Lab**. Join the vibrant team of Ayngaran TV fame "Dance Stars 2008" Champions.
Dance Lab is a place where future stars and their talents are being fashioned, we aim for social integration through dance We provide extensive training for boys and girls of all ethnic backgrounds and religion, aged from 4-30 and specialises in Dance styles including Bollywood, Kollywood(Tamil Cinematic), Bhangra and Semi classical. Our classes happen in East Ham Leisure Centre (Dance studio), East Ham, London on Sundays 2-5pm (Seniors 2pm-4pm and Juniors 4pm-5pm).
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.

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