

**ILPA HOUSE OF COMMONS SECOND READING BRIEFING  
Legal Aid, Sentencing and Punishment of Offenders Bill  
29 June 2011****CASE STUDIES ANNEXE****An example of the complexity of immigration law:**

*"I am left perplexed and concerned how any individual whom the Rules affect (especially perhaps a student, like Mr A, who is seeking a variation of his leave to remain in the United Kingdom) can discover what the policy of the Secretary of State actually is at any particular time if it necessitates a trawl through Hansard or formal Home Office correspondence as well as through the comparatively complex Rules themselves. It seems that it is only with expensive legal assistance, funded by the taxpayer, that justice can be done".*

(AA(Nigeria) v SSHD [2010] EWCA Civ 773, Court of Appeal, Lord Justice Longmore at para. 87)

**An example of the complexity (circumstantial, evidential, procedural and legal) arising in Article 8 and refugee family reunion cases:**

C was seeking family reunion, outside the immigration rules, for his sister. C was a recognised refugee but there is no entitlement to family reunion for siblings. C had arrived in the UK as a minor. C had been kidnapped in his country of origin where his whole family had been killed with the exception of his younger sister. She was also kidnapped, and he had not heard from her since the day that they were both taken. Both client and sister had been taken from their home town to the traditional family home, where they were kept following kidnapping.

Following recognition as a refugee, C had made attempts to locate his sister through the Red Cross, but without success. One consequence of C's escape and his search for his sister was that an adult who had helped him was murdered. C managed to get in touch with another person in his home country who, after a year of searching found his sister. She had been kept as a sexual slave for five years at this point. The person who found her assisted her escape and she stayed in hiding. It had been held in the appeal that the authorities in the country were complicit in allowing the persecutors to operate freely without hindrance from the law. The representatives collated a lot of evidence of attempts made to locate her, evidence of C's original asylum claim, and a statement as well as representations on family life. They obtained evidence that there were people willing to support the sister. The initial hurdle was that C's sister was not allowed to make the application because she did not have a passport. This was resolved. A couple months later the UK consular authority said that they would not accept the application without a fee. The representatives pressed them to consider exercising their discretion to waive the fee. Finally this was referred to the UK. But still it was refused. Further representations and further complaints were made. Eventually the case was referred to the UK for consideration outside the immigration rules. After a further delay, Entry Clearance was granted. After a variety of problems with travel, the applicant eventually made it to the UK and she is settling in, with assistance from friends and counselling. Legal Aid costs were approaching £1000, at private rates, much more. Without Legal Aid, she would have remained in her home country.

**This domestic violence case illustrates how expert knowledge of immigration law may prove vital to resolving complex immigration problems:**

Mrs J was a victim of domestic violence. Her husband had been in the British Army. Their first child was born in their country of origin. Mrs J then joined her husband in the UK, and a second child was born. That child was a British citizen. The husband had a drinking problem and was violent towards Mrs J including whilst she was pregnant. The police were called on numerous occasions, the army welfare officer was involved, and the children were made the subject of a child protection order.

Although the police were involved Mrs J retracted her statement that was required for the husband to be prosecuted. The husband was dishonourably discharged from the army, and later spent some time in prison. Subsequently his leave to remain in the UK was curtailed. The couple's third child was born after

the husband was discharged from the army, and was therefore not entitled to a British passport. Mrs J and the children left the husband, spending some time in a women's refuge and variously living with friends. As Mrs J had left her husband she had not been aware that their leave was curtailed. At the end of the prison sentence the husband was detained under immigration act powers, and finally accepted voluntary return to his country of origin. When Ms J was made aware of the situation and that she was expected to return to her country of origin, she claimed asylum based on her fear of returning to that country where she was afraid that her husband would not be prevented from continuing domestic violence against her. Her claim was refused. It was at this stage that she sought legal advice.

Rather than pursuing the asylum claim by way of an appeal, it was concluded that Mrs J was eligible to make an application under immigration rule 289A – Indefinite Leave to Remain in the UK as the victim of domestic violence. Obtaining the requisite evidence of the domestic violence was a complex matter, as the police could only reveal limited information, none of which named the husband. The army welfare officer who had been involved had been redeployed elsewhere. The women's' refuge, who had originally referred Mrs J for legal advice, were able to provide supporting information. After much effort all the pieces were in place for the application to be made successfully and with the application fee being waived in accordance with UK Border Agency policy.

**This family life immigration case shows how inappropriate it is to suggest individual's have choices in many such cases:**

K instructed legal aid solicitors when his wife of some seven years was removed from the UK as an overstayer. Although he was receiving a state pension and in deteriorating health, he had paid for private advice and representation when his wife was detained and at the time of her removal. He had no more money with which to pay. He appeared to face a choice between leaving the UK, where he had lived for over 50 years and where his son by a previous marriage lived, or remaining in the UK separated from his wife. The legal aid solicitor assembled appropriate evidence and made representations, which addressed the points taken by the Home Office in the previous refusal and also drew attention to the husband and wife's human rights under Article 8. Entry clearance was granted on the application and the wife returned to rejoin her husband in the family home.

**This family life immigration case shows some of the complexities that arise in such cases, including evidential complexities:**

L (an adult) entered the UK illegally in 2000. He instructed his lawyer in 2008 to regularise his status. He lived with his disabled mother and assisted her with personal care. She had abandoned him in his country of origin when he was nine and he then became a street child. Before an application was made he was arrested and removal action was initiated. The lawyer collated evidence, including of the role he played in his mother's care, namely reports by a social worker and an occupational therapist, medical reports on the mother and statements of the client, his mother, siblings, other family members and pastor. These addressed why he was best placed to give his mother personal care, and his fractured childhood. The lawyer obtained supporting evidence of the situation of street children in his country of origin. The relationship between mother and son was complicated by feelings of anger and guilt and this emerged in the statements. The IJ commented that she was "struck by the honesty in the witness statements and oral evidence, which admits human failings of parenting... and the jealousy that has arisen since the Appellant has been reunited with his mother. These uncomfortable truths and disclosures tend to lend support to the credibility of the witnesses' other statements."

**An example of both the complexities of immigration procedures and failings of the UK Border Agency leading to costly litigation:**

*"...It is obviously grossly unfair to give someone the opportunity to provide evidence in support of an application by a certain date and then make a decision before that date because the information has not been supplied. One does not wish to be too critical of hard-pressed officials who are dealing with many difficult and complex applications, but...*

*The Notice of Decision granted the Claimant a further 28 days leave to remain in the UK... As a result of this... he was not entitled to the statutory right of appeal... Whilst there is no suggestion that this step had been taken deliberately to ensure that this was so, the whole process has unfairness written all over it."*  
(*R(Ngouh) v SSHD* [2010] EWHC 2218 (Admin), Mr Justice Foskett at paras. 53-54)

**Several other case study examples** were provided by ILPA in its February 2011 response to the Green Paper as a separate annexe to the response. That annexe is available at [www.ilpa.org.uk](http://www.ilpa.org.uk) in the 'Submissions' section.