ANNEXE E - CASES GATHERED SUBSEQUENT TO ILPA'S INITAL SUBMISSION TO THE MINISTRY OF JUSTICE CONSULTAION

AK (Sri Lanka) Court of Appeal [2009] EWCA Civ 447- See http://www.bailii.org/ew/cases/EWCA/Civ/2009/447.html
A case of the Secretary of State failing to consider evidence pertaining to a mentally ill appellant and unlawfully removing her. Legal aid enabled lawyers to obtain a finding that the removal was unlawful and then to continue to press the Home Office to return her for some 18 months. AK was returned, and was given indefinite leave to remain in the United Kingdom. Had the UK Border Agency acted within the law, the costs to the legal aid budget would have been greatly reduced.

AK entered the UK in 1992. Her appeal against her unsuccessful claim for asylum was dismissed in 1996 and she was refused leave to bring a further appeal to the (then) Immigration Appeal Tribunal. In 2002, she made a claim to remain in the UK under Article 8 (right to family and private life) of the European Convention on Human Rights. This was refused by the Secretary of State in 2003 and her appeal refused that year. In 2004 she was refused leave to appeal to the (then) Asylum and Immigration Tribunal. She was not removed from the UK and in 2005 applied to be given indefinite leave to remain. Subsequent correspondence followed, which included evidence about her mental health. In 2008 a Home Office letter was drafted which provided for her to be removed from the UK by way of the same day removal procedure and which gave no consideration to whether any of the correspondence since 2005 amounted to a fresh claim within rule 353 of the Immigration Rules. The decision letter was not delivered and the claimant attended a routine interview on 18 February 2008. She raised again her mental health and a suicide attempt. The letter drafted but not sent was found, and she was removed the same day.

The case turned on whether "further submissions" had been made to the Secretary of State since the adjudicator's determination of 23 December 2003, requiring the Secretary of State to consider whether these amounted to a fresh claim within the meaning of rule 353; and whether a reasonable Secretary of State would have concluded that she had indeed advanced a fresh claim, i.e. that she had submitted material "significantly different" from that advanced in her unsuccessful case. It was held that a reasonable Secretary of State would so have concluded and would have concluded that the material in her further submissions "realistic prospect of success" (rule 353 of the immigration rules) on the grounds of Article 8. The removal was found to have been unlawful.

In total the AK spent 18 months out of the UK subsequent to her unlawful removal before the Home Office finally agreed to return her and to give her indefinite leave to remain.

B
A case of a person who entered the UK while still a minor and has a British citizen partner and two British citizen children. Were B unable to challenge the decision to deport her with legal aid, either the rights of her British citizen partner and children would not be taken into account or they would have to bring separate and no doubt more costly proceedings to assert those rights.

B entered the UK on a visit visa whilst a minor. She resided with her British Citizen mother and siblings in London. She obtained employment in the UK and was charged with deception offences associated to working illegally. She served her sentence in the mother and baby wing of a woman's prison. At the end of B's sentence, the Secretary of State wrote to B advising of her intention to deport B. B's legal aid lawyers made detailed representations on

the basis of her family life in the UK - her British citizen child, her British citizen partner and her extended family. B subsequently married and submitted an application on that basis to the UK Border Agency. B now has two British citizen children. A decision to refuse B's application for leave to remain in the UK would affect her two British Citizen children.

***CN Burundi* [2007] EWCA Civ 587**

See http://www.bailii.org/ew/cases/EWCA/Civ/2007/587.html

We have drawn on the judgment in the summary below.

In this case the Secretary of State continued to dispute the appellant's nationality for six years. The case of this mentally ill appellant, who had arrived in the UK as a child, went all the way to Court of Appeal and was then remitted to the Tribunal. It is an example of a case that started as asylum case but became an immigration case, where the suffering in the country of origin produced the mental health problems that came to be at the heart of the immigration case. Had the Secretary of State not continued to dispute nationality despite the findings of an immigration judge, the costs to the legal aid budget, not to mention the suffering of the appellant, would have been reduced.

CN came to the UK from Burundi, where his father had been murdered and his mother had disappeared, in 2000 when he was aged 17. The Secretary of State disputed his nationality but on appeal he was found to be from Burundi and his appeal allowed on asylum and human rights grounds. The Secretary of State appealed this decision to the Immigration Appeals Tribunal. It later transpired that the absence was the result of an administrative error on the part of the immigration authorities, CN and his legal advisors only learned of the outcome of that Appeal in June 2004. There was then set in motion an application for permission to appeal to the Court of Appeal but that was resolved when the Deputy President of the Immigration Appeal Tribunal directed that there should be a fresh hearing before another adjudicator. When so doing, he observed that, "This appeal appears to have been blighted generally by error and misunderstanding".

The next hearing took place before an immigration judge on 6 June 2005. On that occasion the CN was represented but was himself absent, this time because he had only recently been released from a mental hospital having been detained under section 3 of the Mental Health Act 1983. An application for an adjournment was refused. The Court of Appeal observes that at that hearing *"His counsel made an application for an adjournment but it was refused. He frankly conceded that, whilst he had no instructions to withdraw the asylum appeal, neither did he have any material to sustain it. Counsel pursued the human rights appeal by reference to Articles 3 and 8 of the ECHR on the basis of the appellant's mental health."* The appeal on this ground failed, the Court of Appeal noted *'as it was bound to do at the time having regard to the paucity of medical evidence'*. On 4 July 2005, a senior immigration judge of the Asylum and Immigration Tribunal granted the appellant leave to appeal to the Court of Appeal on the basis that it was arguable that the immigration judge on 6 June 2005 had erred by refusing an adjournment. On 3 October 2005 the Court of Appeal allowed the appeal by consent and remitted the matter to the Asylum and Immigration Tribunal. On 28 July 2006 CN's appeal was dismissed on asylum and human rights grounds. It was common ground by the time the case came before the Court of Appeal that the asylum claim was unsustainable. By the time of the hearing in July 2006, the central issue was that of suicide risk and Articles 3 and 8 of the ECHR. Permission was granted to appeal to the Court of Appeal because the suicide risk had not been considered. As late as 28 July 2006, the Secretary of State continued to contend that the appellant was not from Burundi. The Tribunal rejected this. Thus it was only when the case came before the Court of Appeal that CN's nationality was finally not in dispute. The Court of Appeal observed *"The irony is*

that if the appellant's Burundian nationality had been accepted by the Secretary of State at the time of the appellant's first application for international protection, the appellant would have been eligible for exceptional leave to remain on the basis of a policy of the Secretary of State applicable to Burundi nationals which was in place until October 2002. At that time, the mental health of the appellant was not as wretched as it has later come to be."

The Court of Appeal held that the Asylum and Immigration Tribunal had erred in law in having 'mistakenly ignored" specific evidence of "several serious attempts to harm himself when unwell" and misunderstood the evidence about medication for the most serious of the appellant's afflictions has been misunderstood. These errors, the Court of Appeal held, had played a significant part in the reasoning of the Tribunal. The Court of Appeal held that Tribunal had erred in law in failing to address whether effective mechanisms were in place to reduce the risk of CN committing suicide. The Court made reference to the expert evidence and detailed medical history supplied. The Court of Appeal also noted that decisions of the Supreme Court meant that the Tribunal would have to consider the question of Article 8 against the background of a changed interpretation of the law; the Tribunal having proceeded on the basis of an understanding of Article 8 held, by the time of the hearing before the Court of Appeal, to be wrong in law.

While *CN*'s case was pending before the Court of Appeal his solicitors ceased to do legal aid work and he had to change solicitors. His then solicitors stopped doing publicly funded work and the client happened to wander into an open Refugee Legal Centre advice session and the Refugee Legal Centre subsequently represented him. One of his lawyers says *"...he made a profound impression on me because he is so vulnerable and the root cause of his illness seems to lie in the dreadful events that he witnessed. So I took his case completely to heart and could not believe that the Secretary of State fought the appeal in the Court of Appeal. After the appeal was remitted, another colleague carried out a lot of work to collate the medical evidence that had never been properly obtained."* The lawyer observes *"...if, as a solicitor doing publicly funded work, I had been told that there was just one case I could do - then I would have been proud to have been able to assist this one person*." CN now has indefinite leave to remain.

L

A case of a person who has two British citizen children. Were L unable to challenge the decision to deport her with legal aid, either the rights of her British citizen children would not be taken into account or they would have to bring separate and no doubt more costly proceedings to assert those rights; something that they are not well-placed to do.

L is from the Caribbean. She has Indefinite Leave to Remain on the basis of her marriage to a British Citizen. L has two British citizen children, both of whom were born in the UK. Following her conviction for shoplifting, L was convicted to 24 months imprisonment. As a result of being sentenced to over 12 month's imprisonment, the Secretary of State invoked the automatic deportation provisions as set out in the UK Borders Act 2007. L appealed the decision on the basis of Article 8 of the European Convention on Human Rights in light of her children's settled life in the UK. L's children had formed an extremely close bond with their private foster carer, J who took care of the children whilst L was in prison and detention. J cared for L's two children for a period of over two years. The Secretary of State was satisfied that L could return with her children to her country of origin and that Article 8 of the European Convention on Human Rights would not be breached. L was represented by a private solicitor in relation to her first appeal in the First Tier Tribunal, however following the breakdown of her marriage could no longer afford to pay privately.

Very brief details regarding the children's' lives were put before the First Tier Tribunal, and L's appeal was dismissed. L transferred to legal aid solicitors to represent her in her appeal to the Upper Tribunal. The effect of a decision to deport L from the UK will have the effect of either permanently separating the two British citizen children from their mother or from J, who has acted as a mother to the children for over two years. As the children are British citizens, they are not parties to the appeal hearing, and would not be granted legal aid to be represented at appeal. The Tribunal and the Secretary of State have a positive duty to consider the children's rights under section 55 of the Borders, Citizenship and Immigration Act 2009 however without witness and expert evidence being placed before the Tribunal, it is difficult to see what enquiries the Tribunal could make other than in oral evidence at the hearing.

J

A case turning on the Article 8 rights of a range of family members following bereavement.

Mrs J escaped from an African country, leaving her husband and their son, T, then aged eight, and applied for asylum in 2003. There was no decision on her case, but the next year she was diagnosed with cancer and asked that her child come to join her so she could see him again. Her friend brought him to join her. Separately, her husband came to the UK, and was able to find them all and to help to care for his wife. Her niece, W, also came from another European country to help, as Ms J was so ill. Mrs J and T were given indefinite leave, outside the rules, in 2007, but Mr J was not. Mrs J died in hospital in 2008, with Mr J by her side, and he continued to care for T. Their solicitors made an application for him to stay, to continue to care for his child, which was refused in 2010, the UK Border Agency expressing the view that they could both adapt to life in their country of origin and did not have strong enough family ties in the UK to qualify under Article 8 of the European Convention on Human Rights. T's close connections to W, and to her husband and baby, were ignored. Their solicitors helped him to appeal, and the case was successful.

Under the proposed legal aid changes, it appears that Mr J would not have been eligible for publicly funded advice to apply for leave to remain on family life grounds. Had the UK Border Agency issued a refusal which gave him a right of appeal, he could not have accessed public funding for a human rights appeal either.

O

This case illustrates the difficulties for a detained client facing removal and the substantive injustice averted by the timely intervention of a legal aid lawyer. Having successfully resolved his case and completed his studies, O returned to his country of origin.

This client was identified by a lawyer providing telephone immigration advice to persons detained in police stations. He was a student. He had been acquitted that day of involvement in a drugs case on a 'no case to answer' basis, having spent three months in prison on remand before the hearing. He was arrested at Court under immigration powers and taken to the police station. He had no previous convictions, warnings or anything else. His leave had been curtailed by an Immigration Officer in the police station on Friday night and removal directions set for Sunday. He had not been notified of his in-country and suspensive right of appeal, simply told he would have to leave the UK and Removal Directions set. The lawyer notes *"When I spoke to him he was beside himself. He had been held on remand for three months, waiting for his case to come to trial, had been completely*

vindicated, only for the UK Border Agency to decide to arrest him and curtail his leave". He was also frightened of returning to his country of origin and facing the person who had supported him with no qualification and all the money spent. The lawyer spoke to the Immigration Officer at the Police Station and was told that the UK Border Agency would not review their decision to remove O.

The lawyer managed to fax a form of authority and legal aid form to him though. These were returned by the client to the lawyer's office on Saturday morning where the lawyer received them. Meanwhile O was transferred to an Immigration Removal Centre. The lawyer faxed the Immigration Officer for a notice of decision and submitted an appeal for him. Removal Directions were cancelled. O went on to win his appeal against curtailment and continue his studies. He is now returning home with his desired qualification. His lawyer notes *"Without legal aid he would have been robbed utterly of the benefit of all the money he'd ploughed into studying, he would have been removed with all the implications for future travel to the UK"*

K

This case illustrates how people under immigration control, and their British citizen children, may require a combination of housing, welfare and immigration advice to resolve complicated problems and to protect the best interests of the children involved. Had the immigration case not been successfully resolved, it is likely that the children involved would have been taken into care.

Mr K is from the Caribbean and came to visit his father in the UK in 1999. During this visit, he formed a relationship with a British citizen, Ms B, and they married in 2003 and had two sons, now aged eight and seven. Mr K applied in 2005 for permission to remain. Sadly, because of Ms B's mental health problems, the marriage broke down. The children live with Mr K, but see their mother, who now lives with her own mother, most weekends. Mr K's solicitors helped him to obtain the evidence and to make a new application to the UK Border Agency for permission to stay in 2007, to continue to care for his sons; they also helped with the family law application for a residence order for the boys and with advice on Mr K's means to support them. This application was outside the immigration rules, because Mr K is the full-time carer for his sons, rather than merely requesting access to them, but they also need to stay in the UK to retain contact with their mother. The application was successful.

Under the proposed legal aid changes, it appears that Mr K could not have accessed advice or representation to obtain a residence order, or to obtain the transfer of the tenancy of the former marital home for the benefit of the children. Nor could he have accessed the welfare benefits advice necessary to ensure that he was able to keep the home for the benefit of the children. Nor could he have accessed publicly funded advice to get leave to remain on the grounds of Article 8 of the European Convention on Human Rights grounds. The result would have been that the children would have had to be taken into public care (as the local council had proposed at the time when Mr K first approached his solicitors).

T

This is an example of a case where expert evidence was required before the Tribunal. An immigration judge can only decide a case on the basis of evidence before him/her and if such evidence cannot be obtained, a meritorious case may be lost.

T was sentenced to 12 months prison for a drugs offence and informed that she was liable to be deported while in prison. She was unrepresented at appeal and her case was dismissed. Enforcement action was not taken and three years later, T gave birth to a daughter. The child's father has indefinite leave to remain in the UK. Shortly after the birth of the child TL was picked up in a random immigration check and shown a deportation order. Her legal Aid solicitors wrote to the UK Border Agency requesting an urgent update on her immigration status and getting no response solicitors applied to have the deportation order revoked. The representations included statements from the family, the baby's father all of whom are legally resident in the UK and a social work report.
Three months later the application was refused. T relied on legal aid funding for representation at the appeal which followed about a month later. The appeal was dismissed and her legal aid solicitors made a further appeal to the Upper Tier Tribunal. Further evidence, including a psychological report and a response from the original social worker who had given evidence at the hearing was submitted and the appeal was allowed on Article 8 grounds. T has been told she will be granted Discretionary leave.

AM and MM

In this case had the UK Border Agency been prepared to reopen the naturalisation application on the submission of fresh evidence, the costs to the legal aid budget would have been reduced.

Two brothers entered the UK lawfully as the minor dependents of their father and were granted indefinite leave to remain. All their documents were lost in a fire and when they applied for naturalisation they were refused because they were unable to produce evidence about who they were and their status in this country.

They were granted legal help and their solicitor obtained a copy of their file from UK Border Agency and commissioned DNA evidence to establish their relationship to their father. The UK Border Agency initially refused to re-open consideration of the naturalisation application, but relented when judicial review was threatened and granted naturalisation.

A lay person would have had difficulty obtaining and interpreting the relevant information from their files. Comprehension of the issues would not have been sufficient, DNA testing, which the brothers would not have been able to afford , was required to establish that they were the same individuals as the children whom the papers showed had entered the UK. Had they not had legal help and been assisted, they would have remained without documents.

F

The Ministry of Justice consultation paper proposes that legal aid should not be granted for an onward appeal even where the appellant has been successful in the appeal and it is the Home Office who challenges the decision further. In this case, the case went all the way to the Court of Appeal where the result of the initial appeal, which F had won, was reinstated.

F is married to a British citizen. She had two young children under the age of five. In the tribunal she successfully argued that it would be a disproportionate interference with right to family life to require her to return to her country of origin with her two young children to apply for a visa to rejoin her husband. The Home Office appealed and the decision to allow her appeal was overturned by senior immigration judges.

She instructed legal aid solicitors to represent her in an application to the Court of Appeal.

The court found that the original immigration judge had not made an error of law in assessing proportionality and allowed her appeal. She was not however granted discretionary leave to remain until, after a lengthy delay her solicitors were forced to threaten the Home Office with judicial review.

The issues were purely legal and complex. F would not have been able to represent herself. Given the complexity of the case and her financial situation, she would not have been able to pay for private representation before the Court of Appeal nor in pursuit of papers granting her leave to remain.

E

A case in which legal aid lawyers were able to sort out the consequences of bad advice, for which the client had paid dearly, and thus protect the rights to private and family life of two children who had lived their whole lives in the UK.

Ms E came from Jamaica to visit in 2004, and was then given permission to remain as a student until 2006. She met Mr G, who had two children from a previous relationship who lived mainly with their mother but spent time with him every week. They married in 2008, and Ms G sought advice from a private solicitor about her immigration status. He asked her to pay £1000. She could only afford £250. He failed to advise her about her rights under Article 8 of the European Convention on Human Rights submitting an entirely ill-conceived application under the immigration rules. This resulted in rejection of her application and a removal decision carrying only an out of country right of appeal.

Ms G then contacted a legal aid solicitor, who advised her about her and her family's rights under Article 8. Her stepchildren, aged 16 and 14, had never left the UK, were doing well in school, and in close contact with both their parents. Her husband had no other relatives in the UK. The solicitors lodged an appeal to the Upper Tribunal, which was successful.

Under the new proposals, *prima facie*, Ms G could not have accessed publicly funded representation for a human rights appeal. She would have had to seek advice privately again, which the family could not afford.

K

In this case undue delay on the part of the UK Border Agency added to the costs to the legal aid budget.

K entered the UK over 10 years ago after fleeing Sierra Leone. After her application for asylum was refused and appeals failed, K found herself destitute and with two young children to support and accommodate. One of K's children was British. After years of hopeless attempts in K getting some paid work and financial assistance from social services, she turned to prostitution to make ends meet. From her small earnings, K paid an immigration consultant to advise and assist her with an application to the UK Border Agency under its legacy (case resolution) work. This consultant did very little in K's immigration matter and asked her for more money, which K did not have. In view of K's work in prostitution, the children were taken away from her by Social Services. This led to a breakdown and K was sectioned into a mental health unit. Her immigration representatives made an urgent application to the Case Resolution Directorate and asked for this to be expedited under the UK Border Agency's policy, and for a decision to be made by a specified period of time.

After not receiving a response from the UK Border Agency, K's representatives issued judicial review proceedings challenging the delay. The UK Border Agency settled the proceedings and granted K and her youngest child Indefinite Leave to Remain.

S

This case illustrates that without preserving legal aid for challenges to substantive immigration decisions, the preservation of legal aid for detainees to challenge their detention may not produce justice. Had the UK Border Agency acted lawfully in taking into account C's age at the date of conviction, as the law requires them to do, the costs to the legal aid budget would have been reduced.

S a refugee from a war torn country in Africa was sentenced to 18 months in a young offenders' institution, after being convicted at the age of 17 of four robbery offences and possession of a bladed article. While he was still under 18 and serving his sentence, the UK Border Agency wrote to him that they were considering his deportation because of his convictions, and whether he was liable to automatic deportation. His legal aid solicitors responded to the UK Border Agency, showing that he was not liable to automatic deportation because he was a minor at the time of the convictions, and because he was a recognised refugee. They received no answer and C was detained under Immigration Act powers for two weeks after the completion of his sentence. He believed that he would be deported to his country of origin, which he had left at the age of eight, and would not be able to see his parents, who had just been granted visas to come to the UK to be with him and his brothers and his grandmother.

His solicitors successfully pressed the UK Border Agency to end his unlawful detention, and then for compensation for the extra time he was detained unlawfully. Under the government's new proposals, S could in principle have accessed publicly funded legal advice/representation to apply for release on immigration bail. However, he could (probably) not have accessed funding to challenge the lawfulness of his detention for deportation or for the compensation he has now received (at no cost to the LSC as the Home Office agreed to pay the costs). S could not have accessed publicly funded legal advice as to his liability to automatic deportation, even though the UK Border Agency was entirely incorrect.

L

L had come to UK as a child to join his parents. He has now been in the UK for over 40 years. Some time ago, he lost his passport. The UK Border Agency has confirmed that he was granted indefinite leave on arrival but will not confirm his current status. L cannot access employment or support in the absence of confirmation of his status. The case is ongoing.

Y

Here the situation of two British citizen children was protected when the legal aid solicitors were able to assist their mother, who had resided legally in the UK for 19 years, to regularise her status.

Y had resided legally in the UK for nineteen years, always renewing her visa and complying with the rules. Two of her children had become British citizens. When she was diagnosed with HIV during a pregnancy, her psychological health also suffered. With her current visa due to expire, a new born baby whose HIV status was still unclear and all her friends and

family in the UK, Y tried to investigate her immigration options herself. She concluded that she either had to separate from her partner and return to her country, where she and her baby would be stigmatised and separated from his father, or overstay. With only days before her visa expired, she met a legal aid solicitor and was advised of the European Convention on Human Rights and that her medical history and family could be relevant to her immigration status.

Two applications were made under legal help. The first was made under the Freedom of Information Act to ascertain what had happened to a previous application and the second was for a visa extension on the basis that forcing Y to leave with her new baby would breach their rights under Article 8 of ECHR to family and private life. The UK Border Agency agreed that this was a compelling and compassionate case and granted three years discretionary leave.

G

In this case successful resolution of the immigration case meant that the British citizen whom his wife joined was able to benefit from her care, reducing not only his distress but also costs to the UK system.

A British man who had severe cerebral palsy wanted his wife to join him in the UK. She applied at an overseas post for entry clearance but was refused because the Entry Clearance officer was not satisfied that she could be maintained and accommodated within the rules.

She appealed against the refusal and was able to prove to the immigration judge that she did meet the maintenance and accommodation requirement. The Immigration Judge however dismissed the appeal because he found that another requirement of the rules could not be met. He found that the British husband lacked capacity to make informed decisions about marriage and hence could not show that he intended to live permanently with his wife. Neither party to the appeal had addressed this possibility and the immigration judge had not put them on notice of his concerns, allowing them to adduce further evidence before reaching his decision.

An application for reconsideration was inevitable and was granted. On reconsideration, a senior immigration judge accepted the expert evidence adduced on behalf of the husband, whose mental capacity had been questioned, and allowed the appeal.
The wife has now joined her husband in the UK. As she is now her husband's primary carer, he has been able to dispense with the services of one of the carers provided by social services.

The British husband was both poor and disabled. The appeal against the judge's decision on his mental capacity, required knowledge of family law and the instruction of an expert witness. He would not have been able to pursue his case without legal aid.

M

M had come to the UK in the 1980s and had indefinite leave to remain here. He was married and had a British child. He became heavily addicted to drugs following the breakdown of his marriage and as a result was involved in petty offending to feed his drug habit. Following a criminal sentence he was detained in immigration detention for nearly

three years while the UK Border Agency sought to deport him. A successful challenge to the legality of his detention led to his release.

On release from his detention M managed to locate his son, who he had not seen or had contact with for over 10 years. They developed a close bond. His son suffered from some learning difficulties. The client applied for an application to revoke the deportation order in light of the renewed contact with his son, his relationship with his British brother and brother's family and his long residence in the UK of over 20 years. M had also been drug-free for over four years and all offending behaviour had long since finished. The UK Border Agency refused his application.

M's appeal succeeded. Legal advice and representation were critical to this difficult appeal. An expert report which detailed the effect of the removal of the client from the UK on his son given his son's medical condition which meant that change was very hard for him to adapt to was essential.

E

E travelled to the UK when a babe in arms and has lived here for over forty years. When she was still a minor, her mother applied to register her as a British citizen. E has learning difficulties but although she can barely read and write, she tried to deal with the Home Office over a number of years without success. She persisted, alone, until she faced eviction and needed to prove her immigration status.

She was granted legal aid and her solicitors made a data protection act application and discovered that the application had lapsed because her mother had not provided all the necessary documents. The Home Office was persuaded to reopen the decades old application and register her as British citizen.

Her learning difficulties would have been a significant impediment to E being able to resolve this matter herself, even if it had been straight forward and all information readily available. With help, however, the matter was quickly resolved and she was able to establish her status and keep her home.

D

In this case legal aid lawyers were able to ensure that D accurately understood his options and that truthful and accurate information was placed before the Home Office, including evidence that could not have been obtained without legal aid.

D instructed legal aid solicitors when he was detained facing removal from the UK. He had previously paid a private solicitor. He and his family had exhausted their funds. His private solicitor had represented him in a claim for asylum which was not only false as to the risk of persecution but also was false insofar as it made no mention of D's had two dependent children and a long term partner, all of whom are British nationals. This claim was refused and certified as clearly unfounded.

The same solicitor then assisted him in making an application to remain on the basis of his life with his British family. The evidence submitted was of limited value. This was refused and the claim certified. He applied for judicial review but was refused.

Detained, without funds and facing deportation, D instructed legal aid solicitors who assisted him to renew the application for judicial review. That application was refused and his solicitors advised him that his only immediate option was an out of country appeal right. When his departure was delayed, apparently by the failure of the Home Office to produce his passport, the solicitors submitted a new application. This included representations from his solicitor, detailed statements from the family, translated documents and a social worker report. This report, which commented on the dependency of the British members of the family on D and the potential risks to the welfare of the children if their father were removed, was the keystone of the evidence.

Nine months after the representations were made, D was granted discretionary leave to remain with his family.

S

In this case, the intervention of legal aid lawyers helped to ensure that the UK was not in breach of its obligations under EEA law. S had also been unable to gather relevant evidence. An immigration judge can only decide a case on the basis of evidence before him/her and if such evidence cannot be obtained, a meritorious case may be lost.

Portuguese national S faced automatic deportation following a relatively short prison sentence. Initially, the UK Border Agency refused to accept the evidence of S' nationality and prepared to deport him to a third country outside the EEA. S had tried to assemble evidence himself but several organisations, including job centres and the Portuguese Embassy had refused to assist. These organisations were, however, prepared to co-operate with his legal aid solicitors. After much work, his nationality was established, a new dispute developed over the length of time he had lived in the UK. His partner and child were both British citizens.

The matter went to appeal. With his solicitor's help and advice from experienced counsel, he was able to establish his nationality and that that he had lived in the UK for more than 14 years. The legal issues were complex, turning on EEA law as to when an EEA national can be expelled. The matter also engaged Article 8. S and his partner had been rebuffed in their attempts to gather basic evidence. He would not have been able to afford advice and representation, nor did he have the knowledge and expertise to represent himself.
He is now able to remain with his partner and child.

D

In this case, legal aid was used to make applications that ensured that three British children could remain with their disabled British father following the sudden death of their mother rather than the family facing the prospect of the children being taken into care.

D entered the UK in April 2008 to visit her British daughter, son-in-law and their three children. Her intention was to return to her country, and to her husband and son there, before the expiry of her six month visit visa. She was preparing to leave when her daughter became ill and died very suddenly, leaving three children under 10. D's son in law is disabled and was not working. He was not able to look after the three children without assistance.

Legal aid solicitors applied for an extension of her visitor's visa to allow her to attend her daughter's funeral and care for her grandchildren. This was granted for a month. A further

application based on Article 8 was then made and was granted for one year. A further application is in preparation. D's lawyers identify a risk that without her support the three grandchildren would have ended up in the care of social services.

S

This case illustrates how legal aid for an immigration case helped to protect the rights of the British citizen spouse as well as those of the migrant.

S had been present and working in the UK unlawfully. When he and his British girlfriend decided to marry, he made a voluntary departure and the couple were married in his country. With legal aid funding, the couple were assisted by a solicitor to gather all the documentation required to support a marriage application, including a detailed plan to enable the husband to be accommodated and maintained in accordance with the rules. The couple both felt that they had suffered racial discrimination from the Entry Clearance Officer during the course of the application.

The application was refused because the Entry Clearance Officer, referring only to a low balance in the wife's bank account, doubted that A could satisfy the rules on maintenance without recourse to public funds.

Their legal aid solicitor drafted detailed grounds of appeal addressing the requirements of the rules, referring to Article 8 and the alleged racial discrimination.

In response to the notice of appeal, the decision was reviewed by a more senior official and within four weeks it was reversed. S was granted entry clearance as the spouse of a British citizen for a two year probationary period.

C

C was an overstayer, having come to the UK on a fiancée visa some years ago. She and her British Citizen husband have a four year old daughter. Sadly, she and her British Citizen husband were completely unaware that being married to a citizen of this country did not mean that she had leave to remain. A friend pointed this out to them, and they immediately telephoned the home office to find out what to do. They were sent a form to fill in and after completing it, they heard nothing for some months. Eventually, they were sent 'forms' to complete, by the Home Office which required them to detail their family life together. At this point they instructed legal aid lawyers. The lawyers advised that the initial application lacked detail about their family life, and that completing the Home Office forms would not be sufficient to provide the information to make their case. On collation of letters, photographs and other evidence the lawyers sent further representations to the Home Office based on Article 8 of the European Convention on Human Rights. C was granted discretionary leave to remain.

Y

Mrs Y has a very serious mental health condition which is controlled by medication. She is married to a British citizen. Mistakes by the UK Border Agency meant that her application for leave to remain as a spouse submitted in 2002 was not dealt with properly, and was refused on erroneous grounds. Eventually, after six years, she was granted Discretionary Leave to remain in the UK. She immediately applied for her daughter by then aged eight years) to join her in the UK on the basis of their rights to respect for their family life. Mrs Y

is too ill to work, but her husband works and is able to support the family. The family have a low income, but they own their own home, and thus would almost certainly be precluded from accessing Legal Help or Controlled Legal Representation under the proposals in the Ministry of Justice Consultation paper.

The family satisfied the most of the requirements of the rules for sponsoring a dependant daughter, with the exception that Mrs Y did not have settled status. The entry clearance application was refused. An appeal was lodged but was initially unsuccessful. An immigration judge held that there was no family life between mother and daughter. An initial request for a reconsideration was refused but, following a renewed application in the High Court, permission was granted. The immigration judge's decision was overturned at the reconsideration hearing, with the senior immigration judge making scathing comments on the delay by the UK Border Agency and the inadequacies of the Agency's initial decision making about Mrs Y's application as a spouse, which if dealt with properly, would have meant that mother and child would have been reunited after two years separation, rather than eight.

The entry clearance application and the lengthy appeal process were funded by Legal Help and Controlled Legal Representation respectively. Mrs Y found the stress of the legal proceedings very difficult. Although she and her husband are fluent in English, they would not have been able to conduct litigation of this type without legal advice. Currently, a challenge to the failure to grant indefinite leave to remain in 2002 is pending, and again in the initial stages is funded by Legal Help.

A

This case is an example of the complex interplay between European free movement law and human rights law. The rights of a British citizen child were at stake and had her mother not been able to bring immigration proceedings, either these rights would not have been respected or the child would have had to bring separate, no doubt more costly proceedings, based on the breach of her human rights.

A is a North African national who entered the UK on a visitor's visa. She was subsequently granted five years Residence Permit as the spouse of an EEA national under EEA free movement law. By the time she was eligible to apply for Permanent Residence, her marriage to the EEA national had broken down. A had a British citizen child, S, with a British citizen married man (B). B was committed to S, the daughter, however the relationship between B and A had long since broken down. A's application for Permanent Residence was refused by the Secretary of State on the basis that she did not have a retained right of residence and it was unclear whether her husband had continued to exercise Treaty rights, all complex points of European law.

The focus of the appeal was therefore Article 8 of the European Convention on Human Rights and an application under the Immigration Rule on Long Residence. A's previous representatives closed down. By the time A's case transferred to new representatives her case had been dismissed twice by the Tribunal and the matter remitted back to the Upper Tribunal by the Court of Appeal for full consideration of the Article 8 argument.

A's case was not straightforward due to the Tribunal having difficulties comprehending the somewhat unorthodox family life between B and S, now 8 years old. B was still married and his wife and children were unaware of S's existence. Despite this, B had almost daily contact

with S and therefore had an extremely close bond with S. A's appeal was allowed once detailed witness statements were taken from A and B explaining the family they had set up for S and the potential to permanently destroy S's relationship with B, if she was compelled to leave the UK with her mother. A's appeal was allowed on Article 8 grounds.

Z

In this case the UK Border Agency's attempt to remove Z despite his having a pending application and subsequent delay added to the costs to the legal aid budget.

Z entered the UK in 1994. His asylum application was refused and appeals failed. He eventually made an application under 14 year long residence rule. Due to the uncertainty and destitution Z began to suffer from mental health problems. On two separate occasions, he tried to kill himself. In 2009, Z visited his MP's office spread with petrol and a lighter. Z was convicted of affray and given a 10 month prison sentence. His long residence application was refused because of Z's criminal offence. The UK Border Agency made no decision to remove, but took steps to remove him despite his pending application: he was transferred from prison to a detention centre prior to removal. He instructed an immigration solicitor in October 2010, who assisted him with his judicial review proceedings. The UK Border Agency agreed to decide the pending application, but refused to release him. At the same time, the UK Border Agency had failed to make a decision on Z's application for a bail address (as part of an asylum support package) a request made in July 2010. Separate proceedings were issued on the delay on Z's bail address. The UK Border Agency made a decision on Z's s4 bail address and confirmed an address the night before Z's bail hearing before the First Tier Tribunal. Z was granted bail. Z's MP has been supportive towards Z before and after the incident in the office. She has intervened on Z's behalf beyond the call of duty, but it nonetheless took the issuing of judicial review proceedings to ensure that this case was properly addressed.

R

In this case legal aid lawyers were able to put the necessary evidence before an immigration judge. An immigration judge can only decide a case on the basis of evidence before him/her and if such evidence cannot be obtained, a meritorious case may be lost. One result of the appeal was that R was no longer confined to hospital in the UK. Had the Home Office not unduly delayed in issuing documents to R following the successful appeal, the costs to the legal aid budget would have been reduced.

R suffered from a severe mental illness and had been treated in hospital. His complicated immigration history had reached a point where a visa application submitted by his family had been refused and he was, in effect, confined to the hospital since he was not eligible for the level of support he needed in the community while his immigration status was unresolved.

His legal aid solicitors made an application for him to be allowed to remain on the grounds that his family were in the UK. The application was refused but an immigration judge allowed his appeal. His legal team had obtained medical evidence and a social worker's report which dealt with the strength of the ties between R and his extended family in the UK.

Although there was no appeal against this decision, there was a considerable delay in issuing status papers to R. During this time he was forced to remain in hospital. Only when his solicitors threatened judicial review were the papers issued.

S

S left his country, in southern Asia, in 2001 after his father died and his elder brother took over their home by force and threw him out. He used an agent to come to the UK unlawfully and managed to find odd jobs of work and to survive in a hand-to-mouth way. At the mosque he attended, he met A, a young settled woman from his country of origin who was sympathetic to his plight and helped him when she could. S helped her to come to terms with the end of her marriage, where she had suffered domestic violence, and the fact that her ex-husband had kept their son. They formed a relationship, and A became pregnant. This meant that their relationship could no longer remain a secret and A's parents put great pressures on her, leading to the breakdown of their relationship.

When their daughter D was born in 2005, A and S agreed that S should care for her, and A would contribute towards her maintenance. S's legal aid solicitors helped in drawing up a parental responsibility agreement between them and in applying to the UK Border Agency for S to remain to keep in contact with, and care for, his daughter. As a child born outside marriage, and being cared for by her father only, she would have faced discrimination in his country. There was no substantive reply for over two years, during which time S had been unable to work as he cared for D, and A had faced great pressures from her family to marry a person approved by them and to break off contact with S and D. S and D moved around between friends' homes; at one stage, they were sleeping in a friend's garage.

The UK Border Agency refused the application. A appealed. The legal representatives were able to obtain detailed social reports about S's close relationship with D, and the difficulties that A would face in her new marriage if D were returned to her care, and S and A both gave evidence in the appeal. The appeal was allowed, on human rights grounds, in April 2008. It was not until September, and after repeated prodding from his solicitors, that the UK Border Agency finally gave him three years' discretionary leave to remain.

Without good legal aid representation, S would not have been able to make the application, and then win his appeal. He had no means of paying a solicitor; he had to borrow money from friends to pay the UK Border Agency application fee as they refused to waive it. Under these proposals, he would not qualify for legal aid; if he had not been permitted to stay, his daughter would have been taken into care.

K

This case illustrates how a legal aid solicitor was able to protect the rights of a person who had been settled in the UK for some 50 years.

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 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 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.

X

In this case, the conduct of the Home Office added substantially to the costs to the legal aid budget.

X came to the UK at the age of eight from a war-torn country n Africa, together with his mother and his siblings. He was subsequently granted indefinite leave to remain as the dependent of his mother in 2002 when he was 15 years old.

While still a minor X was convicted of several offences, the most serious of those being robbery for which he received a custodial sentence of 18 months in a young offender's institute. All of the offences committed by X were committed whilst he was a minor. X was released after serving his sentence in 2005 and remained released at liberty for a year and three months when X was detained under immigration act powers and the Home Secretary made a decision to deport X as a consequence of his robbery conviction. X had committed no offences since his release. X appealed with the assistance of a solicitor, however his appeal was unsuccessful. He was advised there were insufficient prospects of success for his representatives to assist with a further appeal. In 2007 a deportation order was served on X. In May 2007 an attempt was made to remove him. Although he had a travel document the immigration officials in his country did not accept that X was a national of that country, and refused him entry. X was returned to the UK where he continued to be detained under immigration act powers.

X instructed legal aid lawyers. An application to revoke the deportation order was made in light of the errors of law contained within the Tribunal's determination of the appeal against the Order, and the refusal of the authorities of his country to admit X. The basis of the representations was that X's deportation would breach the UK's obligations under Article 8 of the European Convention on Human Rights. There was significant delay in considering those representations and judicial review proceedings were lodged in respect of the refusal to accept the application to revoke the deportation order; and that unlawful nature of X's continued documentation. The proceedings became protracted due to delays in the Secretary of State's providing the relevant documentation and due to changes in the law affecting the proceedings. It was alleged by the Home Office that X had lied to the authorities in his country upon, although X maintained throughout that this was not the case. The Home Office ceased to maintain this and then maintained that X had frustrated his removal by telling the authorities in his country of his father's nationality (which was not that of X's country of origin, a matter known to the Secretary of State throughout). X was detained for almost two years.

A subject access request was made for documents relating to X. These were received after a significant delay. New material was revealed including an escort report which had been previously served on X by the Treasury Solicitors, except that it became clear that the original version served on X had parts of it tippexed out (as opposed to redacted). These parts included relevant information as to why X had been refused entry to his country of origin. A decision letter was served, of a decision which had been made in November 2007 but which had never previously been provided.

An appeal was submitted to the Tribunal upon receipt of the decision letter with an application to extend time to consider the appeal. The Tribunal agreed to treat the appeal

as in time. A case management review hearing was held in which the Secretary of State was directed to disclose all documentation in her possession relating to the failed attempt to deport X to his country of origin. A day before a second such hearing was due to be heard, the Secretary of State withdrew the decision for the purpose of considering fresh evidence. X had a child with his long term partner during this period of time.

Delays on the part of the Secretary of State continued to dog the judicial review proceedings, and because of a request was made to the Administrative Court for directions. The Secretary of finally made a fresh decision to refuse to revoke the deportation order, giving X a right of appeal to the Tribunal. An appeal was made. The Tribunal found that the decision was not in accordance with the law by virtue of its failing to consider relevant matters, including that by the time the case had gone to court, the conviction on which the Secretary of State sought to rely (namely the robbery offence) was spent under the Rehabilitation of Offenders Act. The matter was remitted and the Secretary of State has now written to X indicating that his Indefinite Leave to Remain will be re-instated.

J

A came from a war-torn country in Africa as an unaccompanied child. He was not yet a teenager when he arrived. In the UK he had been reunited with his aunt and cousins, his parents were presumed dead. He received two three year grants of discretionary leave. Publicly funded assistance was vital in making his application for indefinite leave to remain.

A

While it is understood that A's case would remain in scope, as she pleaded Article 3 of the European Convention on Human Rights, risk of torture inhuman or degrading treatment on return, her case succeeded on Article 8 grounds. Had it been pleaded only on that basis, it would have been an immigration case and thus not, under the proposals, within scope. The Refugee Convention and Article 3 look forward to risk on return; where a person has been trafficked but is not alleging persecution or torture if returned, the case is an immigration case.

A was trafficked to the UK from Africa while still a child for the purposes of domestic servitude. She was kept in forced servitude for 14 years before she managed to escape, during which time she was been subjected to physical and sexual abuse. She then met her now former partner with whom she had three children, one of which was later diagnosed as autistic. Her ex-partner left her whilst she was pregnant with their youngest child. She then sought to regularise her immigration status. Her ormer lawyers made a long residence application using, unbeknownst to A, false documents. The application was refused and the appeal dismissed; the law firm was investigated by the police. A further application was then made by another law firm for leave to remain based on both Articles 3 and 8 of the European Convention on Human Rights. A had a community care case with legal aid lawyers. Correspondence relating to this revealed that A did not have a valid application for leave to remain pending; the application was acknowledged but not treated as having been lodged because A had never attended the Asylum Screening Unit. A then attended the Unit. She made an application as a victim of trafficking. This was rejected. The lawyers dealing with her community care matter represented A in her publicly funded appeal. They obtained expert evidence. It was accepted that A had been trafficked. The appeal was allowed on Article 8 grounds A and her children have now been given three years Discretionary Leave to Remain.

M and S

This case illustrates that family visit cases can involve grave issues for those involved, particularly where the person in the UK is too ill to travel.

The applicants were adult siblings who applied for visitor visas to come to the UK to see their housebound mother. They had not seen her for nine years and their last visit had been very short. They were desperate to see their mother who had multiple physical problems and whose mental state was suffering. She was unable to sit for any length of time or to write more than a few sentences.

Before receiving legal advice the siblings had made several unsuccessful applications. In one of these, one of the applicants, for whom English is a second language, had misunderstood a question on the form and had mistakenly stated that he had not previously been refused a visa.

A number of agencies would have been needed to assist the sponsor to travel outside her home to her solicitor's office, but the legal aid solicitor travelled to her home to take instructions. The sponsor would not have been able to fund the costs involved in her travelling or in paying for the attendance of a private solicitor at home. She was also assisted in paying for the medical evidence necessary to support the application.
The applications of both siblings were refused. One was an automatic refusal because "he had used deception" in a previous application. They appealed and were successful on both Immigration rules and human rights grounds, before an immigration judge.

The immigration judge, who allowed their appeal accepted that the false answer on the form was a case of genuine mistake, which would not have occurred had the applicant been represented.

Nobody in this family was capable of dealing with the complex issues of evidence, compliance with rules and human rights which this case raised. Without accessible representation, the appellants would not have been given permission to visit their disabled and distressed mother.

R

This case involved complex arguments about the applicability of Article 8 of the European Convention on Human Rights, for a settled person who had been in the UK for 23 years.

R had been in the UK for 23 years and had been granted indefinite leave to remain. At the age of 56, he received his first and only criminal conviction, for attempting to assist a person to enter the country illegally. At the criminal trial the judge accepted R's explanation that he had only assisted the person because he was worried for the safety of a relative, who had borrowed money; the lender put pressure on R to bring a person to the United Kingdom and promised to reduce his aunt's debt as a result. .

The UK Border Agency sought to deport R, arguing – amongst other things – that deportation was proportionate under Article 8 ECHR to set an example to other foreign nationals.

R eventually succeeded on appeal, but had had to go twice through the appeal process before the Tribunal, and bring a claim for Judicial Review to do so.

L

In this case a mentally ill appellant required legal representation to challenge the decision to deport her. Her four year old son faced deportation as a family member, and it took legal aid lawyers to identify that his interests required separate representation. It is an example of the Home Office seeking to appeal further when they lost at appeal. Under the proposals in the Ministry of Justice consultation paper there would be no legal aid for representation even where an appellant had won her case and it was the Home Office, as in this case, that wished to appeal further.

L was sentenced to imprisonment having been convicted of a drugs offence. While in prison in 2005 she gave birth to son who spent the first six months of his life with his mother in prison. He was then cared for by his maternal aunt. L's sister and was brought regularly to see his mother in prison.

When her son was no longer with her in the prison L was assaulted and held hostage by another prisoner. She was subsequently diagnosed as suffering from Post Traumatic Stress Disorder. She claimed to have also been sexually abused in the prison. Assessed as being a suicide risk without psychiatric care, she received counselling and therapy in the prison By 2009 deportation orders were signed her and against her son, now aged about four and living with his aunt.

In March 2009, L's sister, the aunt who cared for the little boy, made an application to the Family division of the High Court for a residence order. In the same month decisions to refuse to revoke the deportation orders against mother and child were made. At this point L instructed her current legal aid solicitors, who recommended that her son required separate representation. By this time L's mental state was such that she could not look after her son. The matter went to appeal. The Tribunal found in L and her son's favour at first instance. The decision was upheld when the Home Office applied for reconsideration and L and her son have been granted discretionary leave to remain in the UK.

O

This case is not technically a refugee family reunion case but the person assisted was the mother of refugees in the UK and had fled her own country. The case illustrates that immigration cases can involve people living in precarious situations similar to those seen in asylum cases.

O is an illiterate elderly woman. All her children are refugees, either in the UK or other European countries, and after her husband was settled in the UK, she was alone. Having fled a civil war, she was living alone and unlawfully outside her own country. Her husband, who was also illiterate, sought to sponsor her entry to the UK. One of their sons undertook to financially maintain his mother.

Her application was refused by the Entry Clearance Officer, who disputed the relationship between the couple and their children, noted a previous finding that the sponsor's spouse was dead, and applied incorrect authority on the question of third party support (i.e. that her children would contribute to the costs of supporting her.

The couple took advice from a legal aid solicitor and were granted legal aid to appeal the decision. DNA evidence was commissioned which proved the disputed family relationships

and the family provided explanations of apparent difficulties in the evidence. The sponsor had been polygamous.

Although the decision was maintained on review and had to proceed to a tribunal hearing, the appeal was allowed on the day and the Entry Clearance Officer accepted the decision.

M

This case is not technically a 'refugee family reunion' case, because the marriage was contracted and the family formed, following M's recognition as a refugee. It is however a case where legal aid was used in an immigration case to reunite a refugee survivor of torture with her husband.

M is a refugee who was recognised as such by the UK Border Agency without the case's having gone to appeal. She is a survivor of torture. She began cohabiting with a man who was a national of the same country of origin but did not have any immigration status in the UK and had two children. He returned to their country of origin to make an entry clearance application to join M as her spouse around the time the UK Border Agency were informing those who returned within a short window would not face the ten year 're-entry ban' from the UK that would otherwise have been a probable consequence of the M's partners having lived in the UK with no immigration status. As M did not have settled status in the UK, but only five years limited leave to remain as a refugee, her partner's application for entry clearance was refused. An appeal was lodged on Article 8 grounds. M was receiving counselling and family therapy at the Medical Foundation for the Care of Victims of Torture. She was struggling to cope alone with her two young children, as her partner had previously taken on a large share of caring for the children. Her four-year old son was displaying behavioural problems due to being separated from his father and seeing his mother's distress. Witness evidence was submitted. Expert evidence was submitted from the Medical Foundation for the Care of Victims of Torture, an independent Social Worker and M's son's nursery. The appeal was allowed on Article 8 grounds.

Y

This case is not technically a 'refugee family reunion' case, because the UK immigration rules make provision for an adult refugee to be reunited with his/her children but do not make provision for child refugee to be reunited with his/her parents and it is necessary to rely on an exercise of discretion in such cases. It is however a case where legal aid meant that a refugee child was reunited with her mother. Y, a child would not have been able to afford the DNA evidence to establish her relationship with her mother, nor to plead her own case.

Y is from a war-torn country in Africa. She entered the UK as an unaccompanied minor and made an application for asylum. She was recognised as a refugee. Y made an application for her mother to join her under the Family Reunion Policy (as opposed to the immigration rule; necessitating showing compelling compassionate circumstances). DNA evidence was obtained to prove family relationship and detailed representations were made in relation to Article 8 ECHR. Her mother was granted leave to enter the UK.

Q and S

This case is not technically a family reunion case, because the UK immigration rules do not make provision for family reunion for siblings.

Q and S were sisters aged 11 and 8. They had fled a war-torn country in Africa and living in a refugee camp in a third country. They were living with a former neighbour, who was preparing to leave the country and there were fears that they were at risk of sexual assault

in the camp. They applied for entry clearance to join their sister in the United Kingdom, who had been recognised as a refugee and granted indefinite leave to remain. The rest of their family were dead or missing. They did not meet the immigration rules for family reunion, so their application was based on Article 8 ECHR.

Their applications were refused. The reasons given included: that Q had limited knowledge of her older sister's life in the United Kingdom (despite Q's being 11 years old); the neighbour could continue to look after them (despite her having indicated that she would not); that there were communities from their country of origin in the country to which they had fled and no imminent prospect of the children's removal from the third country. The decision stated that there were no compelling compassionate circumstances in the case. The decision ignored Entry Clearance Guidance to the effect that the case should have been referred for consideration in the United Kingdom.

With the assistance of legal aid lawyers, the children eventually succeeded on appeal.

M

This case is not technically a 'refugee family reunion' case, because the sponsor had not been recognised as a refugee or been granted humanitarian protection. It is however a case where a family who had suffered persecution were reunited in the UK.

M came to the UK in around 2003 and claimed asylum. She is a survivor of torture and subject to debilitating panic attacks and constant psychosomatic pain, which at times means she is barely able to walk. She has been diagnosed with post traumatic stress disorder and has had in-patient mental health treatment as a result of this and of her panic attacks. She was not well-served by her initial representatives.

M was refused asylum. An appeal was lodged. She was too ill to attend the appeal but her representatives failed to pass on a doctor's note to this effect. She was told that it was all right for her not to attend her appeal hearing. Her solicitors did not push strongly for an adjournment, and her asylum appeal was dismissed.

Her legal aid lawyers took on the case some time after M has exhausted all her appeal rights. Due to her inability to talk about the events that she suffered, the best course of action at the time was considered to be to apply for Discretionary Leave to Remain on the basis of her mental health, and three years leave to remain was finally granted by the HO on this basis.

M subsequently discovered that three of her children were still living, having fled to a third country. The eldest was over 18 and no longer a child by this time. She was an epileptic, in poor health. The second child complained of nightmares and not being able to sleep. These two children were looking after the youngest, who was a pre-teen.

The legal aid lawyers assisted the family to apply for entry clearance outside the rules, and persuaded the embassy to accept the applications without a fee. The applications were refused, on the basis that they did not come within the immigration rules, and that the time they had lived apart meant there was no breach of article 8, the right to private and family life. An appeal was submitted.

In the mean time, M, being desperate to see her children, visited them in the third country. Whilst she was there, she suffered a panic attack. Those around her there concluded that

she was possessed and brought a priest to beat the daemons out of her. She managed to escape and returned to the UK.

The legal aid lawyers represented the client's children in their appeal, relying solely on article 8, both in terms of the family life, but also on the effect that the separation from her children was having on our client's mental health. M gave evidence during the hearing, to which she was accompanied by her mental health worker and a close friend. She suffered a severe panic attack in court and the hearing had to proceed in her absence. The appeal was allowed and the family has been reunited in the UK. Their lawyer observes *"Although this case really centers on the children's applications, their mother had to play a central part in the case. Without legal advice she would not have been able to prepare the applications, and prepare the case for hearing. Her mental state would absolutely have prevented her from being able to give any evidence as the sponsor to the application. Without being reunited with her children, and freed from the stress and worry about them, her mental health would have continued to deteriorate….This is one of the most extreme cases I have dealt with, but there are many more where similar issues have arisen."*

Family Reunion cases

U

This case, which concerns a refugee being reunited with her family, provides examples of savings to different UK departmental budgets that can be effected by timely spending on legal aid.

Mrs U is an elderly refugee from a war-torn country in Africa. She lives with her three teenage and adult grandsons, all of them recognised as refugees. Her daughter, the mother of her grandchildren, her son-in-law and their two remaining children applied in a third country in 2007 for visas to come to the UK, under refugee family reunion provisions. They were refused, the visa officer recognising that there were strong compassionate circumstances, but not referring the case to the UK Border Agency as they should have done and not considering the case properly on human rights grounds.

The family in the UK sought advice from a legal aid solicitor, who lodged their appeal and represented them in court. The Tribunal remitted the case for reconsideration by the UK Border Agency and the solicitors collected evidence and made detailed representations on the family's behalf. They showed how all the family had faced persecution in the country of origin and how difficult the situation in the third country was, and how the family needed to be together. They provided evidence from doctors and social workers about the family in the UK and how separation from their parents had harmed the boys – one had been sentenced to 18 months in a young offenders' institution, one had been excluded from school and one was clinically depressed – and how their grandmother needed more help in bringing them up .

It was eventually accepted (in light of evidence obtained with public funding) that the sponsoring children (recognised refugees) lacked parental guidance, and if the applicants were not admitted, the likely costs to other UK budgets (foster care etc) would be substantial. The sponsoring elderly adult (a recognised refugee) also needed looking after and costs to NHS/social care of not admitting the applicants would have been substantial. Cutting legal aid for legal representation in this case would not automatically have saved public money. But under the government's new proposals, *prima facie* the applicants could

not have got public funds to appeal from the refusal of entry clearance for family reunion in reliance on the Secretary of State's policy/Article 8 of the European Convention on Human Rights.

ZN (Afghanistan) [2010] UKSC 21

See www.supremecourt.gov.uk/docs/UKSC_2009_0126_Judgment.pdf

This case involves a refugee family reunited after 11 years, following complex litigation that went all the way to the Supreme Court.

A refugee family reunion case. ZN's husband was recognised as a refugee in 2001. ZN and their six children were living in Pakistan. They made various applications to join ZN's husband under refugee family reunion but these were unsuccessful. In March 2005 ZN's husband naturalised as a British citizen. An application for ZN and the six children to join him from Afghanistan was turned down by the Entry Clearance Officer, immigration judge, senior immigration judge and Court of Appeal only to have Supreme Court get it right. The case against ZN's family was that as ZN had become a British citizen he could not rely on the Refugee Family Rules to bring in his family without satisfying the requirements in the immigration rules as to maintenance and accommodation. Just before the hearing before the Supreme Court the Home Office indicated that ZN and her children would be granted entry clearance under Article 8 of the European Convention on Human Rights. However, the Supreme Court went on to hear the case and held that the Refugee Family Reunion rules were applicable in the case. The Secretary of State has subsequently changed the immigration rules so that they now state that in such a case, where a refugee has naturalised as a British citizen, the maintenance and accommodation provisions of the immigration rules will apply to the case. Cases are now likely to be brought under Article 8 (right to private and family life) of the European Convention on Human Rights. ZN and her children arrived in the UK in March 2010 after 11 years separation from ZN's husband and the children's father.

Not only did this case bring a family together but it helped bring together other refugee families that were separated by the Home Office's incorrect interpretation of the rules relating to refugee family reunion. This case was brought under legal aid and it is impossible to see how it would have been brought without legal aid. ZN did not have the money to pay for the case privately (her husband was on benefits and unable to work because of health conditions) and ZN would not have been able to represent herself because she was outside of the United Kingdom and her husband speaks limited English and has no legal knowledge.

B and N

This case illustrates how refugee family reunion cases may involve situations of individuals in danger of persecution just as asylum cases do.

Mr B fled from an African country in 2002, after being arrested, detained and tortured. He applied for asylum in the UK, which was refused, and he lost an appeal against that refusal in 2003. Two weeks later, he learned that his wife had been killed by the security services in his country, who were looking for him, and that their eight-year-old daughter, N, was being cared for temporarily by her aunt. Mr B's legal aid solicitors made a fresh asylum application for him; in 2009 he was given indefinite leave, with no indication that the asylum case had been considered. His solicitors appealed and he won his appeal to be recognised as a refugee in March 2010. The solicitors helped N to apply for entry clearance to come to join him in April, but this was refused, as the visa officers disputed that N is his daughter; that N

lived with B as part of his family in the country of origin and asserted that N, now aged 15, was leading an independent life. The solicitors lodged an appeal and prepared detailed evidence; N won her appeal in October 2010 and has come to join her father at last.

Under the proposed changes, it would appear that Mr B could not have accessed publicly funded advice on behalf of N for entry clearance for refugee family reunion because entry clearance cases are to be taken out of scope of legal aid entirely. Yet it is highly unlikely that Mr B, who is still severely traumatised after his experiences, could have prepared the application or represented N himself successfully on appeal.

D

This case illustrates how the costs associated with obtaining the relevant evidence may keep people from pursuing legal remedies open to them. An immigration judge can only decide a case on the basis of evidence before him/her and if such evidence cannot be obtained, a meritorious case may be lost.

D was a recognised refugee in the UK. She had applied for her four biological children and two adoptive children (niece and nephew) to join her in the UK. They were all refused. Her previous solicitor advised her to only appeal the decisions to refuse her four biological children. After a DNA report was obtained, the appeals were allowed. She went to see her subsequent solicitor and an application under the Immigration Rules as well as on the basis of Article 8 of the European Convention on Human Rights was submitted on behalf of the adopted niece and nephew. The Entry Clearance Officer obtained a DNA test and granted a visa to one of the two children as the test confirmed the claimed relationship with only one of them. An appeal was lodged. It took two months to obtain the permission of the Entry Clearance Officer to re-use the samples used for DNA testing to carrying further tests as to the relationship between the two siblings for a cost of £50. If new samples had had to be obtained the costs would have been £465 and £100 in sample fees. The decision is currently being reviewed. The lawyer notes *"Without advice our client would not have known what to do. She would not have been able to reapply for the children and would not have been able to spend, on top of the costs of the applications under the immigration rules, the costs of the tests. "*

M

This is an example of a mentally ill refugee who needed the assistance of legal aid lawyers to make an application for family reunion as recommended by the medical professionals caring for him.

M is a refugee. M has been diagnosed with schizophrenia. M's Psychiatrist recommended as part of M's treatment that M make an application for his son to join him in the UK. M's adult son, who has also been diagnosed with schizophrenia, resides in the country M had fled. M is very vulnerable and anxious about the application process. An application was submitted to the Embassy with detailed witness and medical evidence submitted under the Family Reunion Policy. M's son's application for entry clearance has been refused on the basis that there were no compelling, compassionate factors and legal aid lawyers are challenging the decision.

H

This is an example of a refugee family reunion case where the immigration judge was able to take into account DNA evidence obtained by legal aid lawyers. An immigration judge can only decide a case on the basis of evidence before him/her and if such evidence cannot be obtained, a meritorious case may be lost.

H is a refugee. He made a straightforward application for Entry Clearance under the Refugee Family Reunion provisions for his wife and son who are in the country he fled. The Entry Clearance officer refused the application for entry clearance on the basis that there was no evidence that H was married to his wife before he fled and that there was no evidence that the child was his son, despite DNA evidence, obtained by H's legal aid lawyers, having been submitted with the application and despite H having informed the UK Border Agency of his wife and son's details when he initially claimed asylum. H appealed the decision with the help of legal aid lawyers and the appeal was allowed.

M

This is an example of a refugee family reunion case where DNA evidence was obtained by legal aid lawyers.

M's mother was raped during her flight as a refugee. She gave birth to her child in a third country but he was left behind in that country with friends. She was recognised as a refugee in the UK. On arrival in the UK, she instructed that she wanted to make an entry clearance application for four month-old M to join her. DNA tests were obtained as evidence of the relationship and witness statements were submitted in support of the application. M was granted leave to enter the UK outside of the Immigration Rules.

T

This is a case where legal aid lawyers were able to protect the interests of the client not only by appealing the decision to refuse refugee family reunion but by ensuring that the hearing was expedited.

T is refugee. Her legal aid lawyers made a straightforward application for Entry Clearance under the Family Reunion provisions for her two minor children. The applications were refused on the basis that there was no evidence that the family had resided together as a unit prior to T's flight. T appealed the decision. Due to the distress the continued separation from her children was having on T, a request was made to the First Tier Tribunal to expedite T's appeal hearing. This was done and the appeal allowed on the day of the hearing.

H

This refugee family reunion case involved four years of litigation, including the legal aid lawyers moving for judicial review before a refugee could be reunited with her elderly mother who was living at risk in a third country.

The case involved complex issues relating to Article 8 ECHR, UK Border Agency policy and Court of Appeal case law. It was necessary to commence judicial review proceedings. The result almost certainly would not have been achieved without quality legal representation. The client would not have been able to grasp or understand the issues without such representation.

H is the elderly dependant mother of a refugee sponsor in the UK. H lived unlawfully in Addis Ababa, Ethiopia. H and the sponsor had been separated due to the displacement caused by the civil war in Somalia. They had lived together as part of the same family unit

before they were forced to flee due to persecution. The sponsor was raped and beaten by clan militia on Mogadishu so had no option but to leave. The sponsor managed to flee to the UK and was recognised as a refugee. M remained in Addis Ababa. M submitted her own application without legal assistance in 2006 and the application was refused. The sponsor sought legal aid solicitors' assistance with the appeal and the appeal was in the Tribunal between 2007 and 2009. The matter was remitted back to the Entry Clearance Officer by the Tribunal on more than one occasion and entry clearance was eventually granted in summer 2010 following lengthy litigation and threat of judicial review.

S

This case illustrates how refugee family reunion cases may involve situations of individuals in danger just as asylum cases do.

S wished to sponsor her adult siblings who lived in a refugee camp in Lebanon. All are orphans and S had brought up the younger members of the family. She believed she was in the best position to care from them as both suffered from paranoid schizophrenia. Legal aid solicitors assisted S in making representations for a fee waiver and an application under the family reunion policy for her siblings to join her. They were able also to assist her ensure that the relevant documents from UNHCR and Red Cross hospitals were translated. Her application was refused without reference to the policy.

Legal aid solicitors assisted her with an appeal which was allowed and she was reunited her siblings. It would have been difficult if not impossible for S to have conducted her case alone. Complex factual and legal matters were involved and S had continuing concern for her siblings, who did in fact attempt suicide before the matter was successfully concluded.

M

This case illustrates how refugee family reunion cases may involve situations of individuals in danger just as asylum cases do. The case involved DNA evidence and a search for birth certificates, neither of which could have been undertaken without legal aid. An immigration judge can only decide a case on the basis of evidence before him/her and if such evidence cannot be obtained, a meritorious case may be lost.

M is a refugee from a country divided by civil war who fled leaving her three children in the care of her uncle. In the confusion of the fighting the children were moved about and separated from the uncle who subsequently died. It took M a year after she had been recognised as a refugee status to locate her children. By this time they were living in difficult circumstances, unwanted, not getting enough to eat and not attending school. The children were 7, 12 and 16 years old. Legal Aid solicitors assisted her to make an application for family reunion which included DNA tests and to search for her children's birth certificates. The application was refused and M's solicitors represented her at appeal, marshalling the evidence relating to the methodology of the DNA testing company which satisfied the immigration judge of the family relationships.

The solicitor's initial view was that this was not a complex case, but it did require DNA evidence. The refusal of the application when DNA evidence had been submitted necessitated further professional support M as she appealed to have her children join her.

L

This refugee family reunion case involved DNA and expert evidence. An immigration judge can only decide a case on the basis of evidence before him/her and if such evidence cannot be obtained, a meritorious case may be lost.

L is arrived in the UK aged three in 2006 and was recognised as a refugee. He lived with his aunt. He applied for his father, who was living in poor conditions in Ethiopia to join him. The application was refused as it was not within the rules. He appealed against the decision and was again refused notwithstanding DNA evidence and a social worker report. The application was remitted to an Entry Clearance Officer to make a new decision on the basis of the DNA evidence which confirmed the father son relationship .A further refusal followed. After considerable work on the part of the legal aid solicitors establishing facts and dealing with a child, his absent father and guardian aunt, who knew little of the family's circumstances in the country of origin, the appeal was allowed.

The Home Office applied for and was granted reconsideration but following a further hearing the decision allowing the appeal was upheld. This case was particularly difficult given the age and the prolonged procedure which ran to two applications and four tribunal hearings. It is unlikely that L's aunt would have been able to conduct the case on his behalf since the application engaged policies outside the rules .The complex case involved issues of the right to family life and required DNA evidence, an expert social work report and international phone calls.

L's father has now been granted a visa to join his young son.

H

This case illustrates that even the application process may be fraught for a refugee in a family reunion case. Had the UK Border Agency's commercial partners not obstructed acceptance of the case the costs to the legal aid budget would have been less.

This case should have been a straight forward family reunion application made to an entry clearance post. It was only resolved when legal aid solicitors threatened to take the matter to the High Court. M has been granted humanitarian protection in the UK. His wife and children were abroad and approached the entry clearance post in Addis Ababa to apply to join him. They were turned away when the agents operating the post insisted that the application could only be made with the payment of a fee. This happened on several occasions despite the presentation of a letter from the legal aid solicitors pointing out that a fee was not a legal requirement in this case. Only when a letter before action threatening judicial review was issued did the company agree to give H's wife an appointment and to accept her application. The entry clearance post is now carrying out DNA tests before issuing visas.

X

In this case, had the Entry Clearance office correctly applied the rules relating to refugee family reunion, the costs to the legal aid budget would have been reduced.

X was recognised as a refugee following a successful appeal. Due to delays in processing his application by the UK Border Agency and further delays in the appeal process this took from 1999 to 2007. He had left four children behind. He had a medical condition which prevented him from fathering children, but the four children had always been treated as his

own. By the time their father was recognised as a refugee, one of them had become an adult. The four were living alone in pitiful circumstances. Their mother had remarried and the children were forced to move from distant relative to distant relative, and they were not attending school. The children applied for entry clearance under the refugee family reunion provisions. The first struggle was ensuring the entry clearance applications were accepted. Their applications were refused, the Entry Clearance Office taking into account irrelevant considerations, including that no evidence had been provided that the father had been supporting the children financially. This is not a requirement of the rules relating to refugee family reunion. Happily the appeal was allowed, and thus after a separation of 11 years, the family were reunited. Both the initial entry clearance application and the appeal were dealt with under Legal Help and Controlled Legal Representation, and would be out of scope under the proposals. Apart from the complexity of the legal arguments, Mr X, whose English is limited, could not have conducted the litigation without legal assistance.

Domestic Violence cases

Ms A

This case illustrates how domestic violence matters can arise in an immigration context, and also the evidential burden, entailing costs of disbursements, that a victim of domestic violence may be required to resolve to find safety.

Ms A is a 29-year-old citizen of a South-Asian country. Aged 20, she married her cousin, a British citizen, and was given entry clearance to join him in 2002. She lived with her husband and in-laws and suffered serious violence from them. In 2004, with the help of the police, she was at last able to escape. She applied for permission to remain but this was refused in 2006 and she lost her appeal in 2008. The women's refuge where she had lived could no longer accommodate her, as they received no funding for her, but referred her to a new legal aid solicitor. The solicitor collected 11 items of detailed evidence about what she had endured and made a new application to the UK Border Agency in 2009. This was successful and she now has indefinite leave to remain.

Under these proposals, public funding would not have been available to pay an interpreter to take a statement from Ms A, to advise her, to get an expert clinic psychologist's report, and prepare representations in support of her case. She would have nowhere to turn other than the refuge. The refuge could not resolve her case and that is why they referred her to legal aid solicitors for advice and representation.

T

As a child, T was a victim of forced marriage. When she divorced her first husband against her family's wishes she was severely chastised. She came to the UK as a visitor and met a man who she chose to marry. They had a religious ceremony in the UK followed by a civil marriage in T's country of origin. She remained in her country of origin for several months while her husband returned to the UK to prepare the papers for her entry clearance application. During this period her husband called her daily and was very threatening and abusive. Her family told her not to return to the UK.

She entered the UK with entry clearance as a spouse against her family's wishes. Her family disowned her and threatened to kill her if she returned to her country of origin.

Once living with her husband he proceeded to rape and sexually abuse her. He was extremely verbally abusive and hit her and scratched her. He told her if she contacted the police he would kill her and that she had no rights as an immigrant in the UK. He then sent her back to her country of origin without any notice by force. There she hid at a friend's house as she was in fear of her family. She returned to the UK a few days later with the hope of saving the marriage. Her in-laws had contacted her while she was in her country of origin and said that she should return and that her husband was not well and needed her care.

On return to the UK her husband was again physically abusive. She was taken into the care of a refuge. Her application for indefinite leave to remain as a victim of domestic violence was refused despite overwhelming evidence of domestic violence, including a detailed GP report, a report from a domestic violence organisation and photographs of injuries she had sustained. Contrary to guidance issued to the UK Border Agency caseworkers, the UK border Agency criticised the lack of a police report and said the photographs and GP report were limited due to lack of DNA evidence to show that her husband was responsible. They also made complex arguments about the cause of the breakdown of the relationship, arguing that it was the husband's decision to leave her and that the marriage did not break down due to domestic violence.

T won her appeal, however legal advice and representation were essential. She did not speak English and required an interpreter. She was very distressed throughout and frequently tearful. The legal arguments about the causation of the marital breakdown would not have been easily understandable to her. She was extremely traumatised by the violence and abuse that she had suffered. Expert evidence was extremely helpful in deciding the appeal, in the form of reports from a domestic violence expert and a psychiatrist.

N

N was 16 when her British husband made arrangements to marry her with her parent's consent in N's country of residence. He completed all the relevant visa forms, and claimed that N was over 18. During the period spent waiting for the application to be determined, and prior to entry to the UK, N was sexually and physically abused by her husband. Soon after her entry to the UK, he became even more possessive and violent. N tried to leave her violent husband, but after finding herself destitute and having no-one to turn to, she returned to him on two separate occasions. N's husband kept all immigration status documents and refused to take N to see a doctor. He refused to allow N to speak to her family, and refused to allow her to attend English classes. At the third attempt in leaving her husband, N fled to a different city. N was then referred to a legal aid immigration solicitor for advice and assistance. Given that N had no documents, no proof of living with her husband and that he was violent, her representatives had to spend many hours in getting evidence of N's circumstances, including getting a copy of her visa application from the UK Border Agency files and an expert's assessment on N's experience of domestic abuse. N was granted Indefinite Leave to Remain and when N learned of this, it was the first time that her immigration solicitor saw a smile from N

D

D has been the victim of domestic abuse. She entered the UK on a spouse visa and thus is not entitled to public funds. She is no longer living in the matrimonial home and has been staying at various peoples' houses as she cannot afford rent and the local council will not house her, as her visa stamp clearly states 'no recourse to public funds'. She could not even afford the £10 police Subject Access request fee to obtain evidence from the police service of the domestic violence she has suffered. When she saw legal aid lawyers, this fee was paid for as a disbursement. She was also referred to a Home Office funded project that aims to provide people in her position with assistance with housing and sustenance.

Part of her claim is that her husband made her sell all her property in her home country before coming to the UK and therefore she currently has no funds or means of support to survive, let alone pay legal fees.

Her lawyer observes "She is a vulnerable client who relies on the advice we are giving to her as she has nobody else to turn to for support and she does not know much about this country or how to live independently, as a result of the domestic (physical and mental) violence that she has suffered. …Without legal aid, she would have no access to legal advice and would have to face making a legally technical and emotionally distressing application personally, despite her vulnerable state, lack of knowledge of legal principles or procedures, and limited ability to communication in English."

B

B has three British children. She is a victim of domestic violence which culminated in her husband threatening to kill her with a knife held to her throat. Her husband had previously been convicted of other offences. The relationship broke down and her husband reported this to UK Border Agency.

Her legal aid lawyers made a prompt application for leave to remain to protect her position. Police records needed to be obtained, which entails a delay but in this case the information held by the police could not be disclosed because of an ongoing investigation. The legal aid lawyers had frequently to liaise with the UK Border Agency to request they did not make a decision before all relevant information had been disclosed by the police and to collate voluminous evidence from 3rd party agencies – social services, GP, and Police. B was identified as a suicide risk. B's husband has been convicted and given a five- year restraining order. The UK Border Agency has refused B's application. The refusal does not mention significant parts of the evidence, including the three British children and is currently the subject of an appeal.

N

N was referred to her legal aid lawyers by a women's refuge. She is a victim of domestic violence and her daughter has also been abused by N's husband. N has a second child, who is a British citizen. A Multi Agency Risk Assessment Conference (MARAC) had been completed and N has been identified as high risk N suffers from long –term depression. The case involved considerable dealings with social services and evidence gathering. N and her daughter were granted Indefinite Leave to Remain.

S

S had been granted leave to remain as an unmarried partner. She was a victim of domestic violence which consisted of extreme physical abuse. She had two children by her ex-partner. An application for Indefinite Leave to Remain was made but refused. Following a publicly funded appeal, she was granted Indefinite Leave to Remain.

W

This is not an application under the domestic violence part of the immigration rules because W did not have leave as a spouse. It is however a case involving a person subject to domestic violence.

W was a visitor. She entered into an abusive relationship and was a victim of domestic violence. W's leave to remain expired. W had two children born in UK by different fathers, both of whom left her. W had attempted to access publicly funded legal advice but had been advised instead to 'lie low'. Eventually she made her way to legal aid lawyers who made an application for leave to remain based on Article 8 (W's eldest child had been in the UK for eight of his 13 years) but this was refused without a right of appeal as there was no appealable decision (such as a decision to removal) made at that time. The lawyers have now made an application for Judicial Review challenging the decision and/or the failure to grant a right of appeal in respect of it.

A

This is not an application under the domestic violence part of the immigration rules, because A had no leave as a spouse. A's abusive husband did not take steps to regularise her immigration status.
A had no immigration status and had lived in the UK for some years. She married a British Citizen around six years ago and they had two children. 'A's husband started being abusive and physically violent towards her. He would promise her that he would do something to regularise her immigration status, then not do so. She felt that this was part and parcel of the abuse. Eventually she managed to leave and was brought to see legal aid lawyers who assisted with an application for Discretionary Leave on the basis of her family life with her children, who were born British citizens, as well that, although their parents relationship was extremely fraught, they would be denied the right to know their father if they were removed with her mother. The application fee of £395 had to be funded by a charitable organisation. Although well drafted representations were submitted, based on Article 8iof the European Convention on Human Rights, the Home Office refused the application. Eventually a challenge was brought by way of judicial review. The Home Office then settled the case and granted Discretionary Leave to Remain. The lawyers observe that although judicial review remains in scope, they could never have got the case off the ground, or to the stage where judicial review was proper and had merit, without legal aid for the initial application.