ILPA RESPONSE TO THE MINISTRY OF JUSTICE CONSULTATION ON LEGAL AID, FEBRUARY 2011

ANNEXE 1 CASE EXAMPLES

This annexe includes both cases submitted to the Ministry of Justice with ILPA's December 2010 initial response and new cases. All cases have been anonymised.

It is divided into sections as set out below to provide illustration of points made in ILPA's response, but many cases are illustrative of a number of points made in ILPA's submissions, not least ILPA's contention that the UK Border Agency's conduct of decision-making and conduct of litigation are significant cost drivers for the legal aid budget and that improvements in these would produce savings for legal aid and for the courts. The annexe should therefore be read as a whole.

Sections

A. **Refugee Family Reunion cases** (see ILPA's response to question 1)
   - Cases within the refugee family reunion rules
   - Cases in which refugees were reunited with family members
B. **Domestic Violence cases** (see ILPA's response to question 1)
   - Cases within the domestic violence rule
   - Other cases involving domestic violence
C. **Cases illustrating the matters at stake in immigration cases** (see ILPA's response to questions 3 and 6)
D. **Cases illustrating the matters at stake in asylum support cases (**see ILPA's response to questions 3 and 6)

SECTION A REFUGEE FAMILY REUNION CASES

Cases within the refugee family reunion rules

A

This case shows the complexity, particularly circumstantial and evidential, that may arise in Article 8 cases and in refugee family reunion cases.

A is over 65. She is a refugee and has Indefinite Leave to Remain as a refugee. A made an application for her daughter K to join her in the UK under the Immigration Rules. The Entry Clearance Officer in Ethiopia refused the application on the basis that A was unable to maintain and accommodate her daughter as A was in receipt of Income Support. A appealed the decision. A's appeal was successful on the grounds of Article 8 of the European Convention on Human Rights (private and family life). A detailed statement was provided to the Tribunal setting out the history of A's relationship with her daughter - her daughter's severe learning difficulties and the compassionate circumstances due to the rest of A's children having been killed during the civil war and A living alone in the United Kingdom. K has since arrived in the UK.

C

This case also shows the complexity, particularly circumstantial and evidential, that may arise in Article 8 cases and in refugee family reunion cases. In addition it highlights procedural and legal complexities that a lay person cannot be expected to deal with.

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

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

After a further delay, Entry Clearance was granted. After a variety of problems with travel, the applicant eventually made it to the UK and she is settling in, with assistance from friends and counselling. Legal Aid costs were approaching £1000, at private rates, much more. Without Legal Aid, she would have remained in her home country.

D

This case highlights the speed with which applications may need to be made (not in this instance because of procedural or administrative time limits), which a lay person cannot be expected to be able to achieve.

D had indefinite leave to remain as a refugee and was not working because she was looking after her severely disabled daughter. An application was being made for her husband and eight year old son to join her.

While the application was being prepared the husband died suddenly, as a result of a heart problem. This left the son on his own. There were no relatives nearby to look after him. He was being looked after, after a fashion, by some family friend who could not afford to keep him. There was immense potential for abuse and exploitation. In a single day the lawyers prepared the application. It was refused. An appeal succeeded. The family are now reunited.

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.

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."

ZN (Afghanistan) [2010] UKSC 21[1]

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

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

[1] See www.supremecourt.gov.uk/docs/UKSC_2009_0126_Judgment.pdf

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.

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.

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 a 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 the third country to which she had fled. H and the sponsor had been separated due to the displacement caused by the civil war in their country of origin. They had lived together as part of the same family unit before they were forced to flee due to persecution. In the war-torn country she had fled, the sponsor had been raped and beaten. The sponsor managed to flee to the UK and was recognised as a refugee. M remained in the third country. 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.

H

This case illustrates that even the application process may be fraught for a refugee in a family reunion case. There were particular difficulties in persuading the UK Border Agency's 'commercial partners' (subcontractors to whom applications are submitted) to accept the application, which considerably increased costs to the legal aid budget.

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 UK Border Agency's 'commercial partners' in the third country in which they were residing, to apply to join him. They were turned away when the commercial partners insisted that the application could only be made with the payment of a fee (no fee is payable in refugee family reunion cases). 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.

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 for M as she appealed to have her children join her.

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. The case involved complex legal argument.

E

If legal aid had not been available in this case E would not have been able to access legal advice to ascertain the necessary types of expert evidence to submit in support of his son's appeal. Money may have been wasted in unnecessary further DNA tests, and E would not have had the knowledge to seek appropriate expertise or have been able to show that relevant evidence was already held on UK Border Agency files.

E is from Africa. He was recognised as a refugee in the UK and subsequently naturalised as a British national. After years of searching, he re-established contact with three of his children who he had been separated from when he fled to claim asylum. The three children were living without lawful status in the third country to which they had fled with an unofficial guardian. Since re-establishing contact E had been sending money to support them, staying in contact, and made several trips to visit them. He wanted to make a refugee family reunion application for them (now this would not be possible since the October 2010 statement of changes to the immigration rules – but at the time the case-law was oscillating between whether a now British person who had been recognised as a refugee could or could not benefit from refugee family reunion).

The younger two children were granted visas following their applications, but the eldest was not – on the basis that the DNA test indicated that Mr E was not the father; the ECO suggested that E had taken pity on a child and was attempting to gain entry clearance for him in the identity of his son. E was not aware that he was not the biological father prior to the DNA result, and as his wife was missing presumed deceased she could not provide any explanation. E did not want to upset his children by revealing the information, and neither did he want to separate them. E insisted that the child, regardless of genetic relationship was his son; he had been there when he was born.

It could not be known whether E's wife had been unfaithful (although it was considered this was unlikely), whether E's wife may have been raped.

An appeal was lodged for the eldest child. It was submitted that whatever the explanation for the non-biological relationship, the child had always been the child of Mr E, and should be treated as such. A facial recognition expert was commissioned to consider photographs of the child from before the family had been split by E's flight, the photograph of the children which E had had in his passport from when he first arrived in the UK (which was shown to be held on the UK Border Agency records by Subject Access Request) and current photographs of the now teenage boy. The expert confirmed that the boy in the photographs was the same person. The Appeal was allowed. E was able to be reunited with all three of his children in the spring of 2010.

Cases in which refugees were reunited with family members

Because of the nature of way in which those who qualify for refugee family reunion is defined in the UK immigration rules, the cases below are not 'refugee family reunion' cases within the definition of the rules. All involved refugees being reunited with members of their families.

L

This case is not technically a family reunion case as the UK rules, while recognising the rights of parents who are refugees to be joined by their minor children, does not recognise the rights of minor children who are refugees to be joined by their parents, and L was only three

when he came to the UK. The application had to be made outside the rules, on the basis of Article 8 and policy. The 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 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 the country to which he had fled 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.

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 elderly woman. She is illiterate. 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 with no lawful status, in a third 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 legal 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 is an example of a case where DNA evidence was obtained by legal aid lawyers to

reunite a refugee with her four-month old child.

M's mother was raped during her flight from persecution. 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.

S

This case illustrates how cases of the family members of refugees 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 the Middle East. 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 case was successfully concluded.

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 based on Article 8 of the European Convention on Human Rights. Y's mother was granted leave to enter the UK.

F

This case illustrates how exceptional cases require legal aid funding where there is no other source of finance in order to put the case before the tribunal for independent assessment.

F is from war-torn country in Africa. She came to the United Kingdom as a spouse dependent on her second husband, under the refugee family reunion rules. Prior to F's marriage to her second husband, F had been married to her first husband, with whom she had had two daughters. F suffered domestic abuse from her first husband and she had to run away from that marriage. For her safety, she had to abandon her two daughters with her first husband; as she feared that he would have pursued her for the children. She then got married to her second husband before he fled to come to the United Kingdom. F then joined her second husband as a refugee dependent and later had a son with her second husband in the UK.

However, since her arrival in the UK, F had been making all efforts to establish contact with her two daughters. After years of searching, F was lucky to find the whereabouts of her two daughters.

The two girls were with their step-mother, who was abusing them. F further discovered that the children's father had died but did not know how he died. F paid some people, who helped in getting her daughters to a third country. F visited them several times.

She then applied for them to rejoin her in the United Kingdom. However, their application was refused by the Entry Clearance Officer (ECO) in the third country. The Entry Clearance Officer was not satisfied that F was the children's mother, as she had not mentioned their names in her application to join her second husband. F did a DNA test with her children and it confirmed they were related as claimed. F then lodged another application for her children to join her under the refugee family reunion rules. However, that was also refused on the basis that F herself was never granted asylum.

At the time, F had separated from her second husband, which resulted in a divorce. F did not have any support and her children were in a very precarious situation in the third country, as she could not find care for them there. F was granted legal aid to appeal against the Entry Clearance refusal under Article 8 of the European Convention on Human Rights. The immigration judge allowed their appeal under Article 8. The Judge found that the children's circumstances were exceptional and to require them to make another application, when their mother could not meet the requirements of the Immigration Rules in the near future would be disproportionate. F's children's appeal was

allowed and the Entry Clearance Officer did not appeal against that determination. After three years of litigation F and her children were reunited.

SECTION B DOMESTIC VIOLENCE CASES

Cases within the domestic violence rule

N

This case shows example of both the difficulties that domestic violence victims may face in addressing their immigration situation (including in applications to the UK Border Agency and in appeal proceedings), but highlights the particular importance of competent legal advice and representation to addressing such situations.

Client N entered the UK on a two year spouse visa to join her British husband. After N arrived in the UK her husband's behaviour changed and he became controlling and physically, sexually and verbally aggressive towards her. N was threatened with a gun by her husband, which was reported to police. N left her husband on various occasions but he would plead for her to go back, saying that he had changed. N was unaware of domestic violence services and could not talk to her doctor about the situation because her husband accompanied her to GP appointments.

The final time N's husband lured her back to the house he locked her into the house and attacked her. He said she had broken in and called the police. N managed to get half way out of the front door when her husband was calling police. When the police arrived her husband had N trapped at the front door. N was hysterical and arrested for breaching the peace and taken to a police cell before being admitted to hospital with serious bruising. N's domestic violence application was refused despite submission of police reports, letter from a domestic violence organisation, photographs of marks on N's body, photographs of fire arms owned by N's husband and witness statements. The final attack on N happened after her application was refused. The UK Border Agency made no attempt to interview N about the fact they were not satisfied that her marriage had broken down permanently as a result of domestic violence, as per their own guidelines. Nor did they apply the relevant case law concerning domestic violence applications being allowed on oral evidence only, in recognition of the fact that it is often very difficult to obtain documentary evidence of domestic violence.

N was unaware of the domestic violence immigration rule and was afraid that she would be returned to her country of origin and as a result kept returning to her husband. He threatened that he would, in any event, have her sent back to her country of origin. Preparing the application and subsequent appeal involved a great deal of liaison with the police, hospital, GP and domestic violence project. This is not something that the N would have been able to do alone. Preparation for the appeal was complex as N was much traumatised, making taking her statement difficult.

She was also much traumatised at the appeal and at one point ran out of the court room. Additionally, the court interpreter was quite harsh with her adding to her discomfort.

Due to N's limited English and the trauma she experienced as a victim of domestic violence it would have been a considerable challenge for her to collect evidence and prepare for her appeal. N would not have been able to pay for private legal representation. If her appeal had been dismissed there is a possibility she would have returned to her husband rather than face the shame of returning home after a failed marriage. Fortunately, her appeal was allowed and the immigration judge commented on the helpfulness of the preparation of the appeal.

T

This case shows how a victim of domestic violence may face serious ongoing abuse and threats long after an application for indefinite leave to remain has been made and hence be

highly unlikely to be able deal with immigration procedures on her own; and shows the complexity of evidence that may need to be obtained and presented in these cases. It also again highlights poor quality decision-making by the UK Border Agency in dealing with or dismissing such evidence, causing Legal Aid and court costs.

T was a young woman granted leave to enter as the spouse of her British citizen husband. Upon arrival her husband embarked upon a campaign of mental and physical abuse this included forcing the couple's young child to refer to T in the most derogatory terms. T was raped by her husband. Due particularly to T's naivety and young age she was unaware of her ability to report spousal rape to the authorities. T continued to live like this for two years at which stage she was entitled to apply for ILR. In keeping with his entirely controlling demeanour her husband instead made an application for further leave to remain for her. A neighbour befriended T and upon being advised of her predicament referred her to Women's Aid who thereafter referred her to her representatives. They were in the process of assisting her with an application for further leave when her husband again physically attacked and sexually assaulted her. The charges initially laid against T's husband were dropped and as a consequence the bar on him returning to the matrimonial home lapsed. As a consequence T and the child immediately moved to a refuge.

The application to the Home Office was refused on the basis that the evidence provided (from the women's refuge, a GP report, a college report on a violent incident and a police report) were simply repetitions of statements of what T had claimed had happened to her. T was an extremely traumatised individual. Whilst her appeal was ultimately successful there is little doubt that T would not have been able to secure the appropriate evidence both in relation to the initial application and her appeal without legal advice and assistance.

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

In this case the UK Border Agency refused an application made under its own policy, in spite

of overwhelming evidence of persistent physical and emotional violence that satisfied the criterion. The case demonstrates how complex factual, evidential and legal matters cannot be understood or managed by victims of abuse who are traumatised by their experiences.

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

This case demonstrates how independent and specialist legal advice assisted an individual to secure entitlements she was otherwise denied by an abusive partner.

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.

K

This domestic violence case illustrates how legal advice and representation for applicants, at an early stage, saves all concerned a good deal of time and money.

K had probationary leave as a spouse when her husband started to abuse her. The police were called She submitted an application for indefinite leave to remain before the end of the two-year probationary period. She subsequently sought help from a domestic violence organisation. While the application was under consideration by the Home Office, the marriage subsequently broke down and the police advised her to move out of the marital home, which she did. She advised the UK Border Agency of her change of address. They checked the situation of the marriage and she explained that it had broken down. The UK Border Agency gave conflicting advice on the correct application form to use. She was advised to submit an application on the basis of domestic violence, which she did. This was refused on the basis that the UK Border Agency was not satisfied that there had been domestic violence, or that it had caused the marriage to break down, nor that the marriage had broken during her two-year probationary period. She appealed. The immigration judge held that she had been subject to domestic violence and that domestic violence had been the cause of the relationship breaking down during the probationary period, but dismissed K's appeal on the basis that her application could not succeed under the immigration rules, because she had no leave at the time when she made it. The immigration judge also dismissed her application made on the grounds of Article 8 of the European Convention on Human Rights. She sought to appeal this decision, but did not succeed. She sought judicial review, but this was not granted.

Her MP intervened on her behalf. The UK Border Agency replied to the MP stating that her evidence had been insufficient to confirm that domestic violence had taken place and that the decision had been upheld on appeal. No mention was made of the immigration judge's finding that domestic violence had taken place, and that this had been why the relationship had broken down.

She went to legal aid lawyers who lodged a judicial review. The UK Border Agency settled these within three months, granting her indefinite leave to remain on the basis of domestic violence. Her legal representative comments "It would have been a very 'simple' cheap legal help case had she been properly represented at the point of application."

A

This case illustrates how legal advice and representation for applicants, at an early stage, not only saves all concerned a good deal of time and money, but can obviate the risk of prolonging exposure to abuse.

A is a citizen of an Eastern European country which recently joined the European Union. She has resided in the UK since 2000, initially as a visitor, and then under the Association Agreement between the EU and her country. She was here on the basis of her self-employment in the UK until she married her British husband and applied for a spouse visa, which was granted for the standard two year probationary period until 2007. There were instances of domestic violence during the

course of the probationary period, although she remained living with her husband after this. During the probationary period they moved away from the city where they lived to a more rural area where her husband's family lived. She was isolated from her support networks. She had two children with her husband, and he was also abusive towards them.

Her husband effectively caused her to overstay her visa by telling her that there was no requirement for her to apply to extend it before it expired in 2007. She had no reason to doubt this at the time.

It was only late in 2009 that she discovered that she did not have the right to reside in the UK solely on account of her nationality. There are no solicitors or organisations dealing with immigration law in the part of the UK where she lives. The closer immigration law provider is 75 miles away. A sought help and received limited information from a local Citizen's Advice Bureau.

A was subjected to further violence resulting in criminal charges against her husband, and managed to obtain support to travel the 75 miles to get legal advice. The lawyers obtained evidence to support an application on the basis of domestic violence. The application was some three years late (it is designed for a person who has current leave). The lawyers also put forward a case under Article 8 of the European Convention on Human Rights, long residence and the rights of her two British children. The letter of representations was 11 pages long, and 63 separate pieces of evidence were submitted. The Home Office considered the application and granted indefinite leave to remain within four weeks. The lawyer observes "...if she had been able to obtain early legal advice ...closer to her home she could probably have escaped her abusive relationship a lot sooner."

D

Without legal aid, this person would not have had access to any legal representation which was necessary for gathering together all the necessary evidence for the domestic violence application and preparing submissions on her behalf.

D was granted a probationary spouse visa to join her husband in the UK. During the first two years of her marriage D was abused by her husband and her mother in law. D's mother-in-law would routinely throw boiling water on her and D's husband would rape her almost every night. D did not have any other family or friends in the UK and was not permitted to leave the house. D escaped from the bathroom window and reported her husband and mother-in-law to the police. D was granted Indefinite Leave to Remain under the domestic violence rule.

J

This case illustrates how legal aid is indispensible for those unaware of alternative applications that may result a grant of Indefinite Leave to Remain in the UK, especially where legal issues are complex and the individual is unable to afforded to pay for private representation, the costs of which would have been immense given the amount of time spent in negotiations to obtain the necessary evidence of domestic violence.

Mrs J was a victim of domestic violence. Her husband had been in the British Army. Their first child was born in their country of origin. Mrs J then joined her husband in the UK, and a second child was born. That child was a British citizen. The husband had a drinking problem and was violent towards Mrs J including whilst she was pregnant. The police were called on numerous occasions, the army welfare officer was involved, and the children were made the subject of a child protection order. Although the police were involved Mrs J retracted her statement that was required for the husband to be prosecuted. The husband was dishonourably discharged from the army, and later spent some time in prison. Subsequently his leave to remain in the UK was curtailed. The couple's third child was born after the husband was discharged from the army, and was therefore not entitled to a British passport. Mrs J and the children left the husband, spending some time in a women's refuge

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

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

After much effort all the pieces were in place for the application to be made successfully and with the application fee being waived in accordance with UK Border Agency policy.

N

Without legal aid children would have remained apart as they could not have afforded the fees to pay to support the preparation and presentation of the appeal.

N entered the UK as an unaccompanied child. She was recognised as a refugee. While still a minor she found her brother in a third country. An application was made for family reunion outside the rules for him to join her in the UK. He is the only surviving relative that she has and she remains a minor to date. This was refused as there is no rule to cover such an application. Legal aid was granted to mount this appeal outside the rules dealing with the need to keep what was left of the family together. Appeal was allowed under Article 8.

Other cases involving domestic violence

The domestic violence rule in the immigration rules is for applications where a relationship breaks down during the two year probationary period. There are a much wider range of situations where a relationship breaks down because of domestic violence.

W

The case illustrates that in cases of domestic violence access to a lawyer is especially important so that victims can discover their entitlements which they otherwise believe (wrongly through fear) are closed off to them.

W is a national of a West African country, who came to the United Kingdom and met her partner, a European national originally born in another West African country. They had two children, both born in the UK. W suffered domestic violence from her partner. She feared that if she had sought help she would be removed back to as her right to reside was dependent on her partner. For this reason, she suffered in silence until one day; when she tried to run away from her husband, she tripped and fell down breaking her leg. She was taken to hospital where she met a nurse from her country of origin. W was supported by this nurse in seeking help, until she managed to move away from her abusive partner with her children. She further sought and obtained a court injunction

against her partner. W was then referred to legal aid lawyers to deal with her immigration status. W's children were all registered nationals of their father's (EEA) nationality. As W had been in the UK on the basis of European Free Movement law her case did not fall within the immigration rules on domestic violence. Nor did she qualify for a right to reside under European free movement law. Her representatives applied for her to be considered as a family member of her eldest child, who was attending school at the time and exercising his Treaty rights. After strong legal representations to the UK Border Agency; W was granted an EEA residence card to reside in the UK with her children.

A

This case is an example of lack of immigration status being used as a means of control by an abusive partner, with the consequence that no application could be brought within the immigration rule on domestic violence and it was necessary to pursue a human rights case to resolve the situation for a mother and her two British citizen children.

A was a national of a country in the Caribbean with two children of four and eight (both British Citizens). She had arrived in the UK about 2000 on a visitors' visa and switched to student visa. She became involved with a widowed man from her community. She moved in with him and he is the father of her eldest child. He mistreated her throughout the relationship, using her lack of immigration status as a threat and forced her to have sex. He travels on business frequently. On one trip unbeknownst to her he got married. She found out about this when a woman telephoned the house threatening her and warning her to leave.

She challenged him and he threatened to go to the authorities re her immigration status and to keep their child. She eventually sought help and was supported by the Sojourner project. As she did not have any valid leave, an application was submitted for her under Article 8, rather than on the basis of domestic violence under the Immigration Rules.

She was eventually granted three years Discretionary Leave. Given that she had no means of supporting herself, she was entirely reliant on legal aid in order to obtain legal representation.

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. Again, British citizen children are involved.

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 8 of 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.

MATTERS AT STAKE IN IMMIGRATION CASES

See also the refugee family reunion and domestic violence cases above.

Whether people are allowed to join spouses, partners, children and parents (entry clearance)

See also the refugee family reunion cases above

C

This case highlights how Article 8 immigration cases cannot properly be described as about lifestyle choices as opposed to family separation (often long-term and potentially permanent). It also indicates the circumstantial and evidential complexity for which legal expertise is needed in order for these cases to properly and successfully presented.

C sought to join his parents in the UK. In the early 2000's, C's father had to flee his country of origin. He fled with his wife and three young daughters, leaving C behind because C is disabled by polio and moves in a wheelchair. The escape from the country involved trekking through mountainous terrain on foot and it would not have been possible to take C. His parents reluctantly left him with his frail grandfather. The rest of the family reached the UK where they were refused asylum but granted Exceptional Leave to Remain. They were not advised that they could appeal against the decision to refuse asylum. They subsequently obtained Indefinite Leave to Remain and then British Citizenship.

C's mother has brain injury arising from a car crash in her country of origin. Her husband looks after her full-time and is thus not available for work. An application by C to join his parents was refused four years ago on the grounds that he would not be maintained and accommodated without recourse to public funds. The appeal was also dismissed - the judge did not accept the argument that Article 8 of the European Convention on Human Rights was breached by the continuing separation. A fresh application was made recently supported by psychiatric evidence of the impact on C's mother of his continuing absence. It was becoming increasingly necessary for C's grandfather - who has a heart condition - to look after him. Special permission had to be obtained for the application to be made locally in the country of origin. The British Embassy has now telephoned to say that C was to be granted indefinite leave to enter to be reunited with his family. Through no fault of his own this child (who has just turned 18) has lived apart from his parents and three sisters for the last eight years. He did not understand why he could not be with them and thought they did not want him. The separation has had a profound psychological impact on the family.

SM/MS

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.

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 had no more money with which to pay. He appeared to face a choice between leaving the UK, where he had lived for over 50 years and where his son by a previous marriage lived, or remaining in the UK separated from his wife.

The legal aid solicitor assembled appropriate evidence and made representations, which addressed the points taken by the Home Office in the previous refusal and also drew attention to the husband and wife's human rights under Article 8.

Entry clearance was granted on the application and the wife returned to rejoin her husband in the family home.

Y

This case illustrates how low income families with multiple demands cannot reasonably be expected to navigate the immigration system without specialist legal advice.

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 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 specialist 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.

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.

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 nor had the immigration judge 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.

A

This case shows the legal and circumstantial complexity that arises in many immigration cases. It also indicates how legal expertise may be critical (particularly, as highlighted in the main body of this submission, in Article 8 cases) in dealing with immigration and appeal proceedings. An error of law would have been necessary for any intervention by way of reconsideration; and it cannot be expected that lay persons will or can understand or present such errors by themselves. It also gives example of the nature and length of family separation that is involved or at risk in many of these cases.

A was a Zimbabwean teacher, who came to the UK as a visitor and varied her leave successfully to student. She had a seven year old daughter who remained in Zimbabwe. A's intention was to return at the end of her studies. During the currency of her leave to remain she developed a rare type of life threatening cancer and was hospitalized for more than three months during which time she overstayed. Whilst ill she met a British citizen and later married him. A made an application to regularise her status on the basis of marriage. Her daughter was by then 10 and applied to join her mother in the UK but due to A's unresolved application the child's own application was refused. Throughout the entire period A was sending money back to her daughter. Whilst still waiting for her application to be processed A had her first child with her husband. Whilst still at hospital someone recognised her husband as a man who was on the child protection register and informed the Social Services who immediately intervened. Social Services informed the family that the baby would be taken into care unless the husband moved out of the matrimonial home and had no contact. He then commenced proceedings attempting to get contact with his daughter. The Social Services were involved and there are still ongoing proceedings in this respect. The husband is currently seeking unsupervised contact with the child. A was granted three years Discretionary Leave (DL) because of these circumstances. She requires the court's permission to take her child out of the jurisdiction for longer than 28 days and is tied to the UK because of the child's father's contact.

Her representatives assisted her in preparing an application for her now 14 year old daughter to join her on article 8 grounds as there are no provisions within the Immigration Rules to allow people with Discretionary Leave to be joined by their dependent children. The application was refused by the Entry Clearance Officer in Pretoria on that basis. The immigration judge dismissed the appeal on the basis that A client could exercise her family life with her daughter by travelling back to

Zimbabwe and visiting her. The representatives obtained an order for reconsideration and at a second stage reconsideration hearing won the appeal, on the established basis that you cannot exercise your family life as a parent by short visits.

Y

The case provides a short example of how immigration decision-making and procedures may well prove to be beyond many individual's abilities without legal advice and representation. As indicated in the main body of this submission, decision making by the UK Border Agency is especially poor. Without adequate means to remedy this in individual cases, the prospects of that situation getting better are remote. This (and this case) also gives a simple example of how the UK Border Agency has it within its grasp to significantly reduce Legal Aid and court costs.

Y is a British citizen whose sister, a national of a West African country had applied for Entry Clearance to visit her in the UK. Y was a young woman with no other family in the UK. Y was eligible for legal aid. The Entry Clearance Officer refused the application and Y was represented at the subsequent appeal. That appeal was refused by the immigration judge. The representatives pursued an application for reconsideration. This was ordered and following a further hearing the appeal was allowed. The husband of Y was, approximately two years later, refused Entry Clearance to join Y here. The same representatives assisted Y with the initial application for Entry Clearance which had been misrepresented by the Entry Clearance Officer. Y's husband was able to join her as a result of a successful appeal.

Whether people are allowed to remain with spouses partners children and whether people will have to leave the UK where they have lived for years, sometimes for decades often as a result of someone else's decision (removal and deportation cases, including of family members of those facing removal or deportation)

See also the domestic violence cases above.

Alegria

This case shows the complexity of immigration situations, immigration law and immigration (including tribunal) proceedings resulting in a protracted and distressing situation for the client and her family

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Algeria lived with her husband and their child in the UK. When her son was seven, the two year probationary period for marriage came to an end. Her husband refused to support her application for settlement and left her for someone else. She was left to work to support her son and mother-in-law. She held two jobs as a cleaner. Initially an application for settlement was made on the basis of a concession relating to her child's length of residence in the UK. This was returned because no fee had been paid but was not considered properly. By this time A's probationary leave as a spouse had expired. A further application on the grounds of right to family life under Article 8 of the ECHR was made. It was refused, with no right of appeal because it was made out of time and as a result she was told that she no longer had permission to work to support her family. Legal aid was granted for a judicial review of the failure to grant a right of appeal or to consider the human rights arguments. The lawyers registered A's son as a British citizen. The court granted the judicial review permission to proceed and only at this point did the UK Border Agency settle, granting her Indefinite Leave to Remain. Without legal aid, A and her son would not have been able to regularise their stay or

remain together. She would never have been able to afford to pay for legal advice and because her situation was complex and involved High Court action, she could never have done it without legal advice.

N

This case gives an example of the importance of underlying immigration issues to resolving immigration detention.

N had been in the UK for 16 years. He has a daughter who is a British citizen with whom he remained in touch. At the time when he was put in immigration detention he was in a wheelchair with a fractured hip. He caught TB in detention; the UK Border Agency was intending to remove him while he was recovering from TB. His lawyers moved for judicial review of the decision to remove him and managed to stop removal. The case was subsequently settled and he has been granted discretionary leave to remain.

L

This case highlights the evidential complexity of immigration cases concerned with a person's private and family life (Article 8). It is simply unrealistic to expect that without competent legal advice and representation the lay person could understand the nature, amount and type of evidence that may be available and required, or be able to obtain it and present it in such a case. It also gives a compelling example of how separation of family members is often at the heart of such cases, the enormity of what this could mean in practice and indicates other costs (such as care costs) to the UK that can result if such cases are not dealt with correctly.

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

A

This case shows the complexity of immigration processes where a decision has been made, but which cannot be appealed albeit that an appeal may lie at some point in the future if the UK Border Agency decides to act on that decision. Without legal advice and representation it is unrealistic to expect that this child or his family can identify and act on legal solutions to this, yet without such solutions this child's immediate future would be a limbo of unlawful residence in the UK.

A is twelve. He came to the UK when he was four to join his father and father's British partner. The father left the UK but A remained in UK with the British partner. A's aunt has been in the UK for over seven years with her two daughters. She applied to regularise her status, that of her daughters and that of A. This has been refused. A requires separate legal advice on his rights to private and family life. No notice of removal has been issued so A is in limbo – until such a notice is issued he cannot challenge the removal. He cannot be expected to represent himself or to gather relevant evidence.

M

This case shows the poor quality and, in some instances, carelessness of UK Border Agency decision-making – here making and maintaining a refusal on incorrect grounds. It indicates how the intervention of competent Legal Aid lawyers can be critical, and can save the taxpayer money (here the intervention ultimately avoided the need for the matter to come before a High Court judge).

M approached a support charity registered to give immigration advice for assistance with applying for indefinite leave to remain at the end of her two year's probationary leave as a spouse. She came on the day that the original visa expired, without any supporting documentation. The application was submitted out of time by about ten days. It was refused on the grounds that her husband had applied for Income Support, and thus they could not meet the maintenance requirement. However, this was erroneous – there had been no Income Support claim – although the family lived on a low income, and for a short time the previous year were in receipt of Incapacity Benefit following an accident at work. Because the application was late, there was no right of appeal. The charity asked that the decision be reconsidered but the decision to refuse was upheld without any evidence that caseworkers had checked the details about the alleged Income Support claim. M was told she needed to return to her country of origin.

The charity was regulated to provide immigration advice but, as OISC regulated advisors, cannot pursue judicial review. They referred her to a solicitor. The solicitor sought judicial review. After two and a half years the UK Border Agency has now granted Indefinite Leave without the matter going before a Judge. An advisor at the charity observes "While the client was certainly at fault for applying late, the UK Border Agency made a simple mistake that required the solicitor seeking judicial review to correct. The client and her family struggle financially: they would not have been able to correct this error without access to a legally-aided solicitor."

T

This case particularly highlights the importance of the intervention of competent Legal Aid lawyers, not merely to investigate and present complex evidential material but to continue to act to pursue the UK Border Agency to ensure that clients receive status papers. (Expert knowledge of the immigration system can be critical, as can a capacity to take further legal action, to encourage or ensure the system to deliver on its obligations – even after it has acknowledged them.)

T's mother died of cancer while her (the mother's) claim for asylum was pending. Nothing happened on T's case. When she turned 16, T was moved out of foster care and into a bedsit in a shared house, where she felt frightened and intimidated. Her former foster mother continued to be immensely supportive. T went to see a legal aid lawyer. T knew very little about the circumstances that had led her mother to leave their country. Some of the little that she did know appeared to confirm what her mother had said, but some did contradict it. This was confusing and frightening for

T. It was clear that T could not make an application based on what little she knew of her mother's claim for asylum. Her lawyer put forward a claim for discretionary leave. Meanwhile, T became pregnant, her boyfriend, while staying with her, was in no position to support her. The claim for discretionary leave was eventually accepted on the basis of T's statement and the lawyer's detailed representations but the decision was never sent. Her case went from pillar to post in the UK Border Agency until the lawyer managed to track down the official who had made the decision on the grant of leave who tracked down the case to ensure that T was issued with the positive decision.

S

Without good legal aid representation, relevant application could not have been made: no means of paying a solicitor; had to borrow money from friends to pay for the application fee as the UK Border Agency refused to waive it. Under the Gov proposals, would not qualify for legal aid; if had not been permitted to stay, child would have been taken into care.

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.

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.

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 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 point.

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.

B

This case illustrates how assistance of a lawyer at an early stage avoids unnecessary cost later in the process.

B's nephew is a British child whose mother died when he was six years old. His mother named her

sister, B as the boy's sole guardian in her will and made arrangements so that they could continue to live in the flat which had been the family home on the UK town where the boy had lived all his life and where he attended school. The Home Office granted B three years discretionary leave to remain as the boy's carer. This enabled him to remain in his home and at his school. When the three year period was due to expire MB sought and was given legal aid to apply for a further period of discretionary leave. She received advice on the necessary documentation required to support her application and her solicitors made brief but relevant representations on her behalf.

Without expert advice she would have had had difficulty making the application and referring to the relevant law. The advice of the solicitor not only assisted her in assembling the relevant evidence but ensured that her application was made in the appropriate terms and referred to the relevant law, thus assisting the decision maker. Under the current proposals this application would not be within scope. If the UK Border Agency had refused the aunt's application in the absence of legal aid to assist her in an appeal, it may have become necessary for action to be taken in the High Court, at much greater cost to the public purse, to protect the interests of the British child, whose sole guardian faced removal.

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.

E

In this case an individual with learning difficulties was able to eventually assert and claim her establish her status with the help of legal advice

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.

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.

H

Inability to pay for the cost of legal representation would have many this individual would have been unable to secure an entitlement to remain because of multiple social problems including homelessness and mental health

H has resided in the UK for nearly 20 years initially as a student then as a spouse and an asylum seeker. His previous representatives had made an application on the basis of his long residence application in 2006 and he had been given three years discretionary leave on the basis of Article 8. He was referred to a lawyer by social services who outlined his problems as including relationship breakdown, unemployment, homelessness and bereavement. He also had severe physical and mental health problems. Due to his mental health problems, he came to see his legal aid lawyers only three days before his discretionary leave expired. His mental health problems were exacerbated by his uncertain immigration status and also meant that he was unable to work. Without legal aid, he would have been unable to afford any legal representation. Detailed representations were submitted to the UK Border Agency on his behalf on the basis of Article 8 and his long residence in the UK. He was eventually granted indefinite leave to remain.

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 a war torn country in West Africa. 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 a British citizen. After years of hopeless attempts to find 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 mental breakdown and K was sectioned into a mental health unit.

Legal aid lawyers 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.

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 the Caribbean as a visitor 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.

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.

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).

J

A case turning on the Article 8 rights of a range of family members following bereavement and how current proposals would have led to a breach of human rights: case could not have been pursued without legal representation.

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.

***CN Burundi* [2007] EWCA Civ 587**[2]

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

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

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.

***AK (Sri Lanka)* Court of Appeal [2009] EWCA Civ 447**[3]

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.

[3] See http://www.bailii.org/ew/cases/EWCA/Civ/2009/447.html

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.

T

This case provides example of the complexity of immigration processes, often caused by the UK Border Agency's poor conduct and decision-making, and of the need for legal advice and representation to ensure that individual's procedural and substantive rights are respected. Here too, it would seem that the UK Border Agency (or its predecessor) had it within its power to avoid Legal Aid and court costs.

T was a national of a North African country who had studied in the United Kingdom for a number of years and had extant leave to remain as a student in order to complete a degree level course. She had no family in her country of origin and had not lived there since she was five years old. In addition to studying T cared for her British citizen grandmother who was extremely unwell and who required considerable assistance. T had been in a relationship with a British citizen for seven years. Advice and representation were provided to T to enable her to pursue an application for leave to remain as the unmarried partner of a British citizen. The application was submitted prior to the expiry of T's leave. The application was rejected by the Home Office who claimed that the prescribed fee had not been paid. In fact investigations by her representatives confirmed that the Home Office had not approached the bank for payment of a fee. The application was therefore resubmitted with representations asserting that the application should be considered as an in-time one thus attracting a right of appeal if refused. The application was returned on a second occasion by the Home Office who now claimed that T had not provided photographs or documents relevant to the application. A standard letter was sent making this allegation including confirmation that "the missing items are identified by a red cross next to them in the relevant part of the form." No such annotation was found on the form and as a consequence the application had to be re-submitted with further representations drawing attention to the errors of the Home Office and again asserting that if the application were refused and in country right of appeal should be granted. Six months after the original application had been issued the Home Office refused it claiming that sufficient documentation had not been submitted. This was an incorrect statement and simply ignored the volume of documents that had been provided. T was provided with an in-country right of appeal

which was allowed by the immigration judge on the day of the hearing itself.

Without the benefit of publicly funded Legal Help it is extremely unlikely that the Home Office would have treated the application of T as being an in-time application which attracted a right of appeal. T would not have had sufficient knowledge or experience to have challenged the Home Office's assertions in relation to the invalidity of the application. She would not therefore have been able to challenge the decision by way of an appeal while she remained in the UK.

O

This case gives example of the Article 8 in immigration cases, and importantly highlights both how without legal advice and representation individuals may well be deprived of their procedural rights (here to an in-country right of appeal) and how the poor quality of decisions and actions of the UK Border Agency may often be at the heart of such problems. As indicated in the main body of this submission Legal Aid is important to holding the UK Border Agency to account, and for ensuring there is some protection against that Agency's standards slipping further with obvious detrimental consequences of many more people.

O was a national of a Central American State who was granted six months leave to enter as a visitor on arrival in the UK. O had come to visit his British citizen girlfriend. O was visiting in order to meet his girlfriend's family and to investigate the possibility of setting up home with her in this country. O intended to return to his home country at the end of his visit where he had employment. The relationship between the couple and O and his girlfriend's family flourished to the extent that they decided to attempt to marry whilst O remained in this country. They made their own application for a Certificate of Approval. During the processing of this application O's girlfriend discovered that she was unexpectedly pregnant.

O's girlfriend then suffered a severe episode of depression for which she was prescribed medication. O himself wished to remain in this country in order to support his partner and, being wary of the length of time and Entry Clearance application may take to be processed, was also concerned that he may miss the birth of his child. Prior to the expiry of O's leave to enter an application for leave to remain on his behalf was submitted by his representatives. The Home Office refused the application and asserted that O had no right of appeal against the decision claiming that when the application was made he had no extant leave. He was advised that he only had an out of country right of appeal. The position of the Home Office was incorrect and unlawful. Substantial representations were submitted on behalf of O and the submission that he did indeed enjoy an in-country right of appeal was made on a number of separate occasions. After many months the Home Office finally accepted that O had the right to appeal from within the United Kingdom. The appeal was allowed at first instance before the Tribunal.

Whether a person who has fled domestic slavery can live safely in the UK away from those who abused them;

M

This case gives example of how domestic workers in the UK may often be exposed to significant exploitation and how, without legal advice and representation in immigration matters, a domestic worker may simply be unable to take control of his or her immigration status or escape an employer's exploitation.

M was a national of a South Asian State on a domestic worker visa. Despite being in the UK for approximately six years she had almost no English and a very basic education, having left school at a very young age. He employer wrote to the UK Border Agency to inform them that she no longer wished to employ her and renew her domestic worker visa, this was as a result of an argument the employer had had with M's boyfriend. Her employer then appeared to change her mind when M separated from her boyfriend and said she would support an application to renew her domestic worker visa. By this time the UK Border Agency had refused to extend M's domestic worker visa.

M came to (legal) appointments with her employer who attempted to speak on her behalf. It was explained to her employer that she would not be able to be present when M was giving instructions.

M's appeal was allowed under Article 8 of the European Convention on Human Rights (Right to a private life) as her employment as a domestic worker enabled her to financially support her son and daughter in India and pay for their educations. M was granted Discretionary Leave to Remain in the UK. After her grant of Discretionary leave she was able to leave her employment as a domestic worker. It transpired that although she had a work contract with her former employer, that her employer did not honour this contract and required her to work additional hours for no additional payment. M was too afraid to say anything about this; it had been as a result of M's boyfriend raising this issue with her employer that her employer had contacted the UKBA to say that she did not wish to renew M's visa.

M would not have been in a position to afford private legal representation. Without Legal Help representation it is unlikely that M would have understood her rights or would have been able to lodge her appeal against the decision to refuse to renew her domestic worker visa and subsequently her human rights as guaranteed by the European Convention on Human Rights would never have been considered.

What happens to children whose claims for asylum having failed and who cannot be returned to their country of origin because their safety and welfare cannot be guaranteed

E

Legal aid lawyers were able to identify the appropriate ground of an application for E and to regularise her status, putting an end to her uncertainty.

E was from Latin America. Her only living relative was an older sister in the UK married to an EEA national. She was a child. She claimed asylum, basing her case on the lack of support services for a lone young person. Her application was refused and she was granted discretionary leave to the age of 18. She appealed. Legal aid lawyers took her case, arguing it on Article 8 grounds and on the grounds that she was the dependant relative of an EEA national. The appeal succeeded on both grounds.

T

Legal aid lawyers were able to identify the appropriate basis for an appeal against the decision to remove T, which would have adversely affected not only T but his young cousin who suffered from Down's Syndrome.

T was fifteen when he came to the UK. The whereabouts of T's family in his country of origin was unknown following flooding there. He came to the UK and claimed asylum. His application was refused but he was granted discretionary leave until his 18th birthday. He was then told he would be removed from the UK. He had a younger cousin in the UK who suffered from Down's Syndrome and he had helped to care for him. Legal aid lawyers appealed the decision to remove T relying on Article 8. They obtained evidence, including evidence from his cousin's teachers that T's removal would be devastating for his cousin. The appeal succeeded.

B

Despite his long history in the UK, supported by social services, B was faced with removal. Legal aid lawyers were able to protect his rights under Article 8.

B was abandoned by his mother with a neighbour. A private fostering arrangement was made and he was supported by social services. Just after he turned 18 he was stopped by the police in the course of a routine stop and search exercise. He was advised to report to immigration and a decision was made to remove him.

He had lived in the UK for over 14 years by this time. Legal aid lawyers submitted a detailed application for discretionary leave. He was granted first discretionary leave and subsequently indefinite leave to remain.

A

A's case required both family law and immigration law interventions by legal aid lawyers to regularise her position after her mother died.

A was 12 years old. Her mother was from Africa. No father was named on her birth certificate and while it was thought that her father was a British citizen, because her parents were unmarried, she was not a British citizen in any event. By the time her mother died of cancer her father's whereabouts were unknown. She was in the care of an aunt. Legal aid lawyers made an application for a residence order, as well as an immigration application under Article 8 of the European Convention on Human Rights. Following detailed representations, A was granted indefinite leave to remain.

L

L had been in the care of social services since he was nine years old, but nonetheless his application for leave to remain on human rights grounds was refused. Legal aid lawyers supported him in a successful appeal.

L was 17. He had been in care in the UK since he was nine years old. His girlfriend was British. They had an argument and she got in touch with the Home Office to tell them that he had no status in the UK. L was given a decision that he would be removed on turning 18. Legal aid lawyers made an application for L to be given leave to remain in the UK on the basis of Article 8 of the European Convention on Human Rights. This was refused the day after L turned 18. The lawyers supported him to appeal against the decision and the appeal was successful.

J

J faced removal as he reached 18 having lived in the UK since the age of six, despite the view of social services that it was in his best interests to remain in the UK. An appeal would not have been necessary had the best interests of the child been given due weight by the UK Border Agency.

J was from a war torn country in Africa. He had been in care in the UK since the age of six. He was referred to legal aid lawyers as he approached 18 to represent him in an application to regularise his status on the basis of his best interests as a child. An application was made but was refused by the UK Border Agency on the basis that he would shortly be turning 18 and thus his best interests as a child were not the issue because he would soon be an adult. The lawyers represented him in his appeal which succeeded under Article 8 of the European Convention on Human Rights.

Whether a person should be deported from the UK following conviction despite having served their sentence and in some cases having been settled over many years

R

This case highlights the nature of immigration cases in detention, and the importance of an early intervention by competent Legal Aid lawyers which might have avoided his very lengthy detention (and cost to the taxpayer of such) and resolved his immigration situation without such protracted proceedings by ensuring the matter was properly and fully investigated and presented. It also gives some indication of the potential exploitation to which individuals may be exposed when competent Legal Aid advice and representation is not available; and highlights the investigative and evidential complexity required to deal properly with many deportation proceedings.

R was in his early 20s. He had come to the UK as a young child with his mother and siblings from a war-torn country. When referred to his lawyer he had been in immigration detention for 19 months. He had a criminal conviction so served some part of a detention and training order. He had lost his appeal against deportation and a deportation order had been made.

During a second legal interview he mentioned that he had never met his previous legal advisors. He had been told by his mother that she had somehow managed to borrow money to pay the previous advisors. These advisors took instructions from him over the phone and faxed him a witness statement to sign for his appeal against deportation. When his lawyer looked at the appeal bundle presented the statements were badly drafted: they were 'frighteningly short'. The determination had dealt initially with a dispute about the client's age and then concluded that both he and his mother were liars about his age and that he should be deported. The immigration judge went on to suggest that the client had been dishonest about his age and so had received a shorter sentence from the Crown Court. This despite probation accepting that he was under 18 at the time of the offence.

His mother sobbed at every visit to the lawyer. The client said that she had sobbed since he could remember. He described how he had to look after her and his siblings. He spoke of memories of being in care and once being taken to a clinic where his height was measured. He described the schools he went to in the UK to show that he was under 18. An age assessment was carried out and was helpful.

The legal representative obtained psychiatric assessment of the mother. The lawyer trawled the mother's social service records and learned that she had been raped back in her own country and

that she frequently cried at meetings with social services about her children. The expert was also able to explain why the mother had given the Home Office an incorrect date of birth for her son which had caused the initial problem regarding her son's age. Numerous documents in the social services records and letters from schools showed the client's age as being under 18 at the relevant time. The lawyer arranged for an independent social worker to meet him so he could for the first time explain how much his family meant to him. The lawyer also got in touch with the offender supervisor with whom the client had had some brief dealings. None of the above had been pursued by the previous advisors.

Removal directions were set. A fresh application was submitted arguing that the relevant jurisprudence of the European Court of Human Rights had not been considered by the immigration judge. Removal was deferred. The further supporting evidence was submitted. Permission for judicial review was obtained on the papers with some very pertinent observations by the High Court judge. The judicial review was allowed and the claim remains under consideration. Further evidence not previously secured has also been admitted.

Subsequent to these developments on the substantive case, the client was granted bail. He has gone back to his mother and siblings. He has gone to college where his tutor has been glowing with praise for his diligence and maturity. He has also stayed in touch with people he had known in immigration detention and they continue to support each other and move on with their lives positively. He has not reoffended. His lawyer writes that he stays in touch 'and is patient.'

Legal aid funded his challenge to removal, the investigations carried out to obtain new evidence, expert reports and representation at the High Court on his successful judicial review.

S

This case shows the complexity of investigation, evidence and presentation required in many deportation and Article 8 immigration cases. Having regard to the situation in the client's country of origin, it also gives particularly compelling example of how such cases inevitably concern not lifestyle choices for individuals and families but the prospect of separation of families (including partners, and children and parents). In some instances, separations that may prove to be permanent or final.

Client S was a Zimbabwean national. He arrived in the United Kingdom and secured a valid Entry Clearance in the early 2000's. He made subsequent applications for leave to remain, these finally being refused about four years after his arrival. At the time instructions were received this client was living with his British citizen fiancée (who he had met in Zimbabwe) and their three British children. The children were at the time aged between four years and five months old. The Secretary of State sought the deportation of S in consequence of the six-month prison sentence he received for working without permission and using a false instrument in order to gain that employment. Both S and his partner had been diagnosed with HIV. S also suffered from a rare HIV related vascular tumour. The deportation appeal came before the Tribunal in 2008. In support of that appeal various expert reports were obtained and submitted. These included substantive reports from a consultant in genitourinary medicine, an HIV consultant, the Helen Bamber Foundation; a specialist in Zimbabwean healthcare and a Zimbabwean country expert as well as supporting statements from four other family members, the local MDC branch and medical professionals involved with the family. The appeal bundle ran to 370 pages. The Determination and Reasons of the Tribunal was 20 pages long and concluded with a finding that S's removal to Zimbabwe would be a disproportionate interference with his Article 8 Right and contrary to paragraph 380 of the Immigration Rules. There can be very little doubt that without the substantial legal work undertaken on behalf of S and his family he would have been removed from this country and the family permanently separated. It is inconceivable that he could have prepared this case himself without such legal assistance.

D

This case shows the difficulties of being without representation able to obtain and present all the relevant and up to date evidence required for his appeal, nor would D have had any assistance at the reconsideration hearing which dealt with the question as to whether there was an error of law.

D has a British partner and two young British children. He was convicted of handling stolen goods and sentenced to three years in prison. The Home Office made a deportation order against him. The case turned on D's risk of re-offending. The pre-sentence report stated that there was medium risk of re-offending. The Home Office did not obtain or produce any further evidence in relation to his risk of re-offending. On assessing the case, D's lawyers felt that he had addressed a number of the issues raised in the pre-sentence report that had led to the conclusion that there was a medium risk. They therefore obtained an independent psychologist's report on the risk of re-offending. Taking into account the way D had addressed a number of the issues raised in the pre-sentence report, the psychologist concluded that there was a low risk of re-offending. This evidence was key to the immigration judge's finding that D's deportation would be a disproportionate interference with his family life. D won his appeal**.**

The Home Office applied for and were granted reconsideration. The Upper Tribunal upheld the first instance decision. Without legal aid D would not have had any representation. Without legal aid, D would probably have been deported and permanently separated from his partner and children based on information which was out of date and inaccurate.

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.

T

This case illustrates how legal representation permits an individual to challenge unlawful decisions and to secure and present sufficient evidence in circumstances where UKBA was in sole possession of it.

T is from the Caribbean. She came to the UK aged five in 1989. She was granted indefinite leave to remain in 1997. In 2002 her first child was born a British citizen in the UK. In 2009 T pleaded guilty to a drug offence and received a two year sentence. T subsequently disclosed to probation that she committed the crime under duress. T's second child was born a British citizen while she was in prison. T sought legal advice when the Home Office informed her that they were considering deporting her and she was represented from this point on. The Home Office made a deportation order against her. Her two British children had the option to travel with her.

This decision was appealed to the (then) Asylum and Immigration Tribunal on the grounds that it breached her and her children's rights to family and private life under Article 8 of the European Convention on Human Rights. The appeal failed. T applied for reconsideration of this decision and, on the second attempt, this succeeded. At the reconsideration hearing, the immigration judge found that there was an error of law and allowed the appeal. The Home Office did not pursue any further appeal. This is a case where the Home Office and two immigration judges all made separate decisions that deporting T would not breach T and her family's human rights. It was only when a fourth decision maker looked at the case that a lawful decision was made. Without legal aid, T would have had no legal representation. When the case began she was in prison and without resources. On release she claimed income support as a single mother. Without legal representation, T would not have been able adequately to pursue the appeal or the reconsideration application. This was a complex case requiring reference to considerable amounts of case law. There were also evidential issues. In particular, the Home Office failed to comply with the tribunal orders in relation to disclosure meaning that her lawyers had to obtain evidence that should have been provided by the Home Office direct from the probation service. Without legal aid, T would almost certainly have been deported in breach of the UK's obligations under the European Convention on Human Rights and her two British children would have had to leave the UK to travel with their mother.

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.

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.

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.

M

Evidencing the developed relationship between father and son could not have been achieved with specialist representation.

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.

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 S'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. Under the proposals 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.

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.

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.

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.

M

This case gives example of the critical link between detention and underlying immigration issues, such as deportation. It also highlights how failures by the UK Border Agency can cause significant Legal Aid and court costs, while showing the importance of competent legal advice and representation to dealing with immigration processes and that agency in order to family separation that may prove to be extended or permanent.

Client M was a Zimbabwean national with the benefit of Indefinite Leave to Remain. He had arrived in the United Kingdom in the early 2000s. He was recognised as a refugee in line with his wife (as a consequence of which he was granted Indefinite Leave to Remain). In 2008 the Secretary of State issued a Notice of intention to deport M as a consequence of three motoring offences stretching back three years. It should be noted that these offences involved no other individuals. M was subject to immigration detention. Following a successful adjournment request his deportation appeal was due to come before the Tribunal several months later. It proved exceptionally difficult to convince the Home Office that M did in fact have Indefinite Leave to Remain. The representatives undertook substantial work in order to try and secure documentary evidence of M's status. Notwithstanding that they first informed the Home Office that M benefited from Indefinite Leave to Remain in September it was not until the end of October that the Home Office conceded that this was the case. (An urgent Data Protection Act request was made to the Home Office – a response was not received until nearly four months had gone by). As a consequence the deportation proceedings were withdrawn and M was immediately released from detention.

There were a number of aggravating factors to this case. M had a 12-year-old daughter with whom he enjoyed regular and frequent contact. She was utterly distraught at the prospect of her father being deported. M himself had significant medical problems. A bail application for M was refused partly because the immigration judge was not satisfied that he did have indefinite leave to remain. M has successfully pursued an application for damages against the Secretary of State.

There is no doubt that M's detention and ill health would have meant that he could not have undertaken the significant enquiries that his representatives were able to make on his behalf. When they first accepted instructions his deportation appeal was listed to take place three days later. His ill health had meant that he had not been able to secure any alternative representation and had only been able to lodge the Notice of appeal. There was a very serious risk that given the Home Office position his deportation appeal would have been dismissed and he would have been removed from this country with little prospect of return given the bar on those subject to deportation orders.

What happens to people who thought they were in the UK lawfully and turn out not to be, and to people who cannot prove their immigration status

B

This case shows the value in early intervention by competent Legal Aid lawyers. While a threat of judicial review proved necessary, a judicial review was avoided. It also provides example of the serious nature of crossover between immigration matters and criminal injuries compensation. (The main body of this submission highlights an example of children trafficked into prostitution.)

B was sent to the UK when she was 12 to stay with her uncle. She is now a young adult. Almost as soon as she arrived the uncle started sexually to abuse her. This abuse continued until she ran away from home when she was still a teenager. During this time she attended school achieving what in the circumstances were very good GCSE results. She reported her uncle to the police after running away and he was arrested. The case came to trial and he was convicted on several counts of rape of

a minor and sentenced to 15 years. B only realised that she had no immigration status when she tried to apply to university to study a course in social work. She approached several lawyers for advice and some offered to take her case on but she could not afford the fees. One legal aid lawyer took her case on but did not do any work on it. She then found representatives who helped her prepare an application on the basis of Article 8. It was refused by the UK Border Agency. The representatives indicated that they would seek judicial review if the UK Border Agency would not reconsider. The Agency then reconsidered and granted discretionary leave. Her representatives also helped her make a claim to the Criminal Injuries Compensation Authority. She was awarded £22,000. She now works for a charity with young people, and mentors young people in difficulty. Her representative says, "She is a very determined and inspirational young woman who has applied to do an access course that will enable her to go to university next year where she intends to study to become a social worker."

R

This case shows the value of competent Legal Aid lawyers addressing complex aspects of the immigration rules and Article 8. It also highlights how the circumstances of many of those who may qualify for immigration legal aid are likely to mean they are not able to understand or address legal, evidential and (in some instances) procedural complexities.

R has lived in the UK since 1994. He came to the UK as a student and worked in IT for over 12 years until he was made redundant. At this point he became aware that he had no immigration status. His savings and redundancy money were used up; his marriage fell apart; he was evicted from his flat. He spent a period street homeless. He secured accommodation in a hostel. His representatives assisted him with an application under the long residence rule (14 years residence) and based on Article 8. He also volunteered for the Hostel where he was staying running the soup kitchen, working in their cafe and maintaining their computers. His application was granted and he is now seeking work and spending time with his son who is excelling in his studies and in sport.

M

This case demonstrates the importance of legal aid for European applications as these applications are not always straightforward given the restrictive interpretation of the Directive in UK law and the fact that clients' cases (in particular those of family members of EEA citizens) do not always fall neatly within the EEA regulations. Furthermore, without the correct documentation to prove their right of residence, clients can have serious difficulties in accessing employment and obtaining the benefits to which they are entitled.

M is a pensioner from an Eastern European country. She is 74 years old. She came to the UK in 2002 under the sponsorship of her son. Her son then forced her to sell her house in her country of original and give him the proceeds for a business venture and in July 2003 he abandoned her and she has not received any support from him since that date. She has been in receipt of a pension from her country but this is insufficient for her needs. She has worked as a self-employed person doing part-time babysitting and cleaning work but this has been intermittent and for small amounts. She does not have comprehensive sickness insurance cover as she is unable to afford that but she has never had recourse to UK public funds other than for NHS medical care. She is traumatised and confused and was referred to her lawyers by a friend of hers who was very concerned about her health and who had been trying to assist her with obtaining benefits (with no success given that she had no proof of her right to reside). The have assisted her in preparing an application for permanent residence or in the alternative a registration certificate. Given that her case does not fall neatly within the EEA regulations, the lawyers have had to prepare detailed representations based on EU case law. They have also spent a long period of time with her gathering the relevant documents as evidence of her residence and her self-employment. Without the availability of legal aid, there is no way that this vulnerable elderly lady would be able to regularise her status and obtain the support to

which she is entitled.

C

This case demonstrates that specialist representation can be required to identify the evidence that is required to support an application.

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.

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 the UK.

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.

V

This is an example of a case where a homeless man has no knowledge of his immigration status. The UK Border Agency and social services concurred that he needed the assistance of legal aid lawyers.

V was referred to legal aid lawyers by social services as one of London's 250 most deeply embedded

homeless people. He has been in the UK since 1969 initially coming as a student and then working in various jobs until 1997 when he had become homeless, remaining on the streets since that date. He lost contact with all of his family in 1994. He was of the view that he might have been granted ILR in 1978 but he was unable to verify this having only a badly damaged expired national passport and the UK Border Agency would not confirm this. Social services had contacted the UK Border Agency to ask for advice and they had recommended that he instruct a solicitor to make an application to regularise his status. An application was submitted an application on the basis of his long residence in accordance with the immigration rules and the decision is awaited.

Other immigration cases

***R (TR) v AIT* [2010] EWHC 2055 (Admin)**[4]

'The decision concluded that the claimant could have served her notice of appeal herself. Although the notice of appeal is brief, its contents do not reasonably lead to this conclusion. Indeed, the contrary is the case given that the claimant was stated to be a twenty-one year old Sri Lankan female with a young child and with no obvious ability to undertake that difficult exercise.'[5]

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

[4] See http://www.bailii.org/ew/cases/EWHC/Admin/2010/2055.html

[5] Paragraph 37(1)

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."*

SECTION D MATTERS AT STAKE IN ASYLUM SUPPORT CASES

C (from Asylum Support Appeals Project)

The case shows that even when appropriate evidence is available, professional advice and representation is necessary to ensure that it is presented properly and the law respected. The co-operation of the solicitors and the Asylum Support Appeals Project ensured that the clients avoided destitution.

C is a single mother. Her 17 year-old son suffers from epilepsy and has regular seizures. They are both failed asylum seekers. They applied for section 4 support on the grounds that he would be unable to leave the UK because of his medical condition. She provided letters from her son's doctors in support of their application. The UK Border Agency refused them support because the medical evidence had not been submitted in the form of the UK Border Agency's own medical declaration. They sought advice from a firm of solicitors, who advised them to appeal the decision. Their solicitors assisted in preparing additional medical evidence and legal submissions to the effect that there is no formal requirement that evidence be submitted in the form of a medical declaration. They also referred his case to the Asylum Support Appeals Project for representation on the day of the hearing (there is no legal aid for representation at asylum support appeals. They won their appeal. Without legal aid, Mrs C and her son would have had great difficulty preparing their medical evidence for the hearing and they could have ended up homeless.

A (from Asylum Support Appeals Project)

The case shows the importance of on- going advice and representation. A received proper advice initially but the response from the UK Border Agency was arguably unlawful. He was able to return to his advisers who knew his case and pursue his case efficiently without unnecessary and distressing duplication of work .

A was a failed asylum seeker with physical and mental health problems. His eye sight was very poor as a result of having been tortured. He was destitute and living on the streets. The Law Centre advised him to submit further representations regarding his asylum claim by post as he was unable to travel by person to the Further Submission Unit in Liverpool. They also helped him apply for support. The UK Border Agency refused him support on the grounds that he had not attended the Liverpool Further Submissions Unit in person, as required by their policy. They made no mention of his postal submissions nor did they address his request to submit them by post for medical reasons. They also failed to abide by their own policy of returning all postal submissions to the sender. Funded by Legal Aid, a Law Centre, which had consulted the Asylum Support Appeals Project, was able to advise A about his options for challenging the refusal of support. This included appealing to the Asylum Support Tribunal or judicially reviewing the decision not to accept his submissions by post. Without the Law Centre's advice, it would have been very difficult for Mr A to consider his next steps and he may have been left destitute, even though he was clearly eligible for and in desperate need of support.

Case of K

In this case, K went in a matter of days from being in a situation where he was about to be made street homeless to being granted indefinite leave to remain in the UK because of the timely intervention of legal representatives. K's case for support turned on matters of case law and evidence which he would not have been able to address without legal representation.

K's support was terminated in August 2004. His appeal was heard in his absence in October 2004; because his support had been terminated he did not receive notice of the appeal hearing. The appeal was heard in his absence and, in the absence of evidence from him, dismissed. He did not know that this had happened. He applied for and was granted 'section 4' support on the grounds that there was no route of return to his country of origin. In 2009 the Secretary of State indicated an intention to cease support, on the grounds that there was now a viable route of return. K's legal representatives, a law centre, prepared submissions to demonstrate that C continued to be entitled to support on other grounds, citing the applicable case law. Meanwhile the procedure for lodging such submissions had been changed, so that people were required to secure an appointment and then to go in person to Liverpool to make the submissions, unless their representatives could demonstrate that they fell within one of the exceptions to this requirement set out in policy guidance. The Secretary of State indicated that support would be terminated before the date on which K could lodge these further submissions. This would have left K street homeless. The representatives applied for an emergency judicial review to require the Secretary of State to accommodate K until he was able to make his application. As a result of this, and within just a few days, the Secretary of State indicated that K would be granted indefinite leave to remain in the UK.

Case of B

Legal aid lawyers secured support for a man seeking asylum who had been street homeless for four years

B was an asylum seeker who had been in the UK for 15 years, and had an outstanding claim for leave to remain in the UK under Article 8 of the European Convention on Human Rights. He had been street homeless for four years and had recently been admitted to hospital for a month, which included spending a week in the intensive care unit due to acute renal failure and respiratory failure. The hospital mistakenly believed he was not entitled to any help with housing and discharged him back to sleeping on the street. Five days later, legal aid lawyers were instructed and advised him to apply for section 4 support, and submitted an urgent application to the UK Border Agency. However, the UK Border Agency said that they would not be able to process the application for 14 days. The following day the lawyers sent the UK Border Agency letter before claim threatening judicial review due to the delay in making a decision on B's section 4 application and B was provided with section 4 accommodation that day. The advice and assistance was provided to B under the Legal Help Scheme.

Case of P

Accommodation provided as part of asylum support fell short of statutory minimum standards as to size. Legal aid lawyers were able to identify that the case fell short of legal requirements and thus ensure that this was addressed.

P was an asylum seeker in receipt of section 4 support, which was a room in a shared house. She spoke little English and suffered from mental health problems. She had asked the accommodation manager to move her to a different room as her room was extremely small, but she had been told this was not possible. She instructed us for help with this matter under the Legal Help Scheme. We advised her room was smaller than the statutory minimum requirement and contacted the UK Border Agency. Their Contract Compliance Team investigated this matter and moved her to a room that meet legal standards.

N

Despite assistance from a voluntary sector organisation with making an application for asylum support, seven-months pregnant N was street homeless. Legal aid lawyers were able to secure her accommodation immediately.

N was seven months pregnant and had been street homeless and sleeping inside a church and on a park bench for two months. She was an asylum seeker, waiting for the UK Border Agency's decision on her fresh claim for asylum. She had become street homeless after the person with whom she had been living had asked her to leave. A voluntary sector organisation had assisted her to apply for section 4 support. At the time when she saw legal aid lawyers, the application had been outstanding for 14 days, during which time N continued to be sleeping in the church and outside. The UK Border Agency refused to say when a decision would be made and therefore the voluntary sector organisation referred her to legal aid lawyers. The lawyers assisted N under the Legal Help Scheme and sent the UK Border Agency a letter before claim threatening judicial review due to the delay in making a decision on N's section 4 application. She was provided with section 4 accommodation that day. The lawyers also ensured she was provided with accommodation in London in accordance with the asylum support policy bulletin on dispersal and pregnancy, a matter which the voluntary sector organisation had not identified in the original application. This work was carried out under the Legal Help Scheme.

Case of T

Voluntary sector organisations assisting T, a survivor of torture seeking asylum who was street homeless, were unable to persuade the UK Border Agency to follow its policy on dispersal. Legal aid lawyers were able rapidly to achieve this.

T had been assisted by a voluntary sector organisation to apply for section 4 support, and the UK Border Agency had decided that she was eligible for this as she was destitute and had an outstanding fresh asylum claim, but they would only offer her dispersal accommodation outside of London. T felt unable to accept this offer, as she suffered from severe depression and without the specialist counselling she received from the Medical Foundation for the Care of Victims of Torture, and the emotional support she received from members of her church and community in London she was worried that she would experience suicidal thoughts, as had previously happened when she was living outside London. The voluntary sector organisation assisting T and the Medical Foundation made ongoing representations on T's behalf to the UK Border Agency, for over six weeks after the decision granting section 4 support was made, requesting that she be accommodated in London due to their concerns about her safety if she were to be dispersed, during which time T continued to be homeless, including spending several nights sleeping on the street, on buses, in train stations and in parks. The UK Border Agency refused to change its decision. The voluntary sector organisation assisting T referred her to legal aid lawyers. They were instructed under the Legal Help Scheme and sent the UK Border Agency a letter before claim threatening judicial review due to their failure to follow their own policy on dispersal. T was then assisted under the Legal Aid Scheme and the UK Border Agency subsequently agreed to provide her with accommodation in London.

B

Despite assistance from a voluntary sector organisation, B, a person seeking asylum who has a disability, was at imminent risk of street homelessness. Legal aid lawyers were able to secure him accommodation within twenty-four hours.

B was an asylum seeker whose case was being considered under the UK Border Agency's Case Resolution ('legacy') caseload. He was in receipt of section 4 support but was given one weeks' notice by the accommodation manager that this support would terminate on the basis that it should

have ended two years previously as it was alleged that B had breached the conditions of his support at that time. This was not something that had previously been put to B and he denied the allegation of a breach in any event. A voluntary sector organisation assisted B to make a new application for section 4 support, and asked that this be treated as urgent due to his imminent homelessness and because he has a disability; his leg has been amputated and he wears a prosthetic limb. However, the UK Border Agency refused to give B's application any priority or provide him with accommodation before his current accommodation was due to end. The voluntary sector organisation referred B to the legal aid lawyers as they considered that B would be street homeless unless legal action was taken. B instructed lawyers under the Legal Help Scheme two days before his accommodation was going to end. The lawyers sent the UK Border Agency a letter before claim threatening judicial review and he was provided with accommodation the following day.

Case of Q

Another example of a case where the assistance of voluntary sector organisations was not enough to ensure that the UK Border Agency followed its own policy on the dispersal of survivors of torture but legal aid lawyers were able to ensure this. Although a voluntary sector organisation may identify that the UK Border Agency is not correctly applying its own policies, only solicitors can make applications for judicial review, which are all too often necessary in these cases. As these examples on asylum support demonstrate, where a letter before claim has been prepared with care, the UK Border Agency will normally settle such cases before they come to court.

A voluntary sector organisation Q to apply for section 4 support. The UK Border Agency determined that decided that she was eligible for this support, as she was destitute and had an outstanding fresh asylum claim, but would only offer her dispersal accommodation outside of London. Q felt unable to accept this offer, as she suffered from severe depression and without the specialist counselling she received from the Medical Foundation for the Care of Victims of Torture, and the emotional support she received from members of her church and her daughter in London she was worried that she would not be able to cope. Legal aid lawyers were instructed under the Legal Help Scheme and sent the UK Border Agency a letter before claim threatening judicial review due to their failure to follow their own policy on dispersal. Following this, the UK Border Agency provided Q with section 4 support in London.

R

This is an example of an asylum support case raising complex and novel points of European Union law where specialist legal expertise was essential. Again, however, the UK Border Agency failed to make any decision until threatened with judicial review – at which point the Agency refused the application.

R suffered from mental health problems. She was in receipt of section 4 support, whereby the subsistence element of support is provided on a 'no cash' basis, using a cashless payment card. Legal aid lawyers identified that R had a claim to section 95 cash-based support, following a the Court of Appeal decision in *ZO (Somalia) v SSHD* [2009] EWCA Civ 442, a case addressing complex points of European Union law. The lawyers assisted her to make this application which involved making complex, novel legal submissions. The UK Border Agency failed to make any decision on this application. The lawyers sent a letter before claim challenging the delay. The UK Border Agency then decided the application. They refused it. The lawyers assisted R to appeal to the First-tier Tribunal (Asylum Support). The Tribunal refused to hear her appeal. R was then assisted under the Legal Aid Scheme to challenge the both the UK Border Agency and the Tribunal's decision.

Case of D

This case involved understanding D's immigration history and the status of his application for asylum to make the correct application for support for him and his three young children. Voluntary sector organisations are permitted to advise on asylum support but are prohibited by law from advising on asylum and immigration unless regulated by the Office of the Immigration Services Commissioner. It was essential in D's case that he received legal advice from a lawyer, because it was essential to address the substantive application for asylum.

D, with the help of a voluntary sector organisation, had applied for section 4 support as he, his wife and his children (aged three, four, and seven) had been told to leave their relative's accommodation and they had nowhere else to go. The UK Border Agency refused this application as D was not treated as having made a fresh claim for asylum as he had not submitted this in person at the Liverpool, as the Agency's policy now requires people to do. D had not done so because he could not afford to pay for himself and his family (who are required to attend) to travel to Liverpool. A duty barrister from the Asylum Support Appeals Project, acting *pro bono*, represented D at his appeal to the First-tier Tribunal (Asylum Support), but the appeal was refused, although it was accepted that D was destitute. D was referred to legal aid lawyers for advice about challenging those decisions (there is no appeal from the First Tier Tribunal (Asylum Support) to the Upper Tribunal) and they assisted him under the Legal Help Scheme. D's immigration background was unusual and complicated, and we advised that rather than challenge the section 4 decisions, under which support is provided to persons whose claims for asylum have failed, he should instead apply for section 95 support, which is paid to persons who have an outstanding, unresolved claim for asylum. D was provided with emergency accommodation (available in these circumstances but not in cases of section 4 support) within two days and subsequently went on to receive section 95 support.

B

It took one communication from legal aid lawyers to secure a street homeless survivor of torture the support to which he was entitled after voluntary sector organisations had spent six weeks trying to achieve this without success.

B was homeless and had spent several nights sleeping on the street. He also suffered from mental health problems and attended the Medical Foundation for the Care of Victims of Torture for specialist counselling. A voluntary sector organisation assisted him to apply for section 4 support. That organisation, and the Medical Foundation, made repeated requests to the UK Border Agency that B's application to be treated as urgent because of their concerns about his health. However, he had been waiting for over six weeks for the application to be processed and the UK Border Agency refused to say when this would happen. Legal aid lawyers were instructed under the Legal Help Scheme. They got in touch with the UK Border Agency and explained that they were instructed to commence judicial review proceedings. They started to draft a letter before claim that day but before the day was out the UK Border Agency got in touch with the lawyers to advise that they had now granted B section 4 support.

N

The intervention of legal aid lawyers ensured that a husband and wife, both of whom had survived torture, could be accommodated together in the UK without delay. That a legal challenge was necessary to achieve this is disappointing, but far from atypical.

N had recently arrived in the UK and claimed asylum. His wife, who was already in the UK, was in

receipt of section 4 support, and living in a female-only shared house in London. N had nowhere to live and asked to be accommodated with his wife. They both suffered from mental health problems following torture in their country of origin and were desperate to be living together again. With the assistance of a voluntary sector organisation N applied for emergency accommodation, which can be provided while a decision on support is made. The UK Border Agency offered accommodation in Liverpool and would not allow his wife to be accommodated there with him. N was referred to legal aid lawyers who were instructed under the Legal Help Scheme. The UK Border Agency confirmed that emergency accommodation would only be provided to N and not to his wife, and that his application for section 95 support, which would cover both of them, would take six weeks to process. The lawyers sent a letter challenging this, requiring the Agency to provide emergency accommodation to N with his wife within seven days. This condition was met, and their section 95 application was processed within four weeks.

T

T was homeless and HIV positive and a voluntary sector organisation had made strenuous efforts to secure him support, but were unable to achieve this without the assistance of legal aid lawyers.

A voluntary sector organisation assisted T to apply for section 4 support, and asked for this application to be treated as urgent as T was homeless and HIV positive. The organisation tried several times to get in touch with the UK Border Agency over an eight-day period to chase the progress of this application but received no response. They referred T to legal aid lawyers due to the delay and because they considered that the application would not be processed unless legal action was taken. The lawyers were instructed under the Legal Help Scheme and sent a letter before claim threatening judicial review due to the delay, and asked for a response within five days, as T had been able to secure accommodation with a friend until then. The UK Border Agency granted T section 4 support within this timeframe.

N

This case illustrates the division of labour between a voluntary sector organisation and legal aid lawyers in a case involving challenges to delay and complex points of law.

N's section 4 support was terminated as her fresh asylum claim was refused. A voluntary sector organisation assisted her to appeal this decision and to make a new application for section 4 support because she had made an appointment to submit another fresh asylum claim. However, the UK Border Agency refused to process this section 4 application or continue to provide N with section 4 support pending her appeal of the decision to withdraw her previous support, which meant she was going to be destitute for an unknown period, until her appeal was heard. At that time the First-tier Tribunal (Asylum Support) were experiencing substantial delays in dealing with appeals. Legal aid lawyers were instructed under the Legal Help Scheme. They got in touch with the UK Border Agency, who advised that they had now refused the new section 4 application as N had not yet submitted her fresh claim in person in Liverpool. The lawyers sent the UK Border Agency a letter before claim challenging the failure to provide N with accommodation pending her appeal. Following this, the UK Border Agency agreed to continue N's section 4 support pending the appeal.

Before the appeal was heard, N submitted her fresh asylum claim in person, and the lawyers advised her to apply for section 95 support, following a recent First-tier Tribunal judgment, known as a 'landmark' judgment because it was perceived to have implications for a significant number of cases. The voluntary sector organisation assisted N to make this application. The application was refused and legal aid lawyers assisted N to appeal this decision and to request that the pending appeals be heard together, which the Tribunal directed be done. The Tribunal conjoined N's appeal with two

other appellant's appeals, as the Principle Judge of the Tribunal was going to revisit her landmark decision on the implications of the decision of the Court of Appeal in *ZO (Somalia) v SSHD* [2009] EWCA Civ 442 for asylum support cases. The UK Border Agency instructed the Treasury Solicitors to provide written submissions and N instructed counsel to provide an Advice in support of the appeal. Before the hearing the UK Border Agency recorded N's fresh asylum claim and granted her section 4 support, so the appeal was withdrawn as the issue became academic.

K

This case, taken with the other asylum support examples, illustrates the difficulty that destitute asylum seekers have in holding the UK Border Agency to account for the lawfulness of its decision-making. It is regrettable that legal representation is required to resolve such cases, but in situations of such fundamental inequality of arms they are powerless when faced with unlawful decisions of the Agency.

K was in receipt of section 4 support in London. He applied to the UK Border Agency for travel assistance to collect his personal belongings, including clothes, photographs and documents, from Newcastle. The UK Border Agency refused this application, a decision without a right of appeal. Under the Legal Help Scheme legal aid lawyers sent the Agency a letter before claim threatening judicial review. Following this, the Agency reversed its decision and K was provided with travel assistance to go to Newcastle.

W

This is an example of a case in which it was necessary for lawyers working on the asylum case and the asylum support case to work together.

W's section 4 support was terminated following the refusal of her asylum claim. Under the Legal Help Scheme lawyers successfully helped her to appeal this decision, by liaising with her immigration solicitors to ensure that her judicial review of the immigration decision was lodged in time and drafting her appeal submissions in the support case.

O

Expert advice from specialists in asylum support meant that the correct application in a very complex case could be identified and a need for judicial review averted.

O had been refused support under section 95 as the UK Border Agency considered that section 55 of the Nationality, Immigration and Asylum Act 2002, whereby support can be refused if a person has not claimed asylum as soon as reasonably practicable. Her immigration solicitors referred her to specialist asylum support lawyers for advice about judicially reviewing this decision; there is no right of appeal attached to a section 55 decision. The lawyers were instructed under the Legal Help Scheme. O's immigration background was complex, and after considering the section 55 decision and her documents the lawyers advised her to instead pursue a Jobseeker's allowance claim, which she was granted.

E

This case involved ensuring that a man who had been street homeless for six months could obtain support in a location where he would be able to maintain contact with his young

child.

E had been street homeless for six months. He approached a voluntary sector organisation for help with applying for section 4 support. They told him that this would only be provided outside of London and they did not consider that he would be able to challenge such a decision. E did not want to be accommodated outside of London because he had lived there for almost 14 years and had a 13-month child living there with whom he had regular contact. Legal aid lawyers were instructed under the Legal Help Scheme. They advised E that he had reasonable grounds to be provided with section 4 support in London. Due to the urgency of the matter they assisted him to complete a section 4 application, as it would have been an unnecessary delay for him to return to the voluntary organisation for help with this given his destitution. They put the UK Border Agency on notice that they would seek judicial review unless section 4 support was provided in London as a matter of urgency. A decision to grant E section 4 support was made within two days, but the UK Border Agency refused to provide this in London. E was then granted Legal Aid. He was subsequently granted section 4 support in London.

A

This case involved ensuring that a mother and her three British citizen children were not left without support in an interregnum between a local authority providing support under the Children Act 1989 and responsibility for support being assumed by the UK Border Agency. Support cases involving British citizen children and partners are often of considerable legal complexity.

A had been provided with accommodation and financial support under the Children Act 1989, from the local authority. The local authority had given A notice that this support was going to be withdrawn. A applied for section 4 support from the UK Border Agency but they told her they would not be able to assess her application before the local authority support was due to end. A's case was complicated because her three children had British citizenship and she wanted to be accommodated in London so that they could continue to have contact with their father, from whom she was separated. Legal aid lawyers were instructed under the Legal Help Scheme. A significant amount of negotiation with the UK Border Agency took place regarding A's section 4 application, as they considered that section 4 support could not be provided in respect of British children. The lawyers also had to negotiate with the local authority to get them to agree to extend A's support pending the UK Border Agency's decision, which they agreed to do. Before they decided the application for section 4 support, the UK Border Agency granted A indefinite leave to remain in the UK.

G

Until the intervention of legal aid lawyers a mother and a tiny baby faced homelessness, not because they were not entitled to support, but because they had applied for a one form of support and the UK Border Agency identified that they were eligible for different (and better) support. The Agency did not provide either form of support, but instructed the mother to apply all over again. The intervention of legal aid lawyers was necessary to cut through this dangerous bureaucracy.

G's asylum claim had been refused because she did not reply to the UK Border Agency's request for further information. However, as this request had been sent to an incorrect address she had asked for this decision to be withdrawn and was waiting for a decision from the UK Border Agency. She had also made a fresh asylum claim. G had recently given birth and because she did not have any accommodation the local authority agreed to provide temporary support. She was receiving a total

of £18 per week for her and her baby. However, this was being withdrawn. A voluntary sector organisation had assisted G to apply for section 4 support but this was refused as they UKBA considered that she was eligible for section 95 support. The UK Border Agency then changed its mind and told G to reapply for section 4 support. She went back to the voluntary organisation and spent all day in their offices but they were too busy to help her. Legal aid lawyers were instructed under the Legal Help Scheme. They negotiated with the UK Border Agency and were able to obtain section 4 accommodation for G the following day, preventing her and her baby from becoming homeless.

S

In this case the UK Border Agency maintained its decision until faced a judicial review and then changed its view.

S had been refused section 95 support because the UK Border Agency considered that section 55 of the Nationality, Immigration and Asylum Act 2002 was applicable in his case, whereby support is refused those the Agency considers have not claimed asylum as soon as reasonably practicable. His immigration solicitors referred him to specialist asylum support lawyers for advice about judicially reviewing this decision; there is no right of appeal attached to a section 55 decision. The lawyers were instructed under the Legal Help Scheme. A letter before claim was sent to the UK Border Agency threatening judicial review unless they granted S section 95 support. The UK Border Agency maintained their decision. ST was then assisted under the Legal Aid Scheme. A claim for judicial review was issued and the UKBA then granted S section 95 support.

G

The intervention of legal aid lawyers was necessary to protect a mentally ill man with a history of suicide attempts where the efforts of a voluntary organisation had for two months failed to secure him emergency accommodation.

G had been told that he had to leave his relative's home. He was mentally unwell and had a history of five suicide attempts. A voluntary organisation assisted G to apply for section 4 support, but he had been waiting for two months for a decision on this application, despite the organisation getting in touch with the UK Border Agency several times, explaining the urgency and asking for the application to be treated as a priority. In the meantime, G had been street homeless for two weeks when the voluntary organisation referred him to legal aid lawyers for emergency assistance. The lawyers were instructed under the Legal Help Scheme. The UK Border Agency had by then granted G section 4 support, but told him he would have to wait another five days for accommodation to be provided and that he could not access any emergency accommodation. The lawyers sent a letter before claim to the UK Border Agency threatening judicial review unless G was provided with accommodation the following day. Following this, the UK Border Agency provided G with section 4 accommodation the next day, ending his destitution.

M

The UK Border Agency provided a voluntary sector organisation with Incorrect information about M's entitlement to support which led them to say that they could not help her. It took legal aid lawyers who were able to address the question of M's immigration status to ensure that she was able to make the application for the support to which she was entitled. Expert evidence was required in the case; Legal aid lawyers were also able to instruct an expert and

pay for a report, something that a voluntary sector organisation with no legal aid contract cannot do.

M had been accommodated by the local authority but this support was being terminated. She went to a voluntary sector organisation three times to try and apply for section 95 support but they said that they were unable to help her with this application as the UK Border Agency had told them that she was not eligible for this support. Under the Legal Help Scheme legal aid lawyers communicated with the voluntary sector organisation and explained M's immigration status, and that the UK Border Agency had made a mistake. The voluntary sector organisation then agreed to assist M with her section 95 application. Legal aid lawyers also assisted M to obtain relevant medical evidence in support of application, which the voluntary sector organisation had been unable to do.

Z

Another case in which the UK Border Agency maintained its decision until faced with a judicial review, and then changed it.

Z had been refused section 95 support under section 55 of the Nationality, Immigration and Asylum Act 2002, as the UK Border Agency considered that she had not claimed asylum as soon as reasonably practicable. A voluntary organisation referred her to legal aid lawyers for specialist advice about judicially reviewing this decision; there is no right of appeal attached to a section 55 decision. The lawyers were instructed under the Legal Help Scheme. They sent a letter before claim to the UK Border Agency threatening judicial review. Following this, the UK Border Agency reconsidered their decision in Z's favour and granted her section 95 support.

X

This case gives example of both the complexity of asylum support questions (even trying to understand what type of support may properly be applied for) and the poor way in which these are often dealt with the UK Border Agency.

X is from Zimbabwe. He submitted a fresh claim for asylum in 2005. Further representations have been made since; the most recent substantive expert evidence was submitted 2009, to which no reference was made in a decision more than six months later.

X lived with a friend until summer 2010 but that friend could no longer support him and he became homeless and destitute. He lodged an application for 'section 4' support (support for persons whose application for asylum has failed) by himself which was refused. His appeal was dismissed on the basis that he was an asylum- seeker as he had further representations outstanding (the Secretary of State had not dealt with the most recent representations in her most recent decision). He came to a legal representative who applied for 'section 95' support, support for persons with an outstanding application. This was refused as the Home Office records were incorrect, showing no further representations outstanding. The representative gave notice that a judicial review of the refusal would be sought. The Home Office then considered the application properly and granted 'section 95' support.

M

M's appeal against refusal of support, prepared by legal aid lawyers, succeed on the basis that it would be a breach of her rights under Article 3 of the European Convention on Human Rights if she were not supported.

M is from Zimbabwe. She came to the UK as a visitor. She was able to stay with her aunt on the understanding that she would cook and look after her Aunt's children on her behalf as her aunt worked. Her aunt confiscated her passport and she was treated effectively as a prisoner during this time. It was not until after the six months visit visa had expired that she was able secretly to take back her passport and escape.

She found an agency that said it had extended her visa for around two years enabling to her to work. She slept on friends' floors and sofas. When she applied for a provisional driving licence in 2003 confiscated her passport as the visa was forged.

M claimed asylum as soon as she learned that she had no leave to be in the UK. The application was refused as was her subsequent appeal. She continued to reside with friends who are able to provide food and accommodation on the understanding she would regularly move around her church group so as not to put too much pressure on one person at any one time.

She made further representations to the UK Border Agency as she was able to get fresh evidence that had not been considered at the time her initial asylum claim. The UK Border Agency sent a standard that her claim would be treated as a legacy case and it would be decided within five years of the date of this letter.

M attended the Home Office in October 2009 however there were no records of her further representations potentially amounting to a fresh claim for asylum.

An uncle paid for M to live rent accommodation and sponsored her to go to university, while friends continued to provide some support with food etc., but her uncle's his health deteriorated and thus his ability to work and earn money was reduced. M had to leave her accommodation. By this time M had exhausted previous support due to the amount of time she had been supported and the number of people she had relied upon. M was unable to stay with her aunt and uncle as her aunt was a foster mother looking after between three to four children at any one time.

M went to university and was in her final year of a degree. She was able to defer the third year's payment until after she would graduate.

M made an application for section 4 support. This was refused but M did not know on what grounds, as the voluntary sector organisation that had made the application had lost her file.

The UK Border Agency then advised that M had stayed at a different address to the one on the application form; therefore it was not considered she was destitute at that time of applying for the section 4 support.

M was prevented from accessing main stream welfare benefits and prohibited from taking up employment and housing due to her immigration status. Legal aid lawyers applied for section 4 support to be provided for her near her university but could not obtain supporting evidence from her uncle as he feared that to say he had supported M would compromise him in his job as a civil servant. The UK Border Agency refused the application on the basis that she was able to access support through other means or that she was and destitute and had failed to explain how she could pay for her course. Her lawyers prepared her appeal and she was successful in arguing that not to provide support and accommodation would lead to a breach of Human Rights under Article 3 of the European Convention on Human Rights.

L

The assistance of legal aid lawyers was necessary to evidence L's entitlement to support following an error by the UK Border Agency, which the Agency maintained, and to prepare detailed legal submissions on the interests of her two children, both of whom had leave in the UK.

L had been separated from her children in her country of origin. The children had entered the UK as unaccompanied minors and had subsequently been granted leave to remain in the UK. They were accommodated by social services.

L claimed asylum on arrival. Social Services reunited L with her children and agreed that L could live with her children; however they have no basis on which to provide support to L. L had no financial support and the accommodation that has been provided to L's children and L was soon to cease as the landlord is of the property is not willing to renew the lease with Social Services department.

L's asylum claim was refused with no in-country right of appeal. She had sought permission for judicial review of that decision and a consent order had been agreed between her representatives and the Home Office that the Home Office would reconsider its decision to deny her an in-country right of appeal.

L applied for support but this was refused. A voluntary sector agency assisted her to enquire as to the reason for this and the response was that there was no record of an outstanding claim for asylum. Further documentation was provided by L including a letter from social services. The application was reconsidered, but with the same result.

Legal aid lawyers assisted L to prepare an appeal to the Asylum Support Tribunal to challenge the refusal, supplying in evidence a Court consent order demonstrating that L's asylum application is being reconsidered by the Home Office. The lawyers argued that L should be accommodated with her children and further that this should be near where her children had been living so that their education was not disrupted. They made detailed submissions on the relevant Home Office policy.

L's appeal was successful and the family were provided with support, all together and in a location where the children were able to continue their education.

M

In this case errors by the UK Border Agency led to a delay in providing accommodation for a family including a very ill child. Legal aid lawyers dealt with matters of law and evidence and ultimately started judicial review proceedings to resolve the difficulties because of the urgency of the case.

M had originally come to the UK as a visitor with two children. She had overstayed following giving birth to a son with sickle cell anaemia and consequent severe medical problems. An application on the basis of Article 3 of the European Convention on Human Rights had been refused as his condition was not considered by the UK Border Agency to be sufficiently serious. No enforcement action was taken and some six years later, after her son's condition deteriorated she made another application for leave to remain. The child requires regular medical attention by a specialist team at the hospital near where he lives.

M had been living with a friend but the friend was finding it increasingly difficult to assist her and asked her to leave. M was extremely distressed and did not know to whom to turn.

Legal aid lawyers requested that M be given emergency accommodation. The UK Border Agency argued that she was not eligible for this but were persuaded by further representations from the

lawyers. M was given temporary accommodation. The legal aid lawyers then assisted her to present the case for her to be accommodated near the hospital that was treating her son. The lawyers also sought to speed up the process of getting the family into permanent accommodation. The UK Border Agency continued to require further information about the son's medical condition. The Agency then said that it did not have proof of the son's birth although this had been provided to the Agency. The representatives produced a further copy of the birth certificate.

During this period M's son's condition deteriorated, necessitating hospitalisation. The lawyers commenced the judicial review pre-action protocol, at which point the Agency provided accommodation for M and her children near the hospital.

I

This case involved a young person leaving care and the assistance of legal aid lawyers was vital to prepare his appeal against refusal of support.

I arrived in the UK when he was 15, with his brother who was a year younger. They claimed asylum and were accommodated by social services as unaccompanied minors.

Aged sixteen, I was abducted by a criminal gang and taken to another city in the UK. Approximately one year later he managed to escape. He went back to social services and reported what had happened to him to the police. Social services accommodated him again, near but not with his brother, and he was given a year's leave to remain. He failed to apply to extend this before it expired. had been refused section 95 support under section 55 of the Nationality, Immigration and Asylum Act 2002, as the UK Border Agency considered that she had not claimed asylum as soon as reasonably practicable. A voluntary organisation referred her to legal aid lawyers for specialist advice about judicially reviewing this decision; there is no right of appeal attached to a section 55 decision. The lawyers were instructed under the Legal Help Scheme. They sent a letter before claim to the UK Border Agency threatening judicial review. Following this, the UK Border Agency reconsidered their decision in Z's favour and granted her section 95 support.

In 2007 I submitted an application for indefinite leave to remain. It is still pending. When I turned 21, social services indicated that they would no longer support him as he is no longer eligible for leaving care support.

Legal aid lawyers applied for section 4 support. The UK Border Agency refused the application because they were not satisfied that I was destitute. Legal aid lawyers assisted him to prepare his appeal, providing grounds of appeal, witness statements, and legal pleadings as well as explaining the procedure at appeal to him. His appeal was successful

C

A survivor of torture was refused support. Following submission of an appeal by her legal aid lawyers, the UK Border Agency granted her indefinite leave to remain in the UK.

C sought asylum as an unaccompanied child in the UK having fled rape and torture inflicted during the civil war in her country. Her application for asylum was refused but she was granted discretionary leave to age 18. When this was coming to an end she applied to extend it but this was refused and her appeal dismissed. C had no legal representative at the time and was unaware that her application had been refused.

C has multiple health problems, both mental and physical, as a result of the treatment she has

suffered. Legal aid lawyers have assisted her to make a fresh application for asylum which included evidence from the Medical Foundation for the Care of Victims of Torture.

C was held not to satisfy the test for social services support as she was found not to be in need of care and attention within the meaning of the definition. She was refused asylum support. Legal aid lawyers assisted her to appeal the refusal. Following receipt of the appeal against refusal of support, the UK Border Agency granted C exceptional leave to remain in the UK.

N

A man whose mental health had required hospitalisation required support to ensure that he was not homeless on discharge from hospital. The efforts of legal aid lawyers to obtain support led the UK Border Agency to examine the substantive case and grant indefinite leave to remain.

N's case was awaiting consideration in the UK Border Agency's case resolution ('legacy') programme. He was admitted to hospital given his depression and suicidal case ideation. His health improved and the hospital wanted to discharge him, but N was without accommodation or anywhere to stay.

Legal aid lawyers made an emergency application made for asylum support. This involved considerable liaison with the hospital which, concerned at the time it was taking to find accommodation, threatened to discharge him on several occasions. The result of the application for support was that the UK Border Agency considered N's case and granted him indefinite leave to remain.