



OPERATIONAL GUIDANCE NOTE

KUWAIT

CONTENTS	
1. Introduction	1.1 – 1.4
2. Country Assessment	2.1 – 2.2
Actors of Protection	2.3
Internal Relocation	2.4
Country Guidance Caselaw	2.5
3. Main Categories of Claims	3.1 – 3.5
The Bidoon (Also Bidun, Bedoun, Bedun)	3.6
Prison Conditions	3.7
4. Discretionary Leave	4.1 – 4.2
Minors Claiming in Their Own Right	4.3
Medical Treatment	4.4
5. Returns	5.1 – 5.5

1. Introduction

- 1.1** This document provides UK Border Agency case owners with guidance on the nature and handling of the most common types of claims received from nationals/residents of Kuwait, including whether claims are or are not likely to justify the granting of asylum, Humanitarian Protection or Discretionary Leave. Case owners must refer to the relevant Asylum Instructions for further details of the policy on these areas.
- 1.2** Case owners must not base decisions on the country of origin information in this guidance; it is included to provide context only and does not purport to be comprehensive. The conclusions in this guidance are based on the totality of the available evidence, not just the brief extracts contained herein, and case owners must likewise take into account all available evidence. It is therefore essential that this guidance is read in conjunction with the relevant COI Service country of origin information and any other relevant information.

COI Service information is published on Horizon and on the internet at:

<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

- 1.3** Claims should be considered on an individual basis, but taking full account of the guidance contained in this document. Where a claim for asylum or Humanitarian Protection is being considered, case owners must consider any elements of Article 8 of the ECHR in line with the provisions of Appendix FM (Family Life) and paragraphs 276 ADE to 276DH (Private Life) of the Immigration Rules. Case owners must also consider if the applicant qualifies for Discretionary Leave in accordance with the published policy. If, following consideration, a claim is to be refused, case owners should consider whether it can be certified as clearly unfounded under the case by case certification power in section 94(2) of the

Nationality Immigration and Asylum Act 2002. A claim will be clearly unfounded if it is so clearly without substance that it is bound to fail. Where a person is being considered for deportation, case owners must consider any elements of Article 8 of the ECHR in line with the provisions of Part 13 of the Immigration Rules.

- 1.4** If, following consideration, a claim is to be refused, case owners should consider whether it can be certified as clearly unfounded under the case by case certification power in Section 94(2) of the Nationality Immigration and Asylum Act 2002. A claim will be clearly unfounded if it is so clearly without substance that it is bound to fail.

2. Country Assessment

- 2.1** Case owners should refer the relevant COI Service country of origin information material. An overview of the country situation including headline facts and figures about the population, capital city, currency as well as geography, recent history and current politics can also be found in the relevant FCO country profile at:

<http://www.fco.gov.uk/en/travel-and-living-abroad/travel-advice-by-country/country-profile/>

- 2.2** An overview of the human rights situation in certain countries can also be found in the FCO Annual Report on Human Rights which examines developments in countries where human rights issues are of greatest concern:

<http://fcohrdreport.readandcomment.com/wp-content/uploads/2011/02/Cm-8339.pdf>

2.3 Actors of Protection

- 2.3.1** Case owners must refer to section 7 of the Asylum Instruction - [Considering the asylum claim and assessing credibility](#). To qualify for asylum, an individual must have a fear of persecution for a Convention reason and be able to demonstrate that their fear of persecution is well founded and that they are unable, or unwilling because of their fear, to seek protection in their country of origin or habitual residence. Case owners must take into account whether or not the applicant has sought the protection of the authorities or the organisation controlling all or a substantial part of the State, any outcome of doing so or the reason for not doing so. Effective protection is generally provided when the authorities (or other organisation controlling all or a substantial part of the State) take reasonable steps to prevent the persecution or suffering of serious harm by for example operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the applicant has access to such protection.
- 2.3.2** The police had sole responsibility for the enforcement of laws not related to national security and State Security oversaw intelligence and national security matters; both were under the purview of civilian Interior Ministry authorities. The military was responsible for external security. The police were generally effective in carrying out core responsibilities. There were reports that some police stations did not take seriously the requests of complainants, especially foreign nationals. In cases of alleged police abuse, the district chief investigator examined abuse

allegations and referred cases to the Courts for trial. There was some evidence of police impunity. Security forces sometimes failed to respond effectively to societal violence against family members or domestic workers.¹

- 2.3.3** The Kuwait National Police had approximately 4,000 officers and the majority were assigned to Kuwait City. They were a semi-military organisation that was capable of dealing with violent disorder in addition to normal policing duties. They were directly responsible to the Emir of Kuwait through the Ministry of the Interior (MOI). The National Police were deployed for public order enforcement and its primary responsibility was internal security. Police units were based in all major urban centres.²
- 2.3.4** The law prohibits arbitrary arrest and detention; however there were reports that police arbitrarily arrested individuals and non-nationals during 2011.³
- 2.3.5** The law offers an independent judiciary and the right to a fair trial and states that: “judges shall not be subject to any authority”; however, the Emir appoints all judges, and the renewal of judicial appointments is subject to government approval. Judges who are citizens have lifetime appointments, but many judges are non-citizens who holding one- to three-year renewable contracts. The Ministry of Justice may remove judges for reasonable cause, but this rarely happens. Foreign residents involved in legal disputes with citizens frequently claim the Courts are on the side of the citizens.⁴
- 2.3.6** The government stated that it investigated all allegations of abuse and punished some of the offenders, however, in most cases the government did not make public either the findings of its investigations or any punishments it imposed.⁵
- 2.3.7** In February 2011, hundreds of illegal residents (Bidoons) took to the streets in protest, demanding their civil and political rights, with a particular emphasis on the issue of statelessness and claims for citizenship. According to local observers, the protesters numbered between 300 and 500 people. They reported that the protestors were primarily peaceful, although following the use of water cannons, teargas, smoke bombs and concussion grenades by the security forces, some protestors did hurl rocks at security personnel. At least 120 people were arrested and detained and approximately 30 people were treated for injuries in hospital. The Kuwaiti government has stated that people should not gather in public, notwithstanding Kuwait’s commitment under international law to protect the right to peaceful assembly.⁶

2.4 Internal Relocation

¹ US State Department Human Rights Report 2011: Kuwait Section 1
<http://www.state.gov/documents/organization/186644.pdf>

² Jane’s Sentinel Security Assessment (Subscription only) Security and Foreign Forces, Last Updated 11 April 2011
Country of Information Service (COIS) Report Kuwait April 2012 (Para 8.02)
<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

³ US State Department Human Rights Report 2011: Kuwait Section 1
<http://www.state.gov/documents/organization/186644.pdf>

⁴ US State Department Human Rights Report 2011: Kuwait Section 1
<http://www.state.gov/documents/organization/186644.pdf>

⁵ US State Department Human Rights Report 2011: Kuwait Section 1
<http://www.state.gov/documents/organization/186644.pdf>

⁶ Human Rights Watch: [Bidun Crackdown: February 2011](http://www.hrw.org/print/news/2011/02/19/kuwait-dozens-injured-arrested-bidun-crackdown)
<http://www.hrw.org/print/news/2011/02/19/kuwait-dozens-injured-arrested-bidun-crackdown>

- 2.4.1** Case owners must refer to the Asylum Instruction on [Internal Relocation](#) and in the case of a female applicant, the AI on [Gender Issues in the Asylum Claim](#), for guidance on the circumstances in which internal relocation would be a 'reasonable' option, so as to apply the test set out in paragraph 339O of the Immigration Rules. It is important to note that internal relocation can be relevant in both cases of state and non-state agents of persecution, but in the main it is likely to be most relevant in the context of acts of persecution by localised non-state agents. If there is a part of the country of return where the person would not have a well founded fear of being persecuted and the person can reasonably be expected to stay there, then they will not be eligible for a grant of asylum. Similarly, if there is a part of the country of return where the person would not face a real risk of suffering serious harm and they can reasonably be expected to stay there, then they will not be eligible for humanitarian protection. Both the general circumstances prevailing in that part of the country and the personal circumstances of the person concerned including any gender issues should be taken into account. Case owners must refer to the Gender Issues in the asylum claim where this is applicable. The fact that there may be technical obstacles to return, such as re-documentation problems, does not prevent internal relocation from being applied.
- 2.4.2** Very careful consideration must be given to whether internal relocation would be an effective way to avoid a real risk of ill-treatment/persecution at the hands of, tolerated by, or with the connivance of, state agents. If an applicant who faces a real risk of ill-treatment/persecution in their home area would be able to relocate to a part of the country where they would not be at real risk, whether from state or non-state actors, and it would not be unreasonable to expect them to do so, then asylum or humanitarian protection should be refused.
- 2.4.3** The constitution generally provides for freedom of movement within the country, however numerous laws constrained foreign travel and the government placed some limits on freedom of movement in practice. The government was generally unco-operative with most efforts by the Office of the UN High Commissioner for Refugees (UNHCR) and other humanitarian organisations to provide implementation of protection and assistance to refugees, returning refugees, asylum seekers, stateless persons and other persons of concern.⁷
- 2.4.4** Women and stateless persons faced problems with or restrictions on foreign travel. Women had the right to obtain a passport and travel without a male family member's permission. However, a husband may still request that immigration authorities prevent his wife departing from the country for up to 24 hours, after which a Court order may extend the travel ban. The government restricted the ability of some Bidoons to travel abroad through the non-issuance of travel documents. It permitted some Bidoons to travel to Saudi Arabia for the annual hajj and continued to issue "Article 17" passports which were temporary travel documents that did not confer nationality for Bidoons.⁸
- 2.4.5** The law also permitted travel bans on citizens or foreigners accused or suspected of violating the law, including non-payment of debts, and it allowed

⁷ US State Department Human Rights Report 2011: Kuwait Section 2
<http://www.state.gov/documents/organization/186644.pdf>

⁸ US State Department Human Rights Report 2011: Kuwait Section 2
<http://www.state.gov/documents/organization/186644.pdf>

other citizens to petition authorities to do so. This resulted in delays and difficulties for citizens and foreigners leaving the country.⁹

2.5 Country Guidance Caselaw

Supreme Court. RT (Zimbabwe) & others v Secretary of State for the Home Department [2012] UKSC 38 (25 July 2012)

The Supreme Court ruled that the rationale of the decision in HJ (Iran) applies to cases concerning imputed political opinion. Under both international and European human rights law, the right to freedom of thought, opinion and expression protects non-believers as well as believers and extends to the freedom not to hold and not to express opinions. Refugee law does not require a person to express false support for an oppressive regime, any more than it requires an agnostic to pretend to be a religious believer in order to avoid persecution. Consequently an individual cannot be expected to modify their political beliefs, deny their opinion (or lack thereof) or feign support for a regime in order to avoid persecution.

BA & Others CG [2004] UKIAT 00256

The Tribunal noted that as a result of undocumented Bidoon not having civil identification documents, they are prevented from working with few exceptions, prevented from receiving the most basic government services, denied rights to medical treatment, housing, documentation, education, and drivers licences. (Para. 69) The IAT then concluded that undocumented Bidoon living in Kuwait experience discrimination so severe that it amounts to a form of persecution. (Para. 90) It was considered that the Bidoon have an extended tribal identity and that this was sufficient to bring them within the meaning of the term “race” under the 1951 Convention. (Para 88) However in addition to this the IAT noted that the existence of a number of legislative and societal measures of discrimination marked the Bidoon out from others, and that this would be sufficient to qualify them as a particular social group. (Para 89) The Tribunal took into consideration the particular circumstances of each case concluding that, “we are satisfied that the individual circumstances of the appellants neither significantly add to nor detract from the situation they would face in common with other undocumented Bidoon.” (Para 86). These appeals were allowed.

HE (Kuwait) CG (2006) UKIAT 00051

The Tribunal noted that although recent improvements represent changes of clear relevance and may be indicative of an improving attitude on the part of the authorities towards the Bidoon, there remain other significant problems. (Para 35) The Tribunal therefore conclude on the general issue that undocumented Bidoon still face such a level of discrimination in a range of ways in their lives in Kuwait, as to continue to be the victims of persecution. There has not been a material change since the country guidance decision in BA and accordingly the Tribunal remain of the view that undocumented Bidoon are at risk as concluded in that determination.

⁹ US State Department Human Rights Report 2011: Kuwait Section 2
<http://www.state.gov/documents/organization/186644.pdf>

3. Main Categories of Claims

- 3.1** This Section sets out the main types of asylum claim, humanitarian protection claim and discretionary leave claim on human rights grounds (whether explicit or implied) made by those entitled to reside in Kuwait. Where appropriate it provides guidance on whether or not an individual making a claim is likely to face a real risk of persecution, unlawful killing or torture or inhuman or degrading treatment/punishment. It also provides guidance on whether or not sufficiency of protection is available in cases where the threat comes from a non-state actor; and whether or not internal relocation is an option. The law and policies on persecution, Humanitarian Protection, sufficiency of protection and internal relocation are set out in the relevant Asylum Instructions, but how these affect particular categories of claim are set out in the instructions below. All Asylum Instructions can be accessed via the Horizon intranet site. The instructions are also published externally on the Home Office internet site at:

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/>

- 3.2** Each claim should be assessed to determine whether there are reasonable grounds for believing that the applicant would, if returned, face persecution for a Convention reason - i.e. due to their race, religion, nationality, membership of a particular social group or political opinion. The approach set out in Karanakaran should be followed when deciding how much weight to be given to the material provided in support of the claim (see the Asylum Instruction '[Considering the asylum claim and assessing credibility](#)').
- 3.3** For any asylum cases which involve children either as dependents or as the main applicants, case owners must have due regard to Section 55 of the Borders, Citizenship and Immigration Act 2009. The UK Border Agency instruction '[Every Child Matters: Change for Children](#)' sets out the key principles to take into account in all Agency activities.
- 3.4** If the applicant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. If the applicant does not qualify for asylum, or Humanitarian Protection, consideration must be given to any claim as to whether he/she qualifies for leave to remain on the basis of their family or private life. Case owners must also consider if the applicant qualifies for Discretionary Leave, either on the basis of the particular categories detailed in Section 4 or on their individual circumstances.

3.4.1 Consideration of Articles 15(a) and (b) of the Directive/Articles 2 and 3 ECHR

An assessment of protection needs under Article 15(c) of the Directive should only be required if an applicant does not qualify for refugee protection, and is ineligible for subsidiary protection under Articles 15(a) and (b) of the Directive (which broadly reflect Articles 2 and 3 of the ECHR). Case owners are reminded that an applicant who fears a return to a situation of generalised violence may be entitled to a grant of asylum where a connection is made to a Refugee Convention reason or to a grant of Humanitarian Protection because the Article 3 threshold has been met.

3.4.2 Other severe humanitarian conditions and general levels of violence meeting the Article 3 threshold.

There may come a point at which the general conditions in the country – for example, absence of water, food or basic shelter – are unacceptable to the point that return in itself could, in extreme cases, constitute inhuman and degrading treatment. Decision makers need to consider how conditions in the country and locality of return, as evidenced in the available country of origin information, would impact upon the individual if they were returned. Factors to be taken into account would include age, gender, health, effects on children, other family circumstances, and available support structures. It should be noted that if the State is withholding these resources it could constitute persecution for a Convention reason and a breach of Article 3 of the ECHR.

- 3.4.3 As a result of the [Sufi & Elmi v UK](#) judgment in the European Court of Human Rights (ECtHR), where a humanitarian crisis is predominantly due to the direct and indirect actions of the parties to a conflict, regard should be had to an applicant's ability to provide for his or her most basic needs, such as food, hygiene and shelter and his or her vulnerability to ill-treatment. Applicants meeting either of these tests would qualify for Humanitarian Protection.

3.5 Credibility

- 3.5.1 This guidance is not designed to cover issues of credibility. Case owners will need to consider credibility issues based on all the information available to them. For guidance on credibility see 'Section 4 – Making the Decision in the Asylum Instruction' [‘Considering the asylum claim and assessing credibility’](#). Case owners must also ensure that each asylum application has been checked against previous UK visa applications. Where an asylum application has been biometrically matched to a previous visa application, details should already be in the UK Border Agency file. In all other cases, the case owner should satisfy themselves through CRS database checks that there is no match to a non-biometric visa. Asylum applications matches to visas should be investigated prior to the asylum interview, including obtaining the Visa Application Form (VAF) from the visa post that processed the application.

3.6 Bidoon (Also Bidun, Bedoun, Bedun)

- 3.6.1 Most applicants will apply for asylum or make a human rights claim based on ill treatment amounting to persecution at the hands of the State due to their ethnicity and undocumented status.
- 3.6.2 **Treatment** Bidoon means “without” in Arabic, indicating that this group lived without nationality of any state. While Kuwaiti nationals enjoyed a large number of benefits and subsidies, stateless people in this small but very wealthy country lived in wretched conditions on the outskirts of its cities, where they suffered numerous human rights violations.¹⁰
- 3.6.3 Kuwait's Bidoon population originated from three broad categories: 1) those whose ancestors failed to apply for nationality or lacked necessary documentation at the time of Kuwait's independence in 1961; 2) those recruited to

¹⁰ Refugees International – Without Citizenship: Statelessness, discrimination and repression in Kuwait – 13 May 2011
<http://refugeesinternational.org/print/4772>

work in Kuwait's army or police force during the 1960s who permanently settled in Kuwait, along with their families; and 3) children of Kuwaiti mothers and stateless or foreign fathers.¹¹

- 3.6.4** Bidoon referred to a diverse group of people who at the time of independence were not given Kuwaiti nationality. The British ceased the protectorate in 1961 and about one-third of the population were given nationality on the basis of being 'founding fathers' of the new nation state, another third were naturalized as citizens, and the rest were considered to be Bidoon jinsiya or 'without nationality,' in Arabic.¹²
- 3.6.5** Many Bidoons failed to acquire nationality at independence. Some did not qualify under the law – in other words they were not able to show residential ties to Kuwait earlier than 1920. Others – and this was a greater problem at the time – did not quite appreciate the importance of having a nationality and failed to register as citizens. Men employed in the oil fields, for example, were sometimes unable or unwilling to take time off to travel to the city for the purpose of registration. Some Bidoons came down from Bedouin tribes that used to move across large areas of land in what is today Kuwait, Saudi Arabia, Iraq and Syria. The concept of nationality was foreign to many of these people and lack of nationality did not create a major problem for many Bidoons as they could continue to work in the public sector, including for the police force and the military. This explained in part why citizenship status may vary amongst members of the same family, despite sharing the very same ancestral ties to the country.¹³
- 3.6.6** The term Bidoon originated in the late 1950s when Kuwait drew up its laws on citizenship in preparation for full independence in 1961. At that time, the disadvantage of being stateless was not really apparent. In the following three to four decades, as Kuwait became rich, the Kuwaiti government sought to limit outsiders from gaining access to citizenship and the wealth and social security benefits that came with it. The position and status of the Bidoon, and the distinction between them and Kuwaiti citizens, had changed significantly since 1960. In addition, the Nationality Law had been modified repeatedly since 1959, and almost every amendment had made access to Kuwaiti nationality more difficult.¹⁴
- 3.6.7** During the oil boom of the 1970s and throughout the Iran-Iraq war, there was a steady inflow of workers from Iraq. Many were well-qualified and quick to understand that abandoning their Iraqi nationality and declaring themselves Bidoons meant they could join the Kuwaiti armed forces and police. By the middle of the 1980s approximately 80% of the armed forces and police were Bidoons. Others declared themselves Bidoons so that they could reap the social and economic benefits which the status conferred at that time.¹⁵
- 3.6.8** Internal instability in the middle of the 1980s, linked in particular to Kuwaiti support for Iraq against Iran during the Iran-Iraq war, led to a series of bombings, assassination attempts and minor civil disorder, sponsored by Iran. This led to a

¹¹ Human Rights Watch – Prisoners of the Past – Kuwaiti Bidun and the Burden of Statelessness – June 2011
<http://www.hrw.org/sites/default/files/reports/kuwait0611WebInside.pdf>

¹² Open Society Foundations – Stateless in Kuwait: Who Are The Bidoons? – 24 March 2011
<http://www.soros.org/voices/stateless-kuwait-who-are-Bidoon>

¹³ Open Society Foundations – Stateless in Kuwait: Who Are The Bidoons? – 24 March 2011
<http://www.soros.org/voices/stateless-kuwait-who-are-Bidoon>

¹⁴ Foreign and Commonwealth Office Letter – July 2012

¹⁵ Foreign and Commonwealth Office Letter – July 2012

security clamp-down by the Kuwaiti authorities. In particular, the fact that a small number of Bidoons were implicated (alongside other nationals) in terrorist offences caused the Kuwaiti government to look again at their status. Residence requirements were imposed, abolishing the exemption from such requirements hitherto enjoyed by the Bidoons. In effect this instantly made them illegal residents. The clause in the Nationality Law which allowed children of Kuwaiti mothers and Bidoon fathers to become Kuwaiti citizens was repealed. Between the middle of the 1980s and the 1990 Invasion of Kuwait by Iraq, there was a further erosion of the rights of the Bidoons, including the right to free education. Some were directly affected. Others were protected by their positions in government service or by other personal connections.¹⁶

- 3.6.9** A significant change occurred in 1991 after the liberation of Kuwait from the occupying forces of Iraq under Saddam Hussein. During the Gulf War, many Bidoons of Iraqi origin had enlisted, or been forced to enlist, in the Iraqi army. This damaged the reputation of all Bidoons and left the Kuwaiti people suspicious of them, with many viewing them as collaborators. The number of Bidoons before the Gulf War had been more than 200,000 and around half of those were believed to have left after liberation. Some were tried by the State Security Court in 1991 and were convicted and imprisoned. Since the early nineties, the government has set up various bodies to deal with the Bidoon issue. The 'Central Committee to Resolve the Status of Illegal Residents' was established in 1993 to regularise the Bidoon's status. In 1996 an Amiri decree set up the Committee for Illegal Residents' Affairs.¹⁷
- 3.6.10** The Central System to Resolve Illegal Residents' Status, generally known as the Bidoon Committee, was the sole government body through which Bidoons could register and seek resolution of their claims for Kuwaiti citizenship. The committee's procedures were opaque and applicants may never be told the reason for non-review, delay or denial of nationality and could not challenge matters relating to their citizenship claims or status through the judicial system. A 1990 law governing the judiciary took away courts' jurisdiction over all matters relating to national sovereignty, including citizenship claims as well as administrative decisions to deny the Bidoon temporary travel documents, or other government documentation. Only small numbers of applicants became naturalized Kuwaiti citizens each year. Kuwaiti law limited the number of citizens that could be naturalized annually to 2000, and naturalizations consistently fell well below the permitted quota.¹⁸ The Prime Minister has declared his intention to push for a solution of the long-standing problem.¹⁹
- 3.6.11** Citizenship was derived entirely from the father; children born to citizen mothers and non-national fathers do not inherit citizenship unless the mother was divorced or widowed from the non-national father. The law further failed to provide non-nationals, including Bidoons, a clear or defined opportunity to gain nationality. Female citizens may sponsor their non-national children, regardless of their age, and husbands for residency permits and may petition for their

¹⁶ Foreign and Commonwealth Office Letter – July 2012

¹⁷ Foreign and Commonwealth Office Letter – July 2012

¹⁸ Human Rights Watch – Prisoners of the Past – Kuwaiti Bidun and the Burden of Statelessness – June 2011
<http://www.hrw.org/sites/default/files/reports/kuwait0611WebInside.pdf>

¹⁹ Kuwait – FCO Travel and Living Abroad – 27 February 2012

<http://www.fco.gov.uk/en/travel-and-living-abroad/travel-advice-by-country/country-profile/middle-east-north-africa/kuwait/?profile=all>

children to be naturalized, should they become divorced or widowed from a noncitizen husband.²⁰

- 3.6.12** Kuwaiti law determined that a child's nationality was that of his or her father, not of the mother or both parents. This discrimination against women increased the problem of statelessness, as the children of Bidoon men and women became stateless. Kuwaiti women may pass their nationality on to their children only when the father is unknown or failed to establish legal paternity, when the couple divorced, or upon the death of the stateless husband.²¹ The government automatically granted citizenship to orphaned or abandoned infants, including Bidoon infants. Parents were sometimes unable to obtain birth certificates for their Bidoon children because of additional administrative requirements, creating an inability to access other public services such as education and health care.²²
- 3.6.13** The status of the Bidoons remained unresolved and they faced social and legal discrimination. The exact number of Bidoon residents was unknown but the Supreme Council for Higher Planning reported in November 2010 that there were 106,000 Bidoons in the country. Although the Bidoons lived in Kuwait long before its independence in 1961 they were considered by the authorities as 'illegal residents' and refused birth certificates, public schooling, marriage certificates and the right to peacefully assemble. The government continued to discriminate against Bidoons in some areas such as education, employment, medical care, freedom of movement and faced barriers to healthcare; some Bidoons could only access limited health insurance and others were denied health care altogether. Bidoon children may not attend public school, however, some Bidoons did work in the armed forces or police.^{23 24 25}
- 3.6.14** Bidoons had to rent accommodations, as they had no right to own, sell or pass property onto their children upon death. Despite their multi-generational presence in the nation, the Bidoons were not recognised as legally residing in Kuwait, and in almost all circumstances, they were not permitted to leave because the government refused to issue travel documents. The government also made it difficult for Bidoons to obtain official documents necessary for employment or travel, such as civil identification cards or driver licences.^{26 27 28}
- 3.6.15** While the government granted citizenship to several hundred Bidoon during 2011, more than 80,000 Bidoon citizenship requests were pending at the end of the year. Many Bidoons were unable to provide documentation proving sufficient

²⁰ US State Department Human Rights Report 2011 – Kuwait – Section 2

<http://www.state.gov/documents/organization/186644.pdf>

²¹ Human Rights Watch – Prisoners of the Past – Kuwaiti Bidun and the Burden of Statelessness – June 2011

<http://www.hrw.org/sites/default/files/reports/kuwait0611WebInside.pdf>

²² US State Department Human Rights Report 2011 – Kuwait – Section 6

<http://www.state.gov/documents/organization/186644.pdf>

²³ US State Department Human Rights Report 2011 – Kuwait – Section 2

<http://www.state.gov/documents/organization/186644.pdf>

²⁴ Refugees International – Kuwait: Bidoon Nationality Demands Can't Be Silenced – 3 May 2012

<http://www.refintl.org/policy/field-report/kuwait-bidoun-nationality-demands-cant-be-silenced>

²⁵ United States Department of State (USSD)

2010 Country Report on Human Rights Practices: Kuwait, 8 April 2011

<http://www.state.gov/j/drl/rls/hrrpt/2010/nea/154465.htm>

²⁶ US State Department Human Rights Report 2011 – Kuwait – Section 2

<http://www.state.gov/documents/organization/186644.pdf>

²⁷ Refugees International – Kuwait: Bidoon Nationality Demands Can't Be Silenced – 3 May 2012

<http://www.refintl.org/policy/field-report/kuwait-bidoun-nationality-demands-cant-be-silenced>

²⁸ United States Department of State (USSD)

2010 Country Report on Human Rights Practices: Kuwait, 8 April 2011

<http://www.state.gov/j/drl/rls/hrrpt/2010/nea/154465.htm>

ties to the country or to present evidence of their original nationality. However, the government maintained that the vast majority of Bidoons were concealing their true identities and were not actually stateless.²⁹

- 3.6.16** The government continued to discriminate against Bidoons in areas such as education.³⁰ In order to register in government schools or the state university or to legally hold employment individuals in Kuwait must present a civil ID card. These were issued by the state to Kuwaiti citizens and foreign nationals who held valid residence visas. However, the Bidoons did not have legal resident status in Kuwait therefore the government did not issue civil ID cards to them. Bidoons who registered with the Bidoon Committee and held security cards could register their children in private schools and the government paid the fees for some students. However, Bidoons without security cards did not have access to educational funding.³¹ The government-administered Charity Fund to Educate Needy Children paid school fees for all Bidoon children (approximately 2,000) who applied for assistance during the 2009-2010.³²
- 3.6.17** While the government had taken steps towards providing Bidoon children access to free elementary education, after removing this right a generation ago, it had failed to guarantee access as a right for all children in its jurisdiction. Children at the primarily Bidoon schools who failed their exams, as well as those whose parents had security offences registered in their names, did not receive school funding, including for primary school. Moreover, the government took no steps to enforce elementary school attendance for Bidoon children. Without enforcement mechanisms in place Bidoon girls risked being kept out of school, because when families cannot afford to educate all children they typically choose to educate sons over daughters. Lack of enforcement also left Bidoon children at risk of child labour.³³
- 3.6.18** By providing mostly separate educational institutions for citizen and Bidoon children with lower educational standards at primarily Bidoon schools, the government failed to uphold its obligations under the Convention Against Discrimination in Education. Additionally, by restricting free government schools to Kuwaiti citizens only, the government failed to ensure that Bidoon children, including those who lacked security cards, had access to free and compulsory primary education, as required by Article 26 of the Universal Declaration of Human Rights.³⁴
- 3.6.19** In June 2010, the government approved a new disability law reportedly because of conflicts within the existing law. The law offered larger disability grants, reduced working hours, and improved housing loans for citizens and Bidoons with mental or physical disabilities. It required government employers with workforces of 50 persons or more to recruit at least 4 percent of their workforce

²⁹ US State Department Human Rights Report 2011 – Kuwait – Section 2

<http://www.state.gov/documents/organization/186644.pdf>

³⁰ United States Department of State (USSD)

2010 Country Report on Human Rights Practices: Kuwait, 8 April 2011

<http://www.state.gov/j/drl/rls/hrrpt/2010/nea/154465.htm>

³¹ Human Rights Watch – Prisoners of the Past – Kuwaiti Bidun and the Burden of Statelessness – June 2011

<http://www.hrw.org/sites/default/files/reports/kuwait0611WebInside.pdf>

³² US State Department Human Rights Report 2011 – Kuwait – Section 6

<http://www.state.gov/documents/organization/186644.pdf>

³³ Human Rights Watch – Prisoners of the Past – Kuwaiti Bidun and the Burden of Statelessness – June 2011

<http://www.hrw.org/sites/default/files/reports/kuwait0611WebInside.pdf>

³⁴ Human Rights Watch – Prisoners of the Past – Kuwaiti Bidun and the Burden of Statelessness – June 2011

<http://www.hrw.org/sites/default/files/reports/kuwait0611WebInside.pdf>

from vocationally trained persons with special needs. The law also allowed citizens with disabilities, or those with children with disabilities, to receive larger than normal housing grants and earlier pensions. Although Bidoons were not normally entitled to receive housing grants, the new provisions incorporated Bidoons with disabilities.³⁵

- 3.6.20** Travel documents were not issued routinely to Bidoons, so many had no means of leaving Kuwait. However, some Bidoons were given temporary travel documents under Article 17 of the Kuwaiti Nationality Law which allowed the issue of a Kuwaiti travel document to any person deemed to require it. They were often issued to Bidoons in government service travelling abroad on official business and their families. According to the Department of Nationality and Travel Documents, Article 17 documents may also be issued to Bidoons for medical treatment outside Kuwait (for which the applicant has to provide medical reports from Kuwaiti and overseas hospitals or physicians); for study at university overseas (where accompanied by the university's letter of admission); or, for amendment of a Bidoon's legal status in Kuwait (for which they should submit a letter from an embassy in Kuwait acknowledging that he/she holds their nationality).³⁶
- 3.6.21** Article 17 documents looked almost identical to Kuwaiti passports, the key difference being that they do not confer nationality on the holder. They were issued only within Kuwait (i.e not at diplomatic missions outside Kuwait) and had to be renewed through the Ministry of Interior. According to the Kuwaiti Passport Office all Kuwaiti travel documents, including Article 17, allowed re-entry into Kuwait as long as they were within their validity date. However, the situation was more complicated than suggested with some Article 17 documents bearing different endorsements. Holders of Article 17 documents applying for visas for travel abroad may seek from the Ministry of Foreign Affairs a letter stating that there was no objection to the applicant leaving Kuwait and that they would be re-admitted on return.³⁷
- 3.6.22** Pursuant to Article 17 of Law No.11 of 1962 concerning passports (the Passports Law'), the Kuwaiti government theoretically issued travel documents in the form of 'temporary passports' to Bidoons who held security cards. In practice, however, the Passports Authority currently granted Bidoons such temporary passports only to travel for education, medical treatment or religious pilgrimage. Typically, these remained valid only for the trip cited in an individual's application.³⁸
- 3.6.23** Lack of legal status impacted every area of life for undocumented Bidoons. They were subjected to numerous infringements of their civil and human rights. They were generally unable to obtain essential state-issued documents. This meant they could not legally own property, and their family relationships were effectively illegitimate. Those adults who do succeed in obtaining Kuwaiti ID cards had

³⁵ US State Department Human Rights Report 2011 – Kuwait – Section 6

<http://www.state.gov/documents/organization/186644.pdf>

³⁶ United Kingdom Foreign and Commonwealth Office (FCO) Letter of 6 November 2007

COIS Report Kuwait April 2012 Paragraph 19.58

<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

³⁷ United Kingdom Foreign and Commonwealth Office (FCO) Letter of 6 November 2007

COIS Report Kuwait April 2012 Paragraph 19.58

<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

³⁸ Human Rights Watch – Prisoners of the Past – Kuwaiti Bidun and the Burden of Statelessness – June 2011

<http://www.hrw.org/sites/default/files/reports/kuwait0611WebInside.pdf>

reported that the renewal process was tantamount to interrogation and that the authorities made the process as difficult as possible. Consequently, some Bidoons resorted to the use of counterfeit passports.³⁹

- 3.6.24** Bidoon people were subjected to various types of discrimination, but the Government had attempted to address this in some areas. However, the process required applicants to prove residency prior to 1965, and therefore still excluded the great majority of Bidoons.⁴⁰ Due to their lack of legal status, they have no right to work, and consequently are disproportionately affected by poverty. They are not allowed to participate in the political process; being disenfranchised they are unable to improve their conditions through political pressure, except by public protest or demonstrations. Undocumented Bidoons were constantly at risk of arrest or detention on grounds of being stateless or illegal residents.⁴¹
- 3.6.25** Most Bidoons were afraid to speak publically about their situation, as they feared ramifications against themselves or their families. One common measure was to label individuals as security threats which prohibited them and their families from ever naturalising as citizens.⁴²
- 3.6.26** Kuwait had set a precedent of using security concerns to block nationality claims. This was originally used to deny nationality to those Bidoons who fought alongside Iraq during the 1991 occupation. The use of a “security block” had grown exponentially to include activists and others, often without their knowledge or the reason for the block. A security block prevented access to a variety of government services, and made the acquisition of nationality almost impossible. Refugee International (RI) were told by a human rights organisation that 850 individuals had been security blocked due to perceived collaboration with the Iraqis, but that the list was likely to be greater than 3000. Some believe the list was as many as 30,000 individuals. RI was also told that within the 850 there were surely errors as many Kuwaitis were used as “moles” on the Iraqi side as an intelligence mechanism; therefore the Bidoon Committee believe these should not be considered as collaborators by the Kuwaiti government. RI has stated that no application for nationality should be denied due to a security block unless it was demonstrated that the person actively supported Iraq during the 1991 invasion.⁴³
- 3.6.27** Kuwait’s government publicly warned activists that participation in demonstrations could result in a permanent security block on their nationality files and possible deportation. However, one man told RI, that he would be willing to sacrifice his own opportunity to gain nationality if it meant his two-year-old daughter may acquire it. RI learned that since Kuwait could not deport stateless individuals, because no other country has an obligation to accept them, it would use “deportation” jails. If ordered deported, a Bidoon could spend years in jail, awaiting an “amnesty” that may or may not come. It was unknown how many Bidoon individuals were in this situation. At the same time, the government said it

³⁹ Refugee Documentation Centre (Ireland) Compilation of sources: [Treatment of undocumented Bidoons in 2010](http://www.unhcr.org/refworld/country,,RDCI,,KWT,4562d8cf2,4c18877c2,0.html)
<http://www.unhcr.org/refworld/country,,RDCI,,KWT,4562d8cf2,4c18877c2,0.html>

⁴⁰ Minority Rights Group International: [World Directory of Minorities: Kuwait: Bidoon](http://www.minorityrights.org/?lid=4278&tmpl=printpage)
<http://www.minorityrights.org/?lid=4278&tmpl=printpage>

⁴¹ Refugee Documentation Centre (Ireland) Compilation of sources: [Treatment of undocumented Bidoons in 2010](http://www.unhcr.org/refworld/country,,RDCI,,KWT,4562d8cf2,4c18877c2,0.html)
<http://www.unhcr.org/refworld/country,,RDCI,,KWT,4562d8cf2,4c18877c2,0.html>

⁴² Refugees International (RI)

Without Citizenship: Statelessness, discrimination and repression in Kuwait, published

13 May 2011 http://www.refugeesinternational.org/sites/default/files/120511_Kuwait_With_Citizenship

⁴³ Refugees International – Kuwait: Bidoon Nationality Demands Can’t Be Silenced

<http://www.refintl.org/policy/field-report/kuwait-bidoon-nationality-demands-cant-be-silenced>

would confer nationality on the 34,000 individuals already recognized as Kuwaiti nationals without documentation (figure supplied by the Bidoon Committee to RI). This was a promise that the government had asserted before but had yet to fulfill.⁴⁴

- 3.6.28** In early 2011, unrest in Kuwait over calls for reform, and the situation of the stateless Bidoons manifested itself in public protests. Human Rights Watch (HRW) reported on 19 February 2011 that hundreds of stateless residents of Kuwait took to the streets on 18 February 2011 to demand their rights. Dozens had treatment for injuries in local hospitals and dozens more were detained by state security. According to interviews with Bidoons and Kuwaiti human rights activists, authorities arrested at least 120 individuals during the demonstrations and approximately 30 people sought treatment for injuries incurred at a nearby hospital. However, Interior Minister Ahmad al-Hamoud al-Sabah told HRW that his forces had arrested only 42 people, and that the Ministry planned to release some of them the same day and it would release others after investigations into allegations of violence were complete. None of the detainees have been brought before judges.⁴⁵
- 3.6.29** HRW World Report 2012 stated that the security forces used water cannons, teargas, smoke bombs and concussion grenades to break up the demonstrations in February and March 2011.⁴⁶ In addition to violently dispersing the Bidoons, authorities repeatedly warned foreign nationals not to participate in public demonstrations and threatened to deport them,⁴⁷ despite the country's commitment under international law to protect the right to peaceful assembly.⁴⁸ Kuwait's government publicly warned activists that participation in demonstrations would result in a permanent security block on their nationality files and possible deportation.^{49 50} In response to the protests, the government promised benefits, including free health care; free education at private schools that primarily served Bidoon children; birth, marriage, and death certificates; and improved access to jobs. Bidoons had confirmed receiving many of these benefits, but continue to cite problems accessing employment and increased difficulty receiving passports.⁵¹
- 3.6.30** One particular problem with access to these facilities has been caused by 'security flags'. These are red flags on the files of some members of the Bidoon community – the number of Bidoons flagged in this way is unknown. Once flagged, their access to basic amenities – employment in particular - is severely curtailed and often removed completely. The flags work as a further level of security block, but with greater repercussions on the individual and their family.

⁴⁴ Refugees International – Kuwait: Bidoon Nationality Demands Can't Be Silenced

<http://www.refintl.org/policy/field-report/kuwait-bidoun-nationality-demands-cant-be-silenced>

⁴⁵ Human Rights Watch (HRW)

Kuwait: Dozens Injured, Arrested in Bidun Crackdown, 19 February 2011

<http://www.hrw.org/en/news/2011/02/19/kuwait-dozens-injured-arrested-biduncrackdown>

⁴⁶ Human Rights Watch: World Report 2012 Kuwait – Accessed 03/08/2012

<http://www.hrw.org/world-report-2012/world-report-2012-kuwait>

⁴⁷ Human Rights Watch: World Report 2012 Kuwait – Accessed 03/08/2012

<http://www.hrw.org/world-report-2012/world-report-2012-kuwait>

⁴⁸ Human Rights Watch; Kuwait – Dozens Injured, Arrested in Bidun Crackdown February 2011

<http://www.hrw.org/news/2011/02/19/kuwait-dozens-injured-arrested-bidun-crackdown>

⁴⁹ Human Rights Watch: World Report 2012 Kuwait – Accessed 03/08/2012

<http://www.hrw.org/world-report-2012/world-report-2012-kuwait>

⁵⁰ Refugees International – Kuwait: Bidoon Nationality Demands Can't Be Silenced

<http://www.refintl.org/policy/field-report/kuwait-bidoun-nationality-demands-cant-be-silenced>

⁵¹ Human Rights Watch: World Report 2012 Kuwait – Accessed 03/08/2012

<http://www.hrw.org/world-report-2012/world-report-2012-kuwait>

The Bidoon Committee have said that these flags are attached to the files of those who have been convicted of a crime, or who collaborated with Iraqi forces during the invasion. Human rights groups and members of the Bidoon community claim that they are used arbitrarily by the Kuwaiti government, and that they are often used to disincentivise members of the community from political activism. The allegation is that those involved in protests, activism or advocacy for Bidoon rights have such flags attached to them within the system; and that these extend to their families as well, meaning that if an activist is 'flagged' in such a way, their entire family will be denied the right to work, and will find access to healthcare and education much harder. Removal of such flags is at the discretion of the Bidoon committee and the security services, does not appear to be time-limited, and is not open to judicial oversight.

- 3.6.31** The government permitted international human rights organisations to visit Kuwait. In June and December 2011 HRW officials visited and conducted interviews, including with government officials, principally concerning the rights of the Bidoon community. Refugees International and the Open Society Institute also conducted study missions during 2011.⁵²
- 3.6.32** **Conclusion** Case owners must assess the credibility of the applicant and the evidence they submit in accordance with the relevant Asylum Instructions (see Para 3.5.1 above). The majority of Bidoons live in what is now the State of Kuwait, but there are also Bidoons living in Saudi Arabia, Syria, Iraq and other parts of the Middle East. Accordingly, case-owners are advised that nationality issues must also form part of the consideration of such cases. Notwithstanding the acknowledged difficulties faced by Kuwaiti Bidoons in securing documentation, case owners are reminded that the possession of a forged passport is not, by itself, an indication that the applicant is in fact a Kuwaiti Bidoon. The Bidoon people have an extended tribal and familial identity which is sufficient to bring them within the meaning of the term 'race' under the 1951 Convention.
- 3.6.33** An asylum claim from a Kuwaiti Bidoon may be accompanied by a claim to stay in the UK on the grounds of statelessness. A stateless person is someone who is not considered as a national by any country under the operation of its law.
- 3.6.34** The UK is a signatory to the 1954 UN Convention Relating to the Status of Stateless Persons. The 1954 Convention is the primary international instrument that regulates the status of non-refugee stateless persons and ensures that stateless persons enjoy human rights without discrimination. The 1954 Convention does not however require signatories to grant leave to stateless persons. There is no provision in primary legislation, the Immigration Rules or UK Border Agency published policy that requires the UK Border Agency to grant leave to stateless persons on the sole basis that they are stateless.
- 3.6.35** Whilst some Bidoons have been able to make successful lives for themselves in Kuwait, others have suffered severe discrimination, and significant problems remain. For discrimination to amount to persecution, measures must involve persistent and serious ill treatment without just cause. They must be of a substantially prejudicial nature and must affect a significant part of the individual's or group's existence to the extent that it would make the individual's life

⁵² US State Department Human Rights Report 2011 – Kuwait – Section 5
<http://www.state.gov/documents/organization/186644.pdf>

intolerable if they were to return to the country in which they are likely to be persecuted. A grant of asylum will therefore be appropriate in individual cases.

- 3.6.36** Many of the Kuwaiti undocumented Bidoon will fall within that category, however a few may not and if there is strong evidence that an individual has been treated differently and would be able to rise above the general discrimination that undocumented Bidoon suffer then they should be refused asylum. Such claimants may have had access to employment, health services, and education in Kuwait.
- 3.6.37** Documented Kuwaiti Bidoon experience significantly less problems than undocumented Bidoon. Documented Bidoon still suffer discrimination as a direct result of their familial and tribal affiliations, however they are able to work and to access education, health care and employment, and the discrimination is not so severe as to amount to persistent and serious ill treatment. It is therefore unlikely that a Bidoon who has documentation would be able to demonstrate that return to Kuwait would put him/her at a real risk of persecution, and a grant of asylum will therefore not be appropriate in these cases.

3.7 Prison Conditions

- 3.7.1** Applicants may claim that they cannot return to Kuwait due to the fact that there is a serious risk that they will be imprisoned on return, and that prison conditions in Kuwait are so poor as to amount to torture or inhuman treatment or punishment.
- 3.7.2** The guidance in this section is concerned solely with whether prison conditions are such that they breach Article 3 of the ECHR and warrant a grant of Humanitarian Protection. If imprisonment would be for a Refugee Convention reason or in cases where for a Convention reason a prison sentence is extended above the norm, the claim should be considered as a whole but it is not necessary for prison conditions to breach Article 3 in order to justify a grant of asylum.
- 3.7.3** **Consideration of Prison Conditions.** The Central Prison Complex houses the country's three prisons: a low-security men's prison, a high-security men's prison, and a women's prison. There were approximately 200 inmates in the women's prison and 4,100 inmates in the men's prisons. Inmates reportedly lived in overcrowded conditions. Prison conditions for women were not worse than those for men. The Talha Deportation Centre had a capacity of 1,000; official overall prison capacity was unknown.⁵³
- 3.7.4** Prisoners had reasonable access to personal visitors and were permitted religious observance. Authorities permitted prisoners and detainees to submit complaints to judicial authorities without censorship and requested investigation of credible allegations of inhumane conditions. The government has stated that it investigates all allegations of abuse, and punishes some offenders. However, in the majority of cases the government does not make public the outcomes of investigations or any punishments imposed.⁵⁴

⁵³ US State Department Human Rights Report 2011 – Kuwait – Section 1
<http://www.state.gov/documents/organization/186644.pdf>

⁵⁴ US State Department Human Rights Report 2011 – Kuwait – Section 1

- 3.7.5** The Ministry of Interior permitted independent monitoring of prison conditions by international and local human rights groups, the media, and the International Committee of the Red Cross (ICRC), in accordance with ICRC's standard processes. The ICRC visited all three prisons and the detention centre during 2011. The government allowed representatives of the leading human rights non-governmental organisation Kuwait Human Rights Society to visit prisons and prisoners during 2011.
- 3.7.6** Some detention facilities lacked adequate sanitation and sufficient medical staff. Prisoners had access to potable water. There were reports of security forces abusing prisoners and in September 2011 a Member of Parliament alleged that security forces at the deportation centre in Talha had abused prisoners. The centre was severely overcrowded for much of 2011 and had poor sanitation.⁵⁵
- 3.7.7** In Kuwait, security detainees, both Kuwaiti and foreign nationals, as well as Iraqi nationals, Palestinians and stateless persons held in the central prison for men or in the deportation centre, received visits from the ICRC, conducted according to its standard procedures, to check on their treatment and living conditions. Detainees held in the Kuwait central prison were visited in March 2010 to assess their overall conditions of detention, particularly medical services and infrastructure, as a follow-up to an ICRC visit carried out in 2009 to study the Kuwaiti detention system as a whole. This led to the start of a dialogue with the detaining authorities regarding co-operation on prison health matters.⁵⁶
- 3.7.8** **Conclusion:** Prison conditions have improved in recent years, and conditions are unlikely to reach the Article 3 threshold. Therefore even where claimants can demonstrate a real risk of imprisonment on return to Kuwait a grant of Humanitarian Protection will not generally be appropriate. However, the individual factors of each case should be considered to determine whether detention will cause a particular individual in his particular circumstances to suffer treatment contrary to Article 3, relevant factors being the likely length of detention the likely type of detention facility and the individual's status, age, and state of health. Where in an individual case treatment does reach the Article 3 threshold a grant of Humanitarian Protection will be appropriate.

4. Discretionary Leave

- 4.1** Where an application for asylum and Humanitarian Protection falls to be refused there may be compelling reasons for granting Discretionary Leave (DL) to the individual concerned. (See Asylum Instruction on [Discretionary Leave](#))
- 4.2** With particular reference to Kuwait the types of claim which may raise the issue of whether or not it will be appropriate to grant DL are likely to fall within the following categories. Each case must be considered on its individual merits and membership of one of these groups should **not** imply an automatic grant of DL. There may be other specific circumstances related to the applicant, or dependent

<http://www.state.gov/documents/organization/186644.pdf>

⁵⁵ US State Department Human Rights Report 2011 – Kuwait – Section 1

<http://www.state.gov/documents/organization/186644.pdf>

⁵⁶ The International Committee of the Red Cross Annual Report 2010 – Kuwait - May 2011

<http://www.icrc.org/eng/resources/documents/film/01094-w1-annual-report-2010-film-2011.htm>

family members who are part of the claim, not covered by the categories below which warrant a grant of DL - see the Asylum Instruction on [Discretionary Leave](#).

4.3 Minors claiming in their own right

4.3.1 Minors claiming in their own right who have not been granted asylum or HP can only be returned where (a) they have family to return to; or (b) there are adequate reception and care arrangements. Case owners should refer to the Agency's guidance on Family Tracing following the Court of Appeal's conclusions in the case of [KA \(Afghanistan\) & Others \[2012\] EWCA civ1014](#). In this case the Court found that Regulation 6 of the Asylum Seekers (Reception Conditions) Regulations 2005 imposes a duty on the Secretary of State to endeavour to trace the families of Unaccompanied Asylum Seeking Children (UASCs).

4.3.2 At present there is insufficient information to be satisfied that there are adequate reception, support and care arrangements in place for minors with no family in Kuwait. Those who cannot be returned should, if they do not qualify for leave on any more favourable grounds, be granted Discretionary Leave for a period as set out in the relevant [Asylum Instructions](#).

4.4 Medical treatment

4.4.1 Individuals whose asylum claims have been refused and who seek to remain on the grounds that they require medical treatment which is either unavailable or difficult to access in their countries of origin, will not be removed to those countries if this would be inconsistent with our obligations under the ECHR. Case owners should give due consideration to the individual factors of each case and refer to the latest available country of origin information concerning the availability of medical treatment in the country concerned. If the information is not readily available, an information request should be submitted to the COI Service (COIS).

4.4.2 The threshold set by Article 3 ECHR is a high one. It is not simply a question of whether the treatment required is unavailable or not easily accessible in the country of origin. According to the House of Lords' judgment in the case of [N \(FC\) v SSHD \[2005\] UKHL31](#), it is "whether the applicant's illness has reached such a critical stage (i.e. he is dying) that it would be inhuman treatment to deprive him of the care which he is currently receiving and send him home to an early death unless there is care available there to enable him to meet that fate with dignity". That judgment was upheld in May 2008 by the European Court of Human Rights.

4.4.3 That standard continues to be followed in the Upper Tribunal (UT) where, in the case of [GS and EO \(Article 3 – health cases\) India \[2012\] UKUT 00397\(IAC\)](#) the UT held that a dramatic shortening of life expectancy by the withdrawal of medical treatment as a result of removal cannot amount to the highly exceptional case that engages the Article 3 duty. But the UT also accepted that there are recognised departures from the high threshold approach in cases concerning children, discriminatory denial of treatment, the absence of resources through civil war or similar human agency.

4.4.4 The improvement or stabilisation in an applicant's medical condition resulting from treatment in the UK and the prospect of serious or fatal relapse on expulsion

will therefore not in itself render expulsion inhuman treatment contrary to Article 3 ECHR. All cases must be considered individually, in the light of the conditions in the country of origin, but an applicant will normally need to show exceptional circumstances that prevent return, namely that there are compelling humanitarian considerations, such as the applicant being in the final stages of a terminal illness without prospect of medical care or family support on return.

- 4.4.5** Where a case owner considers that the circumstances of the individual applicant and the situation in the country would make removal contrary to Article 3 or 8 a grant of Discretionary Leave to remain will be appropriate. Such cases should always be referred to a Senior Caseworker for consideration prior to a grant of Discretionary Leave. Case owners must refer to the Asylum Instruction on [Discretionary Leave](#) for the appropriate period of leave to grant.

5. Returns

- 5.1** There is no policy which precludes the enforced return to Kuwait of failed asylum seekers who have no legal basis of stay in the United Kingdom.
- 5.2** Factors that affect the practicality of return such as the difficulty or otherwise of obtaining a travel document should not be taken into account when considering the merits of an asylum or human rights claim. Where the claim includes dependent family members their situation on return should however be considered in line with the Immigration Rules.
- 5.3** Any medical conditions put forward by the person as a reason not to remove them and which have not previously been considered, must be fully investigated against the background of the latest available country of origin information and the specific facts of the case. A decision should then be made as to whether removal remains the correct course of action, in accordance with [Chapter 53.8 of the Enforcement Instructions and Guidance](#).
- 5.4** Kuwaiti nationals may return voluntarily to any region of Kuwait at any time in one of three ways: (a) leaving the UK by themselves, where the applicant makes their own arrangements to leave the UK, (b) leaving the UK through the voluntary departure procedure, arranged through the UK Immigration service, or (c) leaving the UK under one of the Assisted Voluntary Return (AVR) schemes.
- 5.5** The AVR scheme is implemented on behalf of the UK Border Agency by Refugee Action which will provide advice and help with obtaining any travel documents and booking flights, as well as organising reintegration assistance in Kuwait. The programme was established in 1999, and is open to those awaiting an asylum decision or the outcome of an appeal, as well as failed asylum seekers. Kuwaiti nationals wishing to avail themselves of this opportunity for assisted return to Kuwait should be put in contact with Refugee Action. Details can be found on Refugee Action's web site at: www.choices-avr.org.uk.

**Operational Policy & Rules Unit
Strategy & Assurance Group
UK Border Agency
January 2013**