

# OPERATIONAL GUIDANCE NOTE

## KUWAIT

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## 1. Introduction

- 1.1** This document evaluates the general, political and human rights situation in Kuwait and provides guidance on the nature and handling of the most common types of claims received from nationals/residents of that country, 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** This guidance must also be read in conjunction with any COI Service Kuwait Country of Origin Information published on the Horizon intranet site. The material is also published externally on the Home Office internet site at:

[http://www.homeoffice.gov.uk/rds/country\\_reports.html](http://www.homeoffice.gov.uk/rds/country_reports.html)

- 1.3** Claims should be considered on an individual basis, but taking full account of the guidance contained in this document. In considering claims where the main applicant has dependent family members who are a part of his/her claim, account must be taken of the situation of all the dependent family members included in the claim in accordance with the Asylum Instruction on Article 8 ECHR. 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.

### **Source documents**

- 1.4** A full list of source documents cited in footnotes is at the end of this note.

## 2. Country assessment

- 2.1** Kuwait was invaded by Iraq in August 1990 and occupied for seven months until its liberation in February 1991 by an international military coalition in 'Operation Desert Storm'. Since that time Kuwait has had to recover from the economic, environmental and psychological damage caused by the occupation. In 2003 it was the launchpad for the invasion of Iraq.<sup>1</sup>
- 2.2** Kuwait is a constitutional hereditary emirate ruled by the Al-Sabah family. The 1962 Constitution grants the emir executive authority and authorises the emir to appoint a crown prince and a prime minister who selects a cabinet for emiri approval. The government and an elected National Assembly share legislative authority. According to the Constitution the emir may dissolve the elected National Assembly by decree but must call elections within 2 months. If the emir promulgates a law while the assembly is not in session, it must be approved when the assembly returns. During 2007, pressure exerted by the National Assembly led to the resignation or removal of ministers for corruption. While political parties are not technically illegal, the government effectively barred them in practice. Nevertheless, several well-organised and unofficial blocs, acting much like political parties, existed and were active in the national assembly elections. During the 2006 elections, there were 25 electoral districts but in July 2006 the Assembly passed a law to reduce the number of electoral districts to 5, in order to reduce the opportunity for vote-buying. Under the new law, each voter chooses 4 candidates, and the top 10 voted from each district win seats in parliament.<sup>2</sup> The last National Assembly elections were held in May 2008.<sup>3</sup>
- 2.3** There has been an active campaign in Kuwait to grant women the right to vote. On 16 May 2005, following full debates on the issue, the National Assembly voted in favour of giving women the right to vote and stand for election. On 5 June 2005 the government named two women on the Municipal Council and on 12 June 2005 the government made an historic step by appointing Dr Massouma Al-Mubarak as the Minister for Planning and the Minister for Administrative Development. Dr Al-Mubarak is the first female minister and was sworn into office on 20 June 2005. Since then two more women have been appointed Ministers. Women participated fully in the May 2008 elections but none were elected to the chamber.<sup>4</sup>
- 2.4** The law provides for an independent judiciary and the right to a fair trial. However, the emir appoints all judges, and the renewal of judicial appointments is subject to government approval. The Ministry of the Interior supervised the main internal security forces, including the national police, the Criminal Investigation Division, and Kuwait State Security. The law prohibits arbitrary arrest and detentions and the government generally observed these prohibitions. During 2007 there were credible reports of police corruption and abuse of detainees during interrogation.<sup>5</sup> The government permits visits to prisons by human rights activists, who report adherence to international standards, though with some concern about overcrowding.<sup>6</sup>
- 2.5** Kuwait has ratified all six core UN human rights conventions. Press freedom is guaranteed by the constitution although a degree of self-censorship is exercised. The Prime Minister has declared his intention to push for a solution to the long-standing problem of stateless residents of Kuwait (the Bidoon).<sup>7</sup> The political, economic, and long-term budgetary implications associated with extending citizenship, and the generous welfare benefits that come with it, to the equivalent of roughly 5 percent of the population have rendered the issue highly divisive.<sup>8</sup>

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<sup>1</sup> FCO Country Profile 11 November 2008

<sup>2</sup> USSD 2007

<sup>3</sup> FCO Country Profile 11 November 2008

<sup>4</sup> FCO Country Profile 11 November 2008

<sup>5</sup> USSD 2007

<sup>6</sup> Freedom House: Freedom in the World Report 2008

<sup>7</sup> FCO Country Profile

<sup>8</sup> USSD 2007

- 2.6** The constitution provides for freedom of religion; however, the government placed some limits on this right. The constitution protects the freedom to practise religion in accordance with established customs, provided that it does not conflict with public policy or morals. The constitution declares that Islam is the state religion and that Shari'a is "a main source of legislation." There is a high level of freedom of expression and tolerance of Christianity.<sup>9</sup> Shiite Muslims make up around a third of the population. They enjoy full political rights, although they are subject to some discrimination and harassment.<sup>10</sup>
- 2.7** The 1962 constitution provides men and women with equal rights. Nevertheless, women face discrimination in several areas of law and society and remain underrepresented in the workforce. Regulations stemming from Sharia law discriminate against women in matters like divorce and inheritance. Kuwait is a destination country for the trafficking of women. Foreign domestic servants remain vulnerable to abuse and sexual assault.<sup>11</sup> Violence against women continued to be a serious and overlooked problem. The law does not specifically prohibit domestic violence, although cases are tried as assault. Each of the country's 83 police stations reportedly received weekly complaints of domestic abuse. The courts have found husbands guilty of spousal abuse; however, most domestic abuse cases are not reported, especially outside of the capital. Abusive husbands, if convicted, rarely faced severe penalties.<sup>12</sup>
- 3. Main categories of claims**
- 3.1** This Section sets out the main types of asylum claim, human rights claim and Humanitarian Protection claim (whether explicit or implied) made by those entitled to reside in Kuwait. It also contains any common claims that may raise issues covered by the Asylum Instructions on Discretionary Leave. 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 guidance below.
- 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 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 on Considering the Asylum Claim).
- 3.3** 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 qualifies for neither asylum nor Humanitarian Protection, consideration should be given as to whether he/she qualifies for Discretionary Leave, either on the basis of the particular categories detailed in section 4 below or on the individual circumstances.
- 3.4** 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 the Asylum Instructions on 'Considering the Asylum Claim' and 'Assessing Credibility in Asylum and Human Rights Claims'.

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<sup>9</sup> USSD 2007

<sup>10</sup> Freedom House: Freedom in the World Report 2008

<sup>11</sup> Freedom House: Freedom in the World Report 2008

<sup>12</sup> USSD 2007

**3.5** All Asylum Instructions can be accessed on the Horizon intranet site. The instructions are also published externally on the Home Office internet site at <http://www.ukba.homeoffice.gov.uk/documents/asylumpolicyinstructions/>

### **3.6 Bidoon**

**3.6.1** Most claimants 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 undocumented status or ethnicity.

**3.6.2 *Treatment.*** The Bidoon (an Arabic term meaning "without" as in "without citizenship") are Arabs who have residency ties to the country, some persisting for generations and some for briefer periods, but who either lack or have failed to produce documentation of their nationality. This group includes:

- Individuals descended from nomadic groups whose ancestral lands are within the borders of present day Kuwait but who were unable to claim automatic citizenship under the Nationality Law of 1959 because they could not prove continuous settled presence in Kuwait from 1920, as that law requires.
- Individuals who could have registered as citizens under the Nationality Law and earlier citizenship regulations but neglected to do so.
- Individuals who attempted to claim citizenship under the Nationality Law and earlier citizenship regulations and whose applications were accepted for consideration but never acted upon by the Kuwaiti authorities.
- Individuals who migrated to Kuwait from nearby countries to work and over time lost effective links to and effective nationality in their country of origin, as well as children of such migrants who failed to establish nationality in their parents' country of origin.
- Children of Bidoon parents, including notably the children of Kuwaiti mothers and Bidoon fathers.<sup>13</sup>

**3.6.3** The legal status of Bidoon residents remains unresolved. The exact number of Bidoon residents is unknown but is estimated to be more than 100,000. A report released in June 2007 from the Ministry of Planning put the number of Bidoon at 104,424 at the end of 2006. Since the mid-1980s, the government has actively discriminated against the Bidoon in areas such as education, employment, medical care, and freedom of movement.<sup>14</sup> The government did not issue birth certificates to Bidoon children, which resulted in the denial of public services to those children.<sup>15</sup> Bidoon children may not attend public schools and have no access to secondary education although 100 places are now open to Bidoon at Kuwait University.<sup>16</sup> In 2004 a member of the royal family initiated a charitable fund to pay for Bidoon children to attend private schools; however, according to Bidoon contacts and activists, the fund was insufficient to cover the needs of many Bidoon children. Bidoon generally did not qualify for the subsidised health care that citizens received. The children of male Bidoon inherit their father's undetermined legal status, even if born to citizen mothers unless the mother is divorced or widowed.<sup>17</sup>

**3.6.4** Before the mid-80's, the Bidoon freely worked in all government ministries, including the Ministries of Interior and Defence. After that period, and especially following the country's liberation in 1991, the government did not allow Bidoon to work in most government jobs. The government made it difficult for Bidoon to obtain official documents necessary for employment, such as birth certificates, civil identification cards, driving licences and marriage certificates. In March 2006 the government allowed Bidoon to renew their identity documents. Many Bidoon had not been able to renew these cards in five or more years. In

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<sup>13</sup> COI report 18.02.08

<sup>14</sup> FCO letter November 2007

<sup>15</sup> USSD 2007

<sup>16</sup> FCO letter November 2007 and USSD 2007

<sup>17</sup> USSD 2008

November 2007 the government began accepting applications from Bidoon to join the police. Although the government accepted Bidoon in an increasing number of government positions in 2008, it barred Bidoon from enlisting in the armed forces.<sup>18</sup>

- 3.6.5** On 6 January 2007, the government began accepting applications for driving licences from the Bidoon; however, many were concerned because the licences listed the Bidoon bearer's nationality as "illegal resident". Bidoon worried that this would later be used as evidence that they were not citizens. The controversy caused the government to stop issuing licences. On 30 June 2007 the government began to issue special passports to certain categories of Bidoon, such as those needing medical treatment abroad and those in certain professions.<sup>19</sup>
- 3.6.6** The government granted citizenship to 1,800 Bidoon in 2005, 400 in 2006, 573 in 2007 and 573 in 2008. Only Bidoon registered by the June 2000 deadline could begin the process to gain citizenship. According to the law, Bidoon who were able to prove sufficient ties to the country (their presence, or the presence of their forebears, in the country prior to 1965) were eligible to apply for citizenship directly. Many were unable to provide documentation proving such ties but the government maintained that the vast majority of Bidoon were concealing their true identities and that most were citizens of Iraq, Saudi Arabia, Syria and Iran who wanted to enjoy the country's social benefits. In recent years a total of 10,600 Bidoon received citizenship. More than 80,000 requests were pending at the end of 2008.<sup>20</sup>
- 3.6.7** It was reported in February 2009 that Kuwait's Parliamentary Committee for Stateless Persons would meet the minister of the interior to request data about the Bidoon. The committee wants to give nationality to individuals who fought in wars or in the liberation or any other effort. Askar al Enezi, an MP on the committee, said he believed that anyone named in the 1965 census should be considered for citizenship.<sup>21</sup>
- 3.6.8** Once documented, Bidoon were able to obtain residency permits and other official papers. However, Bidoon who declare another nationality lose the opportunity for citizenship, as do their family members. During 2007, many Bidoon were caught with forged passports from countries such as the Dominican Republic and Nigeria. They claimed they were from countries they had no connection to in order to facilitate obtaining documentation and work. There were no reports during 2007 of the government deciding the nationality of any Bidoon without a hearing. There continued to be reports of Bidoon obtaining false documents in order to apply for citizenship.<sup>22</sup>
- 3.6.9** The issue of extending citizenship to Bidoon was highly divisive in society due to the political, economic and long-term budgetary implications associated with extending citizenship, and the generous welfare benefits that come with it. Some observers noted that tribal rivalries also explained why some citizens opposed naturalisation of the Bidoon.<sup>23</sup>
- 3.6.10** Travel documents were not issued routinely to Bidoon so many have no means of leaving Kuwait. However, some Bidoon were given temporary travel documents under Article 17 of the Kuwaiti Nationality law which allows the issue of a Kuwaiti travel document to any person deemed to require it. They are often issued to Bidoon 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 Bidoon for medical treatment outside Kuwait; for study at university overseas; or, for amendment of a Bidoon's legal status in Kuwait. Article 17 documents look almost identical to Kuwaiti passports, the key difference being that they do not confer nationality on the holder. They are issued only in Kuwait and have to be renewed through the Ministry of the Interior.

<sup>18</sup> USSD 2007 and 2008

<sup>19</sup> USSD 2007

<sup>20</sup> USSD 2007 and 2008

<sup>21</sup> The National <http://www.thenational.ae/article/20090203/FOREIGN/323396983/1011>

<sup>22</sup> USSD 2007

<sup>23</sup> USSD 2007

According to the Kuwaiti Passport Office all Kuwaiti travel documents, including Article 17, allow re-entry into Kuwait as long as they are within their validity date. But the situation is more complex and fluid than this suggests 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 is no objection to the applicant leaving Kuwait and that they will be re-admitted on return.<sup>24</sup> Unlike in previous years, in 2007 the MOI issued a limited number of passports valid for 5 years to Bidoon and allowed them to keep them. In 2007 the government issued more than 15,000 article 17 passports.<sup>25</sup>

**3.6.11** The FCO summarised in its paper of November 2007 the following types of discrimination against the Bidoon:

“Travel: not able to obtain Kuwaiti passport

“Not able to obtain Kuwaiti identity card

“No vote

“Not able to register births, marriages or deaths

“Driving licences: available to bidoon since early 2007, but only for 3 or 12 months (Kuwaitis have 10 years), and must be endorsed ‘Illegal Resident’

“No access to state secondary education; 100 places now open to bidoon at Kuwait University

“Health: access to state hospitals equivalent to foreign nationals (monthly fee of KD 5, about £9)

“Barred from recruitment for employment in public sector, although those previously employed can continue (see 3.6.4)

“Liable to arrest or detention on grounds of being stateless or illegal residents

“Children will have same status, even if their mother is a Kuwaiti citizen

“Access to law: bidoon can sue in the Kuwaiti courts, as can foreigners. If accused of a crime, they can have access to legal aid, but may find it difficult to have a lawyer allocated to them – in this respect being better off than foreigners and worse off than Kuwaitis.”

**3.6.12** The FCO also noted that there was a distinction between documented and undocumented Bidoon. In basic terms, documented bidoon had legal rights and undocumented bidoon did not. Differences were as follows:

**Documented Bidoon:**

“Only those registered by the June 2000 deadline could begin the process under which they could be documented as citizens (having proof of their presence, or their parent’s/grandparent’s presence, in Kuwait in 1965)”

“Although many do not have the same rights as Kuwaiti citizens (such as free education and health care), they are treated similarly to registered foreign migrant workers.”

“They are entitled to medical treatment on payment of the mandatory health insurance fee of KD5(£9) per months; and had access to private education (additionally 16,000 bidoon

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<sup>24</sup> FCO letter

<sup>25</sup> USSD 2007

children, from Kuwaiti mothers, or with fathers in the Kuwait armed forces, received free education)”

“Children of bidoon fathers and Kuwaiti mothers no longer inherited Kuwaiti nationality, though this was not unique to them: the same rule applied to children of Kuwait mothers and other non-Kuwaiti fathers.”

“In terms of employment, bidoon were no longer recruited into the public sector. However, those who were employed earlier remained in position.” (see 3.6.4)

“Although the police and armed forces were purged of bidoon following the Gulf War and key trainers and instructors in the army lost their jobs, there werestill bidoon in the ranks – around 6,000 or 25%.”

“Both the Kuwaiti Ministry of Defence and the police no longer recruited bidoon, but the police still had some 1,700 registered bidoon working for them” (see 3.6.4)

#### **Undocumented Bidoon:**

“bidoon not registered by June 2000 or had not either disclosed their ‘true nationality’, or provided proof of their right to citizenship, would be subject to deportation.

“In practice, this did not happen, although the Government had brought charges against several bidoon who allegedly obtained false documents in an attempt to prove their claim to Kuwaiti nationality.

“The Government stated that the majority of undocumented bidoon were concealing their true nationality, and that they or their forebears had entered Kuwait illegally. The Government had encouraged them to come forward with nationality evidence, whereupon they would be issued with residency permits like any other foreigner residing in Kuwait.

“The problem for some second or third generation bidoon was that their forebears may not have had any citizenship documents or may have destroyed them.

“These people were faced with the choice of acquiring the nationality of a third country and legalising their residency in Kuwait, or of living in the country without rights as an illegal alien. (FCO, 6 November 2007) [3b] (p3-4)

**3.6.13 Sufficiency of protection.** As this category of applicants’ fear is of ill treatment/persecution by the state authorities, they cannot apply to these authorities for protection.

**3.6.14 Internal relocation.** This category of applicants’ fear is of ill treatment/persecution by the state authorities. This does not mean that case owners should automatically presume that internal relocation is not an option. As Lord Bingham observed in Januzi ([2006] UKHL 5):

*“The more closely the persecution in question is linked to the state, and the greater the control of the state over those acting or purporting to act on its behalf, the more likely (other things being equal) that a victim of persecution in one place will be similarly vulnerable in another place within the state. The converse may also be true. All must depend on a fair assessment of the relevant facts.”*

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 none state actors, and it would not be unduly harsh to expect them to do so, then asylum or humanitarian protection should be refused.

**3.6.15 Case/law.**

**BA and others UKIAT [2004] 00256 CG**

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)

#### **HE [2006] UKAIT 00051 CG**

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.

**3.6.16 Conclusion.** Whilst some Bidoon have evidently made very successful lives for themselves in Kuwait, others will 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 intolerable if they were to return to the country in which they are likely to be persecuted. 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. Bidoon have an extended tribal identity which is sufficient to bring them within the meaning of the term "race" under the 1951 Convention. A grant of asylum will be appropriate in the majority of these claims.

**3.6.17** Documented Kuwaiti Bidoon suffer significantly less problems than those who are undocumented. Documented Bidoon still suffer discrimination as a direct result of their ethnicity however they are able 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.

### **3.8 Prison conditions**

**3.8.1** Claimants 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 the Kuwait are so poor as to amount to torture or inhuman treatment or punishment.

**3.8.2** The guidance in this section is concerned solely with whether prison conditions are such that they breach Article 3 of 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.



- 3.8.3 *Consideration.*** Prison and detention centre conditions varied. Some were poor, with inadequate sanitation and lack of sufficient medical staff. Authorities reportedly mistreated prisoners and failed to prevent inmate-on-inmate violence. A new men's prison building that met all international standards opened in 2006, reducing previously severe overcrowding. On 30 September 2007, the parliamentary Human Rights Committee reported that Talha Prison was no longer suitable for inmates and stressed the need to renovate the dilapidated building.<sup>26</sup>
- 3.8.4** The government permitted visits by independent human rights observers. During 2008, the International Committee of the Red Cross carried out several visits to the Central Prison, both the men's and women's wards. It also visited temporary jails at police stations. The local non-governmental organisation, Kuwait Human Rights Society visited the women's ward at the Central Prison during 2008, in addition to several temporary jails at police stations.
- 3.8.7 *Conclusion.*** Whilst prison conditions in some prisons were poor, 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) Where the claim includes dependent family members consideration must also be given to the particular situation of those dependants in accordance with the Asylum Instruction on Article 8 ECHR.
- 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 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 and the Asylum Instruction on Article 8 ECHR.
- 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 they have family to return to or there are adequate reception, care and support arrangements. At the moment we do not have sufficient information to be satisfied that there are adequate reception, care and support arrangements in place.
- 4.3.2** Minors claiming in their own right without a family to return to, or where there are no adequate reception, care and support arrangements, 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 Instruction.

#### **4.4 **Medical treatment****

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<sup>26</sup> USSD 2008

- 4.4.1** Claimants may claim they cannot return to Kuwait due to a lack of specific medical treatment. See the IDI on Medical Treatment which sets out in detail the requirements for Article 3 and/or 8 to be engaged.
- 4.4.2** **Please see 26.01 - 26.09 COI report 18 February 2008.**
- 4.4.3** The health system is based on three levels of health care delivery: primary, secondary and tertiary health care. Primary health care is delivered through a series of health centres, with general or family health clinics, maternal and child care clinics, diabetic clinics, dental clinics, and preventive care clinics, school health services, ambulance services and police health services are also available. Secondary health care is provided through six general hospitals, each serving about 300 000 people. Tertiary health care is provided through a number of national specialized hospitals and clinics.<sup>27</sup>
- 4.4.3** The implementation of health strategies has had an effective impact on the health status of the population, as can be seen from the decrease in mortality indicators and the increase in life expectancy, as well as the decline in incidence of infectious diseases.<sup>28</sup>
- 4.4.4** The large numbers of the general population affected with post-traumatic stress disorder have been the major focus of mental health care during recent years. A special unit, a REGGIE centre, has been set up with extensive human resources for care and systemic research relating to post-traumatic stress disorder. The official mental health policy favours the regionalisation of services and the integration of mental health into primary health care. The training of primary health care workers in mental health issues is a recognised priority.<sup>29</sup>
- 4.4.5** The Article 3 threshold will not be reached in the majority of medical cases and a grant of Discretionary Leave will not usually be appropriate. Where a case owner considers that the circumstances of the individual claimant and the situation in the country reach the threshold detailed in the IDI on Medical Treatment making 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.

## **5. Returns**

- 5.1** 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, in particular paragraph 395C requires the consideration of all relevant factors known to the Secretary of State, and with regard to family members refers also to the factors listed in paragraphs 365-368 of the Immigration Rules.
- 5.2** Nationals of Kuwait may return voluntarily at any time by way of the Voluntary Assisted Return and Reintegration Programme (VARRP) implemented on behalf of the UK Border Agency by the International Organisation for Migration (IOM) and co-funded by the European Refugee Fund. IOM will provide advice and help with obtaining any travel documents and booking flights, as well as organising reintegration assistance. 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. Those wishing to avail themselves of this opportunity for assisted return should be put in contact with the IOM offices in London on 0800 783 2332 or [www.iomlondon.org](http://www.iomlondon.org)

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<sup>27</sup> WHO 2001

<sup>28</sup> WHO 2001

<sup>29</sup> WHO 2001

**6. List of source documents**

- Foreign and Commonwealth Office, Country Profile of Kuwait, published 11.11.08  
<http://www.fco.gov.uk/en/about-the-fco/country-profiles/middle-east-north-africa/kuwait>
- US Department of State 2007 Human Rights Report: Kuwait, published 11.03.08.  
<http://www.state.gov/g/drl/rls/hrrpt/2007/100599.htm>
- US Department of State 2008 Human Rights Report: Kuwait, published 25.02.09  
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