

**REFUGEE STATUS APPEALS**  
**AUTHORITY**  
**NEW ZEALAND**

**REFUGEE APPEAL NO 76506**

**AT AUCKLAND**

<b><u>Before:</u></b>	A R Mackey (Chairman)
<b><u>Counsel for the Appellant:</u></b>	I Uca
<b><u>Appearing for the Department of Labour:</u></b>	No Appearance
<b><u>Dates of Hearing:</u></b>	20 April & 9 July 2010
<b><u>Date of Decision:</u></b>	29 July 2010

---

**DECISION**

---

[1] This is an appeal against the decision of a refugee status officer of the Refugee Status Branch (RSB) of the Department of Labour (DOL), which declined an application for recognition as a refugee by the appellant.

**INTRODUCTION**

[2] The appellant is a 38 year-old man born in Kuwait. He claims he is stateless because he is *bedoon*.

[3] The term "*bedoon*", as explained in *Refugee Appeal No 74880* (29 September 2005), a decision referred to later in this determination, is variously spelled *Bidun*, *Bedoon*, *bidoon*, and other variants, both in the country information relating to Kuwait and in other decisions of the Authority. Here, the singular *bedoon* and plural *bedoon*, as used by Human Rights Watch, is adopted.

[4] The appellant arrived in New Zealand in September 2009. He claimed refugee status at the Auckland airport on arrival. A passport, which he used to depart Kuwait and arrive at Singapore, was retained by the agent (AA) he

instructed when the agent left him immediately before he boarded a plane to fly to New Zealand. He was detained, after an airport interview, pursuant to s128 Immigration Act 1987. He was later released on conditions to the Mangere Accommodation Centre (MAC).

[5] The appellant lodged a formal application for recognition as a refugee four days after he arrived. In short, he claims that he was a stateless *bedoon* from Kuwait and that, on return to Kuwait, he would be arrested, imprisoned and tortured and that *bedoon* had no rights or freedom in Kuwait. This decision revisits that claim.

[6] He states that he departed Kuwait with the assistance of his agent, using what he presumed to be a fraudulent but “full” Kuwaiti passport which the agent had obtained for him.

[7] The appellant’s application for recognition was declined by the RSB because they considered that he had not established that he was classified as a *bedoon* in Kuwait and that he had travelled on a Kuwaiti passport. The appellant then appealed to this Authority on 23 February 2010.

[8] After a full day hearing on 20 April 2010, the Authority became aware that on arrival in New Zealand, Immigration New Zealand (INZ) had reached the conclusion the appellant had arrived on an “Article 17” restricted Kuwaiti travel document whereas the RSB had concluded the appellant had arrived using a full, genuine Kuwaiti passport. In this situation, and to give the Authority and counsel the opportunity to make further enquires about the appellant’s “passport” and personal details in Kuwait, the Authority adjourned and issued a Minute, dated 26 April 2010. The Minute stated that the matter would be resumed in the first or second week of July 2010. In the meantime, the Authority had received to an enquiry from DOL. A summary of the information received from the DOL was sent to counsel on 20 May 2010. This stated:

You will recall from the Authority’s Minute of 26 April 2010 that the Authority undertook to clarify with the Department of Labour the apparently conflicting conclusions reached by INZ and the RSB in relation to the type of Kuwaiti passport/travel document that the appellant used to depart Kuwait.

The Authority advises that an initial response has been received from the Department of Labour. In summarised form, this states that the immigration officer concluded that the document used by the appellant to travel to New Zealand was an Article 17 passport. That conclusion was reached on the basis of advice INZ had earlier received from the Australian Department of Immigration. This related to identifying technical features used by the Kuwaitis in their passports and the conclusion that the appellant had travelled to New Zealand on Singapore Airlines

SQ281. The RSB officer, on the other hand, advises that he was not aware of the infringement notice sent to Singapore Airlines (which was noted by yourself and the Authority during the hearing) and went on to conclude that the appellant had been issued with a full Kuwaiti passport.

INZ officials also now inform the Authority that they are currently seeking to confirm the accuracy of the information they received from the Australian Department of Immigration by enquiring, on a purely anonymous basis, unrelated to refugee determinations in any way, to the Kuwaiti embassy in Canberra. They are requesting advice on technical matters related to Kuwaiti travel documents including, if possible, information on whether a full citizen's passport is distinguishable from an Article 17 passport, and if so, in what way.

We are informed that their request was sent off on 30 April 2010. The Authority is to be provided with a copy of the response as soon as it is received.

[9] On 8 July 2010, the DOL further advised the Authority that they had received no response from the Kuwaiti Embassy in Canberra and that:

It appears that there may be no reply. I am advised that this is not infrequent in such enquiries.

[10] The Authority brought this to counsel's attention at the resumed hearing and, at the end of the hearing on 9 July 2010, it was directed that in default of receiving any further information by 23 July 2010, the Authority would proceed to complete its decision upon all the evidence and documentation then available.

### Documents

[11] The Authority received a memorandum from counsel on 19 April 2010 which had attached to it a schedule of documents including a letter and some supporting documents from relatives of the appellant, BB and CC, who are now New Zealand citizens and live here. BB and CC gave evidence at the hearing on 20 April 2010 and gave permission for their immigration files to be passed to the Authority and Ms Uca. The Authority has had the benefit of hearing their evidence, inspecting all their immigration documentation and receiving related submissions from counsel.

[12] The Authority also had before it several decisions of the Authority relating to Kuwaiti *bedoon* and a decision of the United Kingdom Immigration Appeal Tribunal (IAT): *BA and others (Bedoon - statelessness - risk of persecution)* Kuwait CG [2004] UKIAT 00256. Ms Uca gave substantive oral final submissions on the appellant's case, particularly in relation to the jurisprudence of the Authority and the UK IAT case. These submissions and all of the other relevant country information have been taken into account by the Authority in its determination.

## **THE APPELLANT'S CASE**

[13] The account which follows is a summary of the appellant's claim on appeal. His evidence is then assessed against the issues outlined below. The appellant adopted a statement dated 30 October 2009 which he had presented in support of his claim to the RSB. An English translation of that document was used by the Authority.

[14] The appellant's parents were both born in Kuwait and are *bedoon*. Like the appellant, they are Shi'a Muslim. His father is approximately 56 years old. His mother died in 2006 when she was 46 years old. The appellant has seven siblings, three brother and four sisters. His father sells second-hand clothes and his brothers are involved in small-time trading of mobile telephones, fruit and nuts.

[15] Between 1986 and 1990, the appellant completed about four years of primary education. He was unable to continue as there was no government assistance for *bedoon* and the fees were expensive. All of his education was completed before the 1990 Iraqi invasion of Kuwait. From the time of the invasion, none of his family had been able to receive further education. While some secondary school education may have been available, it was far too expensive for his family. As a *bedoon*, he had no right at all to go to university.

[16] The appellant was able to obtain some illegal work from about the age of 15. He worked at a wholesale market for a Syrian national who traded in clothing. His Syrian employer was able to obtain a Kuwaiti citizen as a sponsor and was thus able to carry on business. However, as a *bedoon*, the appellant and his family did not have the same opportunity. His employer told him that it was also possible for him to change his sponsorship and to lodge a complaint against his sponsor if necessary. None of these rights were available to *bedoon*.

[17] It was not possible for him to obtain any type of Kuwaiti passport and any of his friends or colleagues, who had managed to work or travel abroad, had done this by obtaining false foreign passports and getting a Kuwaiti work visa inserted into that false passport.

[18] A friend of the appellant, DD, who obtained a false foreign passport and used it to travel overseas, was sent to the Taliha prison when he attempted to re-enter Kuwait shortly before the false passport was about to expire. This friend has been kept in prison since that time, without even the opportunity of having a case

brought against him, let alone a hearing. The appellant referred to a number of articles on the internet about this friend.

[19] Another *bedoon* friend who had left Kuwait in 2006 using a false foreign passport, was able to travel only as far as Cairo airport when he was returned to Kuwait. Immediately upon return, he was also jailed at Taliha. The appellant thought that he was still held in the prison. He has been unable to get information about him or to visit him as other *bedoon* are just too frightened to enquire in case they are detained themselves.

[20] In 1999, the appellant attempted to obtain a Kuwaiti passport for himself. His application was declined. He was told that he should get a false foreign passport, perhaps using overseas friends or relatives, then a visa or approval to enter another country could be issued and that would allow him to leave, but it would be stamped to state that he could not return. The appellant knew of a *bedoon* friend who had married a woman in Canada who did this and he had been able to depart Kuwait in this manner and then stayed with his wife.

[21] The appellant explained that when his youngest sister, EE, was born in the mid-1990s, he and his father attempted to obtain a birth certificate for her. They attended the office of the "*Bedoon* Committee" situated in Al Aaradia. This office was run by the Kuwaiti military. They explained that his sister could not be given a birth certificate. As a result of this, she cannot go to school and cannot obtain any form of immunisation or basic health care. He referred the Authority to a newspaper article of March 2010 which said that a high percentage of *bedoon* children were now getting measles and other transmittable diseases as a result of them not being immunised.

[22] When he was 21 years of age, he had to go to the *Bedoon* Committee and open a file for his own family. This is what he termed as a "green card". He stated that the document was of no value and could not be used for any form of identification purposes and, even when it was shown to the police, as a form of identity, they would not approve it and state that it was not an official identification card.

[23] He explained that in 2006 when his mother took ill, the family were desperate to get some medical treatment for her. He attempted to go to a pharmacy. He took with him the "green" card he had been issued by the *Bedoon* Committee. He was travelling by bus to go to the pharmacy, when the bus was

stopped at a checkpoint. The police ignored the card and detained him as he was a *bedoon*. He was hit on the head by a police officer when he was detained with other *bedoon* on the bus in a parking lot. After falling down from the blow to the head, he was told that he was not allowed to speak. Eventually, after several hours, he was released.

[24] At the time of the national day celebrations in February 2008, the appellant was with a friend, FF, who is a Bahraini national. They were stopped at a check point. The appellant was put into a patrol car and taken to Sharq police station. However, his friend with the Bahraini passport was released. After being detained at the police station in very dirty conditions and given no food for a period of one and a half days, he was released and told that he was lucky there were national day celebrations taking place, otherwise he would have continued to be detained.

[25] On another occasion, he was travelling with another *bedoon* friend in a motor vehicle, when they were stopped. His friend, who was driving, did not have a licence as he was a *bedoon* and thus was charged. They were both held in detention for one and a half days in poor conditions.

[26] Some of his siblings have had similar experiences while selling goods. One brother was detained for more than 10 days until eventually his father had to pay a bribe to have him released. However, most of his siblings do not tend to discuss their problems in front of the family because of their mother's deteriorating health.

[27] His own father had a driver's licence until 1996 when it was withdrawn. He continued to drive, however, he was stopped and imprisoned on some occasions. In one of these detentions, he was held for approximately one month.

[28] The appellant considered that the "*Bedoon* Committee" was still operating and its powers appeared to be getting stronger. The Kuwaiti government refuses to stop their activities because it was established by the decree of the prince of the ruling family. He considered the *Bedoon* Committee to be an organisation that was outside the control of the courts and was able to operate illegally with impunity. To avoid problems with the *Bedoon* Committee, and to regulate their lives, many *bedoon* purchased false passports. The courts have stated that they are right to do this but the *Bedoon* Committee informs them that if they purchase those passports, they must leave the country or obtain a work permit to work within Kuwait. Some *bedoon* who had obtained false European passports had managed to remain in Kuwait using work permits in those false passports. The

attitude of the *Bedoon* Committee to such people is that these people have “corrected” their situation and so they are able to obtain a work permit. However, that is a short term “fix” only as they are, after a period of time, unable to renew their passports, because of their fraudulent nature. They are then placed in the impossible position of not being able to even prove that they are *bedoon*. The appellant stated that this was the reason he did not proceed to get an overseas passport as he would very soon be in an impossible situation where he would be put into prison when it expired or if he had no passport. The only logical possibility available, therefore, to *bedoon* such as himself, was to obtain some form of false passport and leave the country permanently.

[29] The appellant considered that if he had to return to Kuwait on some form of travel document, he would be admitted but immediately transferred to state security. Those who are known to have claimed asylum overseas are then treated as people who have insulted the Kuwaiti government and are therefore imprisoned in the special prisons for *bedoon* like Taliha. They are also liable to be prosecuted for entering the country if they use a false passport.

[30] The appellant said he was aware of people such as DD who had attempted to return. In all such cases, they had been detained in the Tahila prison.

#### Departure from Kuwait

[31] Following the detention in February 2008 at the time of the national day celebrations, and then his further detention at the end of that year, the appellant became extremely frustrated with his inability to conduct any form of normal life in Kuwait. With the assistance of a group of friends, the appellant was introduced to a people smuggler, AA. A fee was negotiated with AA to facilitate the appellant's departure from Kuwait. The appellant gave him a photograph with his name and the date of his birth on the back of it. AA undertook to arrange a passport for him, purchase the air tickets and guide him through the airport. Five of his friends provided the money to pay AA's fee. About a month later, AA and the appellant went to the international airport in Kuwait where he was guided through the check-in and customs sections. AA retained the passport which he had acquired for the appellant.

[32] There were two types of passports issued in Kuwait. The first type was one that had a blue cover and was that used by full Kuwaiti citizens. The second was one that had a silver cover and was issued under Article 17 of the Kuwaiti Constitution. This was for use only by *bedoon* to leave Kuwait and gave no other status than that. To the best of his knowledge, AA used a blue covered passport which had been issued fraudulently in the appellant's name. Together with AA, the appellant travelled to Singapore, stopping off for a short period in one of the Gulf states where passengers were not able to disembark. At Singapore airport, AA said goodbye to the appellant after taking him to the departure gate for the plane which was to come to New Zealand.

[33] During the flight, the appellant noticed another person on board who he later discovered was also a *bedoon*. He had no prior association with this man and only came to know more details about him when they were both detained at MAC.

[34] In discussions with his family since he has arrived in New Zealand, the appellant understands that his father and siblings continue to reside in a rented apartment in a district predominantly occupied by *bedoon*.

#### Evidence from BB and CC

[35] BB and his wife, CC are both related to the appellant. They are all part of a large family of many thousands of XX family members, all of whom are *bedoon*.

[36] BB arrived in New Zealand in September 2001 and applied for refugee status on arrival. He was granted status by the RSB in April 2002. He then applied for residence on behalf of himself and his wife, CC, and their seven children. That application was approved in December 2002 by INZ.

[37] After the appellant had been in New Zealand for a short while, following enquiries made by his father in Kuwait, the appellant was advised that CC, a paternal cousin, was living in New Zealand and that BB, her husband, was a member of the wider XX family. The appellant's father and CC share a common great-grandfather.

#### *Evidence of BB*



[38] BB explained that the XX family were a large group of *bedoon* who had been living, originally as bedouin farmers, in Kuwait for hundreds of years. A small branch of this family had moved to the Kuwait city area at the time of BB's grandfather. His wife, CC, was a cousin of the appellant's father, GG (they are both members of the HH family). For this reason, BB stated he knew the appellant's father quite well and had met him at family occasions such as weddings, funerals and gatherings of the male members of the family on a number of occasions. He recalled meeting with GG approximately once or twice a year. He did not specifically know the appellant before he came to New Zealand but he did know that GG had a number of young children.

[39] BB explained that he came to New Zealand on a false foreign passport which he obtained by bribing a Kuwaiti member of parliament. He travelled via Malaysia and had destroyed the passport, which he thought was a silver Article 17 passport, when he passed through Malaysia on his way to New Zealand.

[40] He explained that he was given a work permit on arrival in New Zealand and, after spending six or seven months in the hostel, he was able to obtain refugee status. He consented to the Authority looking at his immigration file to check the details.

[41] Since he had been in New Zealand, he had not had direct contact with GG until he was recently contacted by him. He did however have regular contact with his own brothers in Kuwait. They had explained to him that the situation was constantly becoming more and more economically depressed for *bedoon* and none of their children were able to go to school. Their only method of survival was through handouts from charities and a few of them carrying out illegal work activities.

[42] Most of the *bedoon*, he explained, lived in the outer suburbs of the city of Kuwait. He thought that about two percent of the *bedoon* had obtained some form of citizenship or residence, usually by paying large sums of money, through friends in government or alternatively their fathers had died in attempting to defend Kuwait at the time of the invasion by Saddam Hussein.

[43] The Kuwaiti government encourages *bedoon* to purchase foreign passports such as from Saudi Arabia or Iraq and then those who are able to do so, can obtain work permits and thus remain in Kuwait. However, those without passports cannot work and cannot obtain any form of citizenship or identification. He thought

that the appellant was part of the 90% of those in the XX family who have not been able to obtain any form of citizenship or identification and were thus in a desperate situation.

[44] BB considered that the appellant would be put in prison when he returned to Kuwait because he had no proof of identity and any passport that he may have used in the past was clearly a false one. He said hundreds of *bedoon* had been put in prison when they returned with no proof of identity. He considered that the appellant would not be refused entry but be placed in prison and then told that he should get his family to obtain some form of fraudulent documentation so that the government could then remove him from Kuwait again. He explained that there had been much debate on the subject before the Kuwaiti parliament as a few MPs were sympathetic to *bedoon* but despite this, the situation had not improved to the advantage of *bedoon*.

[45] He also considered that if the *Bedoon* Committee obtained information about the return of the appellant, this could cause significant problems for his father and other members of his family. They would accuse GG of disloyally encouraging his son to leave the country but at the same time, they would actively encourage GG and the rest of the family to leave as well. He suggested that the safest way to make contact with the *Bedoon* Committee was to do so through the UNHCR as they were able to check the names of people on the lists of *bedoon* held by the *Bedoon* Committee.

#### *Evidence of CC*

[46] CC explained that she was a close relative of the appellant through a paternal grandfather. She had many other members of her family who were desperate to leave. She said the situation for *bedoon* had always been difficult in Kuwait, but had become far worse after the Iraqi invasion. The Kuwaitis claimed that the *bedoon* are Iraqi supporters who had supported the invasion by Saddam.

#### Television clip from Al-Jazeera

[47] The appellant produced a DVD which he asked the Authority to view. On the DVD he stated that there was a television clip taken from a recording of a programme on Al-Jazeera. Unfortunately, the appellant was unable to give an accurate date or confirmed sourcing of this material. He obtained the television clip from an Al *Bedoon* website and thought it was quite recent in date.

[48] The Authority agreed to view and listen to the recording. The interpreter provided a general overview translation. The programme, when translated from Arabic to English, is entitled "To all the world - save the *Bedoon*". The events shown on the clip appear to be shot in the Kuwaiti parliament and are some speeches by members (MPs) of the Kuwaiti parliament. The appellant considered this was a "reasonably recent" recording taken from a parliamentary debate. The nature and presentation of the recording did not give the impression of it being a professional, authorised television recording of parliamentary debate. Its appearance is clearly more one of a secret videotape recording.

[49] The programme commenced with a person, who was apparently an MP, referring to articles and advertisements published in two Kuwaiti newspapers, one of which the interpreter was able to recognise as an extract from "Al Waseet" or "80 80".

[50] The MP stated that the newspapers showed advertisements for the sale of passports in Kuwait, as an example, a passport from Liberia was being advertised, and that the cost was up to 5,000 Kuwaiti dinar. He said two *bedoon* brothers had purchased such false passports. However, when it was discovered that one of these false passports had an expired date in it, the brother was thrown into prison and now a human rights organisation was endeavouring to help him.

[51] The MP went on to state that Kuwaiti immigration officials were actively encouraging people to go and buy such passports so that they could "correct" their situation in Kuwait. Kuwait had become a place where false passports were actively being promoted for *bedoon* to buy as once the *bedoon* had obtained such a passport, the Kuwaiti authorities would put a residence permit in it. He gave a further example of a false EU passport being purchased, which allowed the *bedoon* purchaser to travel to a European country. However, when he returned, he was immediately put in prison and has stayed in prison ever since.

[52] The appellant stated that this first speaker on the DVD was one of a small number of MPs who were sympathetic to the *bedoon* situation. His name is Hussain al Qullaf. There was then a presenter's comment made on the speech by a former MP who was also a supporter of *bedoon* causes. The commentary on the television clip stated that the government had divorced itself from the *bedoon* problem by leaving it to traders in false passports and that this was all being done under the encouragement and with the knowledge of the government.

[53] The appellant said he knew of the type of advertisement that was placed in the newspaper and had seen them before he left. He thought that the passports sold were not only foreign passports, but also false blue (full) Kuwaiti passports as well. It was now well known from information like that on the television clip that those *bedoon* who wished to leave Kuwait, needed to acquire one of these passports.

[54] The video clip commentary also stated that, from the Kuwaiti government's viewpoint, no-one was being forced to buy such false passports. The *bedoon* were doing it of their own will. The appellant, commenting on this, said that, in reality, even such passports gave *bedoon* no real rights but false passports were the only way of obtaining even any temporary respite from their predicament.

#### Acquisition of a passport by the appellant

[55] As noted, the appellant obtained his passport through a "people smuggler", AA. He met him in a café in August 2009. After agreeing terms, AA stated he would contact the appellant in approximately one month, during which time he would organise travel, a false passport and passage through the airport. The appellant provided only a photograph and a date of birth and no further papers beyond that.

[56] About a month later, his friend who had carried out the introduction to AA, told him confidentially that a date had been set for him to leave and that he should not tell anyone, including his own family. He then departed with AA on the evening of 25 September 2009. He was instructed by AA merely to follow him, carrying hand luggage only. He paid AA for his services in the parking lot at the airport before he departed. All the documentation remained with AA throughout the whole process. AA spoke with airport officials as he passed through, chatting and laughing with them as he went along. AA had sat beside him during the whole trip to Singapore and had got up on one or two occasions to talk with another man. After waiting approximately eight to 10 hours in Singapore, AA gave him a boarding pass and took him to the appropriate gate to board the plane to New Zealand and then parted company.

[57] As stated, the appellant never actually handled the passport used but he thought it was a blue, full Kuwaiti passport. He had reached this conclusion partially because he knew that a so-called "Article 17 passport", which he had been told was silver, could not be used to enter another Gulf country and thus, as

his plane was landing in another Gulf country, he would not have been allowed to board on an Article 17 passport. He stated that there were also widespread reports in Kuwait of corruption at the airport, the use of false documentation and bribes being accepted by officials.

[58] At the resumed hearing, the appellant stated that additional country information had come to his notice relating to the treatment of *bedoon* in evidence given to a United Nations Human Rights Commission (UNHRC) investigation of this issue in Geneva that had taken place in May of this year. Unfortunately, he said the information he had obtained was only in Arabic. The reports of this meeting which were translated to the Authority, in general terms, stated that a Kuwaiti government official attending the hearing before the UNHRC had been shocked when he became aware that a *bedoon* supporters group had been circulating photographs and brochures to the UN panel describing the lack of status and resort to false passports by *bedoon* in Kuwait. The government official stated that the government considered this group were insulting the reputation of Kuwait. A further report said, as a result of the protests, supporters and representation made by that group to the UNHRC, a pro-government MP had stated publically that further action had to be taken by the government to stop *bedoon* protesting in this manner. Another MP, from the small minority group who supported the predicament of *bedoon*, had stated in a newspaper report that the Kuwaiti official representative at Geneva had misled the UNHRC by providing false information about the conditions of *bedoon* in Kuwait. The MP stated that Kuwait was not a real democracy as Kuwaiti government representatives were not showing the reality of the catastrophe of *bedoon*, particularly the sad situation of *bedoon* children.

[59] The appellant stated that government of Kuwait were strongly against giving *bedoon* any further rights and the few MPs, who supported them, were overruled by the majority of MPs and officialdom. The appellant did not know whether a UNHRC report had yet been published but that it could greatly assist the Authority if it had.

#### Result of enquiries made to DOL

[60] Following the issue of the Minute by the Authority on 26 April 2010, the Authority wrote to the DOL asking for clarification of the type of passport they considered had been used by the appellant to depart Kuwait and whether or not

they had any further evidence beyond the conflicting conclusions reached by the INZ officer at the airport and the RSB decision.

[61] The response from the DOL, the substance of which is set out above, unfortunately has taken the Authority no further in clarifying the issue beyond the conclusion of the INZ officer and the RSB officer that the appellant departed using a passport in his own name.

[62] No further response had been received and passed onto the Authority as a result of the generalised enquiry made to the Kuwaiti Embassy in Canberra. The Authority therefore informed the appellant that it would proceed on the basis of the evidence before it and overall credibility evaluation.

## **THE ISSUES**

[63] The Inclusion Clause in Article 1A(2) of the Refugee Convention provides that a refugee is a person who:

... owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

[64] In terms of *Refugee Appeal No 70074/96* (17 September 1996), the principal issues are:

- (a) Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to the country of nationality?
- (b) If the answer is yes, is there a Convention reason for that persecution?

## **ASSESSMENT OF THE APPELLANT'S CASE**

### **Credibility**

[65] The Authority found the appellant's evidence to be credible, straightforward and unembellished. Where he was in doubt, or could not give firm answers, the appellant made this clear. His evidence was greatly supported by the evidence of his relatives, BB and CC. Their evidence was also accepted as credible and not

only consistent with the appellant's reports but also consistent with country information.

[66] The Authority thus accepts the appellant is a *bedoon* whose family have lived for many years in Kuwait, with virtually none of the large wider XX family having genuine Kuwaiti citizenship.

[67] The Authority is satisfied that this appellant departed from Kuwait using a false Kuwaiti passport which readily had been purchased using the services of AA, the people smuggler. The ability to obtain such passports is accepted. This finding is based on the evidence in the country information supplied in the bundle submitted by Ms Uca and, more particularly, from the Al Jazeera television clip the Authority was able to view, which referred to the open advertising of such documentation being readily available, at a price, in Kuwait.

[68] A preliminary issue thus arises as to whether the appellant, as an apparently stateless *bedoon* could, in reality, be admitted into Kuwait on presentation at the border. To reach a conclusion on this preliminary issue, the Authority has been assisted by two previous decisions, namely *Refugee Appeal No 72635/01* (6 September 2002) and the later decision of *Refugee Appeal No 74880* (29 September 2005), where a summary of the jurisprudence was carried out and a close examination of the ability to return to Kuwait and the likely predicament of a returning *bedoon* are considered. After a consideration of these two appeals, and with some additional guidance from the UK decision in *BA*, and noting the up to date country information now available. and others noted above, the Authority has gone on to reach conclusions on the appellant's ability to re-enter Kuwait.

[69] *Refugee Appeal No 72635* was carefully considered in the later decision in *Refugee Appeal No 74880*. The Authority adopts the comments and findings set out between [57] and [67] of the 2005 decision.

[70] Additionally, the Authority has noted from *Refugee Appeal No 72635* a useful background on the history of *bedoon* in Kuwait between [41] and [49]. The 72635 decision gives fulsome consideration on the issues of statelessness and nationality and the relationship between stateless persons and the Refugee Convention. Important conclusions are then reached on the "return" point. At [149] on the facts found in *Refugee Appeal No 72635*, the Authority concluded that the appellant in that case could not, in fact, be returned to Kuwait and therefore

was not at risk of being *refouled* to a country of former habitual residence. It therefore followed that he could not satisfy the Convention requirement of a well-founded fear of being persecuted. On the particular facts of 72635, this Authority, without the need to be conclusive because of a different fact scenario in this case, has no reason to question the validity of the conclusions in 72635.

[71] Relevant to this case, however, were the conclusions reached in [156] of 72635, which states:

Fifth, the protection afforded by Article 33(1) of the Refugee Convention is protection from the **act** of expulsion or return, whether that act is “legal” under the domestic law of either the sending or the receiving State. The issue of return to a country of former habitual residence is therefore an issue of whether return is possible as a matter of fact, not as a matter of law. Article 33 prohibits return “in any manner whatsoever”, not in any **legal** manner whatsoever.

[72] The issue of whether the return had to be a “legal” one was discussed in depth in the decision in *Refugee Appeal No 72635* and, in particular, academic comment on this issue by Professor James Hathaway *The Law of Refugee Status* (Butterworths, Toronto, 1991) pp59-63, where it appears Professor Hathaway considered that the return to the country of former habitual residence had to be a “legal” one. The Authority, in *Refugee Appeal No 72635* found itself in disagreement with Professor Hathaway, “if he is indeed to be understood as requiring the stateless to have a legal ability to return to the country of former habitual residence” (see [144]).

[73] The Kuwaiti nationality laws and finding of fact that they are a manifestation of pre-existing antipathy towards *bedoon* as set out in further conclusions from *Refugee Appeal No 76235* [86]-[95] are usefully noted and recorded.

#### *Refugee Appeal No 74880*

[74] In this case, at [72], the Authority concluded that:

As stated above, the Authority in the present appeal concludes that the evidence establishes that the appellant *is* able to return to Kuwait as a matter of fact in any event. However, the concerns expressed in *Refugee Appeals No 73861 and 73862* (30 June 2005) as to the “returnability as a matter of fact” question are ones which are respectfully shared. The parameters of ‘returnability as a matter of fact’ remain difficult, if not impossible, to define. Further, the approach neither sits comfortably with the terms of Article 1A(2) nor provides an analysis which would necessarily lead to the same result in different receiving states.



[75] The Authority then went on to conclude that the appellant's claim should be measured against Kuwait as the country of former habitual residence. Between [74] and [84], the decision in 74880 considers the applicable Convention issues.

[76] This Authority now adopts the useful findings in those 10 paragraphs and particularly notes the country information assessed therein and commentary on the historical background of *bedoon* set out in *Refugee Appeal No 74467* (1 September 2004) at some length between [41] and [72] of that 2004 decision.

[77] The Authority, in 74880, summarises its findings on the risk on return for the stateless *bedoon* in that case in the following manner:

[83] The analysis of the country information and the finding of a nexus to a Convention reason in the historical disenfranchisement of *bedoon* is persuasive. It is reinforced by the account of the appellant in this appeal, notably his evidence of the significant deterioration in the treatment of *bedoon* since the Gulf War. The institutionalised discrimination the appellant has suffered since 1991 has undoubtedly also been aggravated by the Kuwaiti view that *bedoon* are both *Sh'ia* and Iraqi sympathisers. The evidence does not suggest that other residents who are not Kuwaiti nationals and who are there unlawfully, suffer the level of discrimination which now exists against *bedoon*.

[84] Not all *bedoon* suffer discrimination which reaches the level of "being persecuted". Every case will fall to be determined on its own facts. Here, the Authority is satisfied that there is a real chance of the appellant being persecuted if he returns to Kuwait. He has twice been warned to regularise his status (which his failed attempts establish that he cannot do) or be deported. Similar threats have more recently been made to his son. His family are living in hiding, unable to work lawfully and dependent upon charity. The appellant cannot access social services which are available to Kuwaiti nationals, including education, health care and benefits. If he returns to Kuwait, this twilight existence represents the foreseeable future. At worst, he risks being detained and/or deported - with or without his family. His fear of being persecuted is well-founded and is for the Convention reasons of race, nationality and/or membership of a social group, namely *bedoon*.

#### Can this appellant return?

[78] As a matter of fact, based significantly on the evidence presented by the appellant and his relatives, the analysis of country information set out in *Refugee Appeal No 74880* and indeed the television clip submitted in this case, the Authority is satisfied that "in fact" the appellant could return to Kuwait. He stated how, using contacts and the services of a smuggler or agent he could purchase a "blue" (full) Kuwaiti passport at any time. He explained further how such passports could readily be obtained, and if not a full Kuwaiti passport then a false passport from another country could be easily obtained. The evidence clearly revealed that there is a ready market for obtaining such passports. The appellant stated that, if necessary, to minimise his risk on return should he be returned from New Zealand

on some form of travel document that was not found to be acceptable by Kuwaiti officials prior to his final leg of return to Kuwait, he would use such a false passport.

[79] The Authority, therefore, accepts the reality of the appellant's particular situation is that if, for any reason, he was physically removed to the borders of Kuwait, he would in fact be able to "re-enter". His predicament is thus distinguishable, on the facts, from the situation in 72635.

#### Well-founded fear

[80] Having reached the conclusion that the appellant could, as a matter of fact, re-enter Kuwait, the Authority firstly adopts similar findings and reasoning to that of the Authority in *Refugee Appeal No 74880*. Beyond this, the Authority also accepts the evidence of the appellant and his relatives that on a return as a *bedoon*, there is a real chance that once his true identity is established, or the falsity of his documentation is noted, he would be detained. This detention could be indefinite, at the Tahila jail. He is at a real risk of suffering a similar fate to the appellant's friends and a number of other *bedoon* the witness BB was aware of from his own experience.

[81] The most recent country information confirms the continuing discrimination against *bedoon* by the Kuwait authorities and the denial of identification documents, birth certificates, marriage certificates, death certificates and passports, as well as free education, medical care, driving licences, property ownership and employment (including self-employment). The latest Human Rights Watch report, January 2010, on Kuwait confirms the above:

Kuwait hosts approximately 120,000 stateless persons, known as the Bidun. The state does not recognise the right of these long-time residents to Kuwaiti nationality or permanent residency. Children of the Bidun are also stateless.

As a consequence of their statelessness, the Bidun cannot freely leave and return to Kuwait; the government issues them one-time travel documents at its discretion. As non-Kuwaitis, they face restrictions in employment, healthcare, education, marriage, and founding a family. Kuwait issues Bidun with identity cards, but issue and renewal can be accompanied by pressure to sign affidavits renouncing any claim to Kuwaiti nationality. Prosecution and deportation to Iraq and other countries as illegal aliens are possible consequences of failing to sign such waivers.

A 2007 draft law would grant the Bidun civil rights, but not nationality. At this writing it has not been passed.

[82] This appellant's own evidence sets out the institutionalised discrimination he and his family have suffered over many years which, on several occasions, has resulted in short terms of detention. The risks of more severe maltreatment, particularly in detention in the special *bedoon* prison at Taliha, are greatly aggravated by the manner he would return to Kuwait. There is credible evidence, noted above, that many *bedoon* in a similar predicament to the appellant are detained for lengthy periods of time without trial when they encounter Kuwaiti officials at the point of return.

[83] While the Authority would agree with the conclusions reached in the earlier decisions of the Authority that not all *bedoon* suffer discrimination which reaches the level of "being persecuted", and that every case must be determined on its own facts, in this case, the Authority is satisfied there is a real chance this appellant will be persecuted if he returns to Kuwait. His family continue to live entirely dependent on charity. He personally cannot access any form of social services, including education, health care and benefits. He will be subject to the list of discriminations the Authority has noted above.

[84] The appellant's predicament on return, therefore, is that he has a well-founded fear of being persecuted for reasons of race, nationality and/or membership of a particular social group, namely *bedoon*.

## **CONCLUSION**

[85] For the above reasons, the Authority finds the appellant is a refugee within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is granted. The appeal is allowed.

"A R Mackey"  
A R Mackey  
Chairman