



**Upper Tribunal
(Immigration and Asylum Chamber)**

NM (documented/undocumented Bidoon: risk) Kuwait CG [2013] UKUT 00356(IAC)

THE IMMIGRATION ACTS

**Heard at Field House
On 14 and 30 January 2013**

Determination Promulgated

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Before

**UPPER TRIBUNAL JUDGE ALLEN
UPPER TRIBUNAL JUDGE REEDS**

Between

NM

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr B Ali of Aman Solicitors
For the Respondent: Mr P Deller, Senior Home Office Presenting Officer

- (1) *The distinction made in previous country guidance in respect of Kuwaiti Bidoon, between those who are documented and those who are undocumented, is maintained, but the relevant crucial document, from possession of which a range of benefits depends, is the security card, rather than the "civil identification documents" referred to in the previous country guidance in HE [2006] UKAIT 00051. To that extent the guidance in HE is amended.*
- (2) *The evidence relating to the documented Bidoon does not show them to be at real risk of persecution or breach of their protected human rights.*
- (3) *The evidence concerning the undocumented Bidoon does show them to face a real risk of persecution or breach of their protected human rights.*
- (4) *It must be assumed that Bidoon who did not register between 1996 and 2000, and hence did not obtain security cards, are as a consequence undocumented Bidoon, though this must be seen in the context of the evidence that most Bidoon carry security cards.*

DETERMINATION AND REASONS

1. The appellant, who claims to be a Bidoon from Kuwait born on 5 August 1961, appealed to a First-tier judge against the Secretary of State's decision of 1 March 2011 to remove her as an illegal entrant from the United Kingdom. The judge dismissed her appeal, but it was subsequently concluded at a hearing on 23 September 2011 that he had erred in law. As a consequence it was ordered that the appeal be remade on the merits on all issues except that two matters were accepted on behalf of the Secretary of State: first, that the appellant's brother S is an undocumented Bidoon, and secondly that S is the appellant's full brother as confirmed in a DNA report. It was common ground that the fact that S was an undocumented Bidoon did not mean that the appellant was an undocumented Bidoon and that that was a matter that would require to be proved.
2. It was subsequently concluded that the appeal would be appropriate for country guidance on the issue of risk to the Bidoon in Kuwait, and the matter was set down for hearing on that basis.
3. In terms of the ambit of the hearing, Mr Deller argued that all issues were at large and that matters had not been narrowed in any respect at the Case Management hearing. We consulted our notes from that hearing, and Mr Ali accepted that the issue of whether the appellant was an Iraqi national was still a matter which could be and was being argued by the Secretary of State.

Summary of the Appellant's Claim

4. The essence of the appellant's claim to international protection is that she fears oppression there, on account of what has happened to her husband and because of her and her family's status as Kuwaiti Bidoon. She said that her husband had been arrested in 1991, 1997, 2005 and 2011 and was still detained.
5. In 1991 he was arrested when serving in the Navy and was accused of being aligned with the Iraqi military. He was released after a year as part of a general amnesty. He was arrested in 1997 for illegally working, and released after six months. The 2005 arrest was for distributing leaflets about promotions and sales in shops. He was released in March 2011 and re-detained three weeks later. Her son, K, was currently seeking asylum in Italy. She produced various documents, including her birth certificate and marriage certificate. Her husband's brother, A, had been in the United Kingdom since 2003.

Oral Evidence of Mr Shiblak

6. We heard oral evidence from the expert Mr Abbas Shiblak who is a research associate and area specialist of the Department of International Development Refugee Studies Centre at the University of Oxford. He identified his signature on his report and was happy to give evidence on the basis of this report.
7. With regard to the appellant specifically, there was a section in his report from page 143 onwards concerning the documents. Nothing he had heard today would lead him to change what he said about the appellant's evidence, though he had not seen a translation of the marriage certificate and, as he had said at paragraph 11 of the report, on the basis of the documents referred to there, nothing he had heard from the appellant today was such as to cause him to change his opinion about what he said about her documents and her case.
8. With regard to the Home Office questions put to him in light of his report and his responses to them, he was asked whether he would wish to comment further. He said that he had been working since 1991 in connection with the social and legal status of refugees, focusing on statelessness including the Bidoon. He said that with respect to them in particular there was a gap between the law and its application in Kuwait which was greater than in other countries. If a particular law had been passed it should not be taken to imply that it had been implemented and it would either have been done patchily or not at all. What was said by the Kuwaiti authorities was taken in good faith by the Home Office. They gave promises but did not fulfil. For example, with regard to healthcare, it was said by the Home Office that in recent years this matter had been resolved, but in fact the Bidoon did not get access to free government schools, reference being made to the human rights report of June 2012 and the OGN of last week. In the latter report the Home

Office went beyond the official government views by consulting the community and INGOs who had acknowledged that healthcare was not available free of charge and it had to be private, and they were not allowed to work. They could not have birth certificates or marriage certificates. It was a very autocratic tribal system. For example, last week MPs had criticised the head of the agency for illegal residents who had said it was not within his domain but within the domain of the Interior Ministry which was linked to the head of state, the Emir. If a Bidoon was blacklisted for a job it would affect everything and would affect his family also. Mr Shiblak estimated that those without security clearance had increased in number. It had been thought that it was 3,000 but the OGN at paragraph 3.6.26 said the number was far higher.

9. As regards the announcement of eleven privileges/benefits and the question of whether they had been implemented, the answer was no. Understandably the NGOs including Human Rights Watch hoped that it would materialise in the near future but it had not done. With regard to education, they were told they could go to government schools and some families sent their children to register, but they were asked for civil ID which they did not have. Likewise with respect to birth certificates, they had had the same impression, but when they went to do it they were sent to the Ministry of Interior. They had a ready made form for them to fill in in which they had to show the country of origin, hence it would show they were not Kuwaiti Bidoon, so there were ways of putting blocks on benefits.
10. He was asked whether as of today there were any changes which justified reversing the previous country guidance decisions in **BA [2004] UKIAT 00256** and **HE [2006] UKAIT 00051**, and he referred to the most recent Human Rights Watch report and the OGN.
11. When cross-examined by Mr Deller it was put to Mr Shiblak that at several points in his comments he seemed to think that the Home Office were too quick to accept the official Kuwaiti government version of events, especially with regard to the Kuwaiti government. He said that it was a problem with the Kuwaiti government. They had produced a study in 2010 with sections about good practice, but it was still too early and they had to wait for effective implementation. He was asked whether there was any reason why the Kuwaiti government would say they were making progress with respect to the Bidoon if they were not. He said that they had given an answer and the main worry in Kuwait was security. The Bidoon had previously comprised 80% to 85% of the army and they were thought to be a security risk for Kuwait, though many had fought for Kuwait so that was not the case, he thought. It was a question of individuals and not tribal risk. The issue of security was the security of the ruling family. They did not want the Bidoon any more and sought to reduce or eradicate the number of Bidoon in Kuwait. Many were active in trying to put pressure on the government to change its mind, including MPs.

12. Mr Deller asked why, if this was the case, would they bother to say that they were taking steps and whom they were trying to please Mr Shiblak said it was the international community and to avoid Bidoon pressure and protests. He was asked why the authorities would not simply put it all down to security and said for example they had given the figure of 34,000 people who were registered in the 1965 census and had talked about offering them nationality in the law of 2000 and they had promised they would naturalise the Bidoon, at the rate of 2,000 a year. Until recently this promise was shelved. There was no more naturalisation for the Bidoon. There had been a few hundred in the initial few years and those were the wealthy and powerful. They said that they would give it to people who had done military service, but the problems were with the detail. They had to have been registered in 1965 to have served for 30 years and to have family. In effect, this would apply to very few people. The official figures showed 108,000 Bidoon and the total population in Kuwait was some 800,000.
13. Mr Shiblak was asked how the Bidoon were regarded by the general population of Kuwait. He said that discrimination against the Bidoon was institutional rather than by the public. He was asked whether it was the case therefore that they were not seen generally as Iraqi collaborators and said that that was the line the government took. In fact, most of the military were stopped at the Iraqi checkpoint and had been given a choice of being shot or joining them, hence they were coerced into doing it. He was asked whether the propaganda from the government had stuck in the population's mind and said that some had perhaps but not the majority. With regard to the recent protests, most of those in the opposition took the side of the Bidoon. Loyalty to the Emir was very important in Kuwait.
14. He was asked where the pressure came from in Kuwait to change things and he said it came from the opposition and Bidoon protests and the international community. He was asked whether there was a reason why the Kuwait government needed to be bothered by international opinion and said if you followed this path Kuwait would not be seen as a democracy and there were MPs who voiced opposition and wanted Kuwait to be a constitutional monarchy. When it was suggested that Kuwait had reason to feel under threat internationally given the problems in the region he said yes, there were concerns about the Muslim Brotherhood.
15. He was referred to the specific case of the appellant and the document about her husband who had been given a lifetime sentence for collaboration, and he was asked how that chimed with him being in and out of prison for lesser offences. Mr Shiblak said that they had put hundreds in jail after 1991 as collaborators and planned to deport them in masses and UNHCR had stepped in. No other countries could take them. 100,000 had fled to neighbouring countries. Some people from 1991, 200 or 300 were in prison indefinitely. He did not know how they allowed the appellant's husband out. It could be personal favours or to send him to collaborate with intelligence for a while after he failed to do the job properly.

16. We asked him whether he knew of any cases of such release and he said yes, it could be a reaction when a summary court realised he was not in fact involved or someone intervened on his behalf. In one case he had come across, a person had been released to spy among the Bidoon and had failed and was recalled. He had no idea of any other examples.
17. He had now seen the original documents, having previously only seen photocopies. He said this was one of the most fully documented cases he had seen. Up to the mid-1980s the Bidoon were able to register civil marriages so it was not surprising.
18. On re-examination the witness was asked about a reference he had made to an assassination attempt on the Emir and he said he thought it was in 1986 and Bidoon bodyguards were killed. The number of Bidoon were said to be about 108,000.
19. At that point it became necessary to adjourn for lack of time and to enable more focused skeleton arguments to be prepared specifying the background evidence relied on and focusing more clearly on the issues in dispute. It was agreed that the representatives would have until close of play on 28 January to put in further written submissions and a further hearing date for closing oral submissions was fixed for 11am on 30 January for half a day.

The Country Evidence: Introduction

20. Kuwait was formerly part of the Ottoman Empire, but after World War I it emerged as an independent Sheikdom under the protection of the British Empire. Kuwait became fully independent in 1961. It is now a constitutional hereditary emirate. Its population is said in the US State Department Report of 2011 (published 23 May 2012) to be 3.44 million, of whom 1.1 million are citizens. In 1959, in preparation for achieving full independence from Britain, Kuwait issued law number 15 governing Kuwaiti nationality. Article 1 of the law declared as Kuwaiti citizens those who had settled in Kuwait and maintained residence there since 1920. Under Article 4 Arabs resident in Kuwait for at least fifteen years (twenty years for non-Arabs) could be naturalised, provided that they were Muslim, knew Arabic and had lawful means of earning a living. Those eligible for naturalisation included children born to a Kuwaiti mother and a stateless father (a provision repealed in 1980), children born to a Kuwaiti mother and an unknown father or a father who failed to establish his paternity by law, and individuals recommended by the Ministry of the Interior.
21. After independence the Kuwaiti government formed a committee to register and review claims for nationality, but this body was dismantled in 1969. Thereafter, claims relating to citizenship remained matters of administrative determination. There is no right of appeal to the courts. In 2000 the National Assembly passed law number 20 permitting naturalisation of individuals registered in the 1965 census and their descendants. The law limited the number of naturalisations to 2000 per year. Naturalisations can only take

legal effect through ministerial decree. Since law number 20 was passed the yearly maximum of 2000 naturalisations has never been met.

22. At the time when the nationality law was enacted in 1959 the authorities sought to register all residents within Kuwait and identify those eligible for nationality. It appears, however, that many of those living in outlying areas, primarily of Bedouin origin, either did not learn about this or neglected to register their claims. Some were illiterate and persons who kept no written records faced especial difficulties in proving that they met the legal requirements of the new law. Others were simply uninterested in the new concept of nationality, failing to foresee the rights and benefits that would accrue to citizens in later decades as Kuwait's wealth increased (it has been described as the fifth richest country in the world) and government service has expanded.
23. The particular category of Kuwaiti residents with whom we are concerned in this appeal are those known as the Bidoon (variously spelled Bidoun, Bidun, Bedoon). They originate from three different categories, as set out in the Human Rights Watch report "Prisoners of the Past: Kuwaiti Bidoon and the Burden of Statelessness" 12 June 2011 (the HRW report) a report to which we are particularly indebted and which is also significantly relied on in the UKBA Operational Guidance Note on Kuwait of January 2013.
24. The first category of Bidoon comprises persons who claimed citizenship under Kuwait's nationality law but whose ancestors failed to apply or lacked necessary documentation at the time of Kuwait's independence. It is said that among this group are the descendants of nomadic clans who regularly traversed the borders of modern day Gulf States but settled permanently in Kuwait prior to independence. This group of people has never held the citizenship of any other country.
25. The second group is composed of former citizens of other Arab states (such as Iraq, Syria and Jordan) and their descendants who came to Kuwait in the 1960s and 1970s to work in Kuwait's army and police forces. It is said (Longva; "Walls Built on Sand: Migration Exclusion in Society in Kuwait" 1997) that the Kuwaiti government preferred to register these people as Bidoon rather than to reveal this politically sensitive recruitment policy. Some of these people settled in Kuwait with their families and never left.
26. The third category of Bidoon is composed of individuals born to Kuwaiti mothers and Bidoon fathers.

The HRW Report

27. Following passage of the nationality law, Kuwait's government still granted the Bidoon residency rights, equal employment opportunities and full access to social services, including free education and healthcare, so in effect they were treated as equal to Kuwaiti citizens except for their lack of voting rights. They were informed that they remained eligible to present claims for

nationality and they were issued with temporary documents that described them as “without nationality” (in Arabic: Bidun Jinsiyya, from which the term Bidoon (without) derives).

28. However, between 1960 and 1987 the Kuwaiti government amended the nationality law seven times, each time introducing further restrictions on eligibility. In 1960 there was a restriction limiting the number of naturalisations that could take place each year to 50, including a 1980 amendment removing a Kuwaiti woman’s ability to transmit her citizenship to her children. There was also an amendment in 1981 which specified that only Muslims could qualify for Kuwaiti nationality.
29. The position of tolerance towards non-citizens began to shift in 1980 when the war between Iran and Iraq threatened Kuwait’s internal stability and the country became a target of terrorist attacks. As Longva (supra para 76) has commented, the ambiguous status of the Bidoon at that time provided a human pool into which Iraqi refugees, draft dodgers and infiltrators could easily blend after getting rid of their identity papers. In 1985 the then ruler of Kuwait escaped an assassination attempt when a bomb detonated in one of the cars forming his motorcade, and later that year the government changed the Bidoon’s status from that of legal residents without nationality to “illegal residents”. It is relevant, however, to note that during the 1980s the Bidoon constituted between 80% and 90% of the Kuwaiti army.
30. There were further difficulties for the Bidoon following the Iraqi invasion of August 1990 and the subsequent war. Before then the official number of Bidoon resident in Kuwait was around 250,000, but many who fled the country during the war were refused entry at the Kuwaiti border when they sought to return. They had intended to escape to villages and other areas in Iraq which did not require travel documents from persons arriving from Kuwait. Many Bidoon lived in refugee camps along the Iraq-Kuwait border for up to eight months following the liberation from occupation, and after the end of the war official figures placed the number of Bidoon in Kuwait at approximately 125,000.
31. The Kuwaiti government maintains that the vast majority of Bidoon are actually nationals of other countries and therefore do not have legitimate claims to Kuwaiti nationality. In effect this amounts to a denial that they are stateless.
32. The Central System to resolve Illegal Residents’ Status, established by ministerial decree in November 2010, is the current administrative body responsible for reviewing Bidoon claims to nationality. This body, like its predecessor, to which we have referred above, is widely known as “the Bidoon committee”. It has exclusive authority to determine all matters touching upon nationality or official documentation for the Bidoon. The key document in Kuwait is the civil identification card which Kuwaiti citizens and legal foreign residents receive. The Bidoon are not entitled to such cards. These cards are necessary in order to rent or purchase real estate or

cars, open bank accounts, enrol in private universities and some private schools, hold legal employment, and receive birth, marriage or death certificates. It is said in the HRW report that while both government authorities and private entities have created limited exceptions, the requirement of civil ID cards effectively bans the Bidoon from many forms of employment and public services.

33. The Bidoon committee issues Bidoon who registered between 1996 and 2000, a cut-off date set by ministerial decree, with security cards, which are informally known as "green cards". The cards identify a holder with their name, address and birth date, but it is stated on them that the card does not serve as proof of identity and that it may be used only for specified purposes, though exactly what those purposes are remains unclear. We set out below situations where possession of such a card is significant. The cards have to be renewed either yearly or once every two years depending on the class of card. Some Bidoon report that they could renew their cards and those of their offspring simply by presenting their previous cards and documents proving their registration in the 1965 census or residence in Kuwait before that time. Other Bidoon said that they had to undergo interviews each time they wished to renew their cards.
34. In November 2010 Kuwait's Supreme Council of Higher Planning announced the results of a study which found that there were 106,000 people of "unspecified nationality" in the country. It was said that of these, 34,000 remained valid candidates for citizenship while 68,000 had "other origins". Such people would have a limited time in which to "correct their status", by which officials meant that they were required to produce passports or other evidence of citizenship from other countries. Those who failed to do could face deportation.
35. It is said in the HRW report that the unregistered Bidoon, i.e. those who are not able to renew security cards, face even greater hardships. Some unregistered Bidoon told Human Rights Watch that in the past they had found ways to obtain passports from other countries, but at some point suspected or discovered that these passports were counterfeit. Those Bidoon who presented counterfeit passports in order to keep government jobs or receive birth or marriage certificates, and later discovered that they could not renew these passports, found that their files with the committee had been closed and they could not renew their committee-issued security cards. They therefore now remained illegal residents without even the limited protection of a security card. The same must apply to other unregistered Bidoon who have never obtained security cards in the first place.
36. In order to bypass the civil ID requirement and access government services, including civil documentation (birth, marriage and death certificates), Bidoon must obtain clearance from the Bidoon committee. Bidoon who have requested clearance from the committee have reported that the committee frequently denied their applications, in some cases citing unspecified "security restrictions" and in other cases issuing letters stating that the

applicant had other citizenship and should “correct their status” by producing evidence of this citizenship.

37. From 1986 onwards the government began to restrict access by the Bidoon to passports, granting them only to individuals with official permission to travel abroad for medical treatment, education or religious purposes or to Bidoon serving in the army and the police. Later that year the authorities began to require that all government employees provide proof of Kuwaiti or foreign citizenship or lose their jobs. In 1987 the Interior Ministry ceased to issue or renew driver’s licences to Bidoon except to those in police or military service and at the same time ceased to allow the Bidoon to register car ownership in their names. The kind of temporary passports currently granted to the Bidoon are only for the purpose of travel for education, medical treatment or religious pilgrimage, and typically remain valid only for the trip cited in the individual application. An individual who wishes for a passport must obtain clearance from the Bidoon committee. An item from ‘Gulf in the Media’ of 21 May 2012 says that temporary Kuwaiti passports issued to stateless residents for travel purposes will be restricted to holders of 1965 census documents and children of Kuwaiti women.
38. Prior to 1987 all Bidoon received free education at government schools and, until 1993, free healthcare on a par with Kuwaiti citizens. They had freedom of employment and formed a substantial part of Kuwait’s army and police forces. However, the position now is that in order to register in a government school or the state university or hold employment legally, an individual must present a civil ID card. The Bidoon who register with the Bidoon committee and therefore hold security cards can register their children in private schools, for which the government pays fees for some students. The annual fees range between the equivalent of US \$860-1550 per child and there are extra charges for textbooks and uniforms.
39. In 2004 the Kuwaiti government established a charitable fund to pay educational expenses for children in need, including but not limited to Bidoon children. This fund, it is said in the Human Rights Watch report, pays primary and secondary school fees for many Bidoon students as well as expatriate children who wish to attend Arabic language schools. It is commented that while the government has taken steps to provide Bidoon children access to free elementary education, after removing this right a generation ago, it has failed to guarantee access as a right for all children in its jurisdiction. Children at the primarily Bidoon schools who fail their examinations as well as those whose parents have security offences registered in their names, do not receive school funding, including primary school. Nor does the government take any steps to enforce elementary school attendance for Bidoon children. Kuwaiti activists and school administrators whom Human Rights Watch interviewed said that the charitable fund did not meet the needs of all children. Examples of this are given in the report. The point is also made that the government does not provide Bidoon children who lack security cards with educational funding. A girls’ school administrator told Human Rights Watch that the government was setting more conditions

before people could obtain funding and the number of students was going down. Kuwait University, the higher education institution founded and operated by the state, requires students to be of “specified nationality” as opposed to unspecified nationality or status, and the university admissions page makes it clear that the children of two-status parents may not register.

40. There have been various attempts to reform the situation. In March 2011 government officials announced to local media that they would be granting a package of civil, social and economic rights to the Bidoon, among them the right to civil documentation including birth certificates, marriage registration and passports, and the right to education and healthcare. It is said in the HRW report that the proposed reforms have not been implemented, but in a subsequent HRW report, “World Report 2012: Kuwait”, 22 January 2012, it is said, with regard to the government promise of benefits, including free health care; free education at private schools that primarily serve Bidoon children; birth, marriage and death certificates; and improved access to jobs, that Bidoon have confirmed receiving many of these benefits, but continue to cite problems accessing employment and increased difficulty in receiving passports.
41. In 2009 members of the Parliament reviewed the “Draft Law concerning the Civil, Legal and Social Rights of Stateless People” which would grant greater civil and social rights to the Bidoon, which among other things required the grant to all registered individuals, as well as their descendents born in Kuwait, of a right to permanent residency and identification documents. However, the bill continues to define the Bidoon as “illegal residents” of Kuwait and fails to provide a mechanism for legal review of Bidoon claims to nationality.
42. As regards employment and property, under Kuwaiti law only those with legal resident or citizen status can legally hold employment. It is said in the HRW report that the government has carved out limited exceptions and allowed Bidoon to hold certain government jobs but, although previously Bidoon men constituted a significant percentage of Kuwait’s army and police forces, these forces ceased to accept new Bidoon applicants in 1986. Some Bidoon officers already employed were permitted to keep their jobs whilst others lost their employment. The Bidoon may not own property in Kuwait, as article 6 of Law No. 5 of 1959 states that any person seeking to register property ownership must prove their nationality either by producing their passport or through another valid document. This also causes difficulties for Bidoon who wish to own and operate their own businesses.
43. It is said in the HRW report that in response to public and international criticism, the government has announced that it will waive the requirements of the law and allow certain ministries to hire Bidoon employees. In addition, local activists report that the government has relaxed enforcement of laws prohibiting private sector employers from hiring illegal residents and that inspections of private companies for Bidoon employees have become rare. It is said to be the case therefore that private employers have grown

increasingly comfortable about hiring stateless persons despite their lack of legal status, in recent years. It remains the case, however, that the Bidoon have no legal protection for their right to work. Also, without formal employment the Bidoon remain excluded from benefits accorded to citizens in permanent positions such as salary increases, social security, job security and end-of-service benefits. Also restrictions on property ownership affect the Bidoon's ability to open and operate their own businesses. One person gives an example of how he is able to manage this by the fact of his company being registered in his mother's and his wife's names (his mother and his wife are Kuwaiti citizens).

44. Until 1993 the Bidoon residents of Kuwait received free treatment at public clinics and hospitals. However, the government subsequently began to require them to pay user fees. In 1999 government-regulated health insurance plans replaced user fees. Bidoon who carry security cards can purchase low-cost health insurance through a government-administered program. However, several Bidoon interviewed by Human Rights Watch said that this insurance did not adequately cover their healthcare costs and that they could not afford medication or surgery recommended by medical professionals. Bidoon without security cards reported that they were denied access to government clinics and hospitals altogether.
45. Many Bidoon purchase health insurance through the government system, which charges a fee of the equivalent of US \$21 for one year of coverage or \$39 for two years. In addition, insurance holders pay the equivalent of \$3.50 for visits to government clinics and the equivalent of \$7 for hospital visits. However, several Bidoon who were interviewed said that their insurance did not cover all prescription medication and medical testing, such as X-rays and scans, nor did it cover certain types of surgery. It seems that Bidoon without security cards (unregistered Bidoon) will not be treated by government hospitals and clinics and have to seek services from expensive private hospitals.

Mr Shiblak's Written Evidence

46. In his report dated 21 August 2012 Mr Shiblak in many respects endorses what is said in the Human Rights Watch report. He emphasises that the Bidoon are considered by the Kuwaiti government to be "illegal residents" rather than stateless persons. He says that they are barred from access to government services such as those offered free of charge to Kuwaiti nationals including education and medical care, and that the only option left to the Bidoon families in education is to send their children to private schools which they cannot afford. Unlike Kuwaiti nationals they do not have free medical care and do not have the financial capabilities of foreigners working in Kuwait who can afford private medical care and to send their children to private schools.
47. He refers to the limited help offered in recent years by the government to some Bidoon families through local charities to cover school fees at primary

level and to cover part of primary healthcare. He makes the point that both the charities involved in this are limited in their effectiveness and both suffer from lengthy bureaucratic processes and a lack of resources. As regards education, the charities help some but not all Bidoon in paying the fees for primary schools up to primary level. The level of students in the classrooms in these schools is nearly double the number in government schools and they are poorly supervised and resourced. He says that the Bidoon are subject to systematic discrimination and punitive measures that make their future uncertain. The majority of them live in virtual exile in squalid housing projects. He refers to law 22 which was issued in 2000 which was aimed at granting nationality to the Bidoon who could meet its very restrictive requirements, including being registered in the 1965 census, while leaving the issue of proof on the Bidoon who were largely illiterate indigenous Bedouins at the time. The government also limited the time for applying for naturalisation and left the decision to the total discretion of the intelligence services with no right of appeal in a court. It was estimated that no more than 20% were able to fulfil the restrictive conditions laid down by this law. Nor was there any clear guideline on how to apply the law. He makes the point that the government can always use a process which involves a person being blacklisted on security grounds which automatically exclude the Bidoon from being naturalised without giving any reason or being open to challenge in a court of law. The Bidoon committee deals with all applications on a completely discretionary basis. Nationality was granted to a few who were well-connected as a personal favour to those who were not necessarily Bidoon. Early in January 2012 the Kuwaiti government decided to deport any Bidoon and to sack a number of them still working in the army if they participated in protests against their treatment. This followed earlier protests in December 2010 going through to May 2011. Many were injured and around 300 Bidoon were arrested. Torture remains prevalent in Kuwaiti prisons. Mr Shiblak makes the point that despite threats of deportation, there is nowhere for the Bidoon to be sent to. All the countries to which the Kuwaiti government claims the Bidoon belong refute such claims and refuse them entry to their territories. These countries include Iraq, Saudi Arabia, Jordan, Syria and Iran.

UKBA OGN

48. As we have noted, the UK Border Agency's Operational Guidance Note on Kuwait of January 2013 borrows quite heavily from the Human Rights Watch report that we have paraphrased in some detail above. The report notes the history of the Bidoon in Kuwait and the continuing discrimination against the Bidoon in areas such as education. It notes that Bidoon without security cards did not have access to educational funding. It says, quoting the US State Department Human Rights Report for 2011, that the government-administered charity fund to educate needy children paid school fees for all Bidoon children (approximately 2,000) who applied for assistance during 2009 to 2010. The point is made, however, that the government had failed to guarantee access to free elementary education as a right for all children in its jurisdiction. At paragraph 3.6.18 it is said that by providing mostly

educational institutions for citizens 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, and also, 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.

49. There is reference at paragraph 3.6.19 to the government approving, in June 2010, a new disability law which offered larger disability grants, reduced working hours and improved housing loans for citizens and Bidoon with mental or physical disabilities. The law required government employers with workforces of 50 people or more to recruit at least 4% of their workforce from vocationally-trained people with special needs, and also allowed citizens with disabilities or those with children with disabilities to receive larger than normal housing grants and earlier pensions. Although the Bidoon were not normally entitled to receive housing grants, the new provisions incorporated Bidoon with disabilities. This information is again taken from the US State Department Human Rights Report of 2011.
50. At paragraph 3.6.23 it is said that lack of legal status impacted on every area of life for undocumented Bidoon. They were subjected to numerous infringements of their civil and human rights. They were generally unable to obtain essential status documents. This meant that they could not legally own property and their family relationships were effectively illegitimate. Those adults who did succeed in obtaining Kuwaiti ID cards reported that the renewal process was tantamount to interrogation, and the authorities made the process as difficult as possible. Consequently, some Bidoon resorted to the use of counterfeit passports.
51. It said at paragraph 3.6.24 that the Bidoon were subjected to various types of discrimination. The government had attempted to address this in some areas but the process required applicants to prove residency prior to 1965 and therefore still excluded the great majority of Bidoon. Due to their lack of legal status they had no right to work and were consequently disproportionately affected by poverty. They were not allowed to participate in the political process and, being disenfranchised, they were unable to improve their conditions through political pressure, except by public protest or demonstrations. Undocumented Bidoon were constantly at risk of arrest or detention on grounds of being stateless or illegal residents.
52. The OGN also considers the use of “security blocks” which were originally used to deny nationality to those Bidoon who fought alongside Iraq during the 1991 occupation. The security block prevented access to a variety of government services and made the acquisition of nationality almost impossible. Refugees International were told by human rights organisations that 850 individuals had been security blocked due to perceived collaboration with the Iraqis, but that the list was likely to be greater than 3,000. It was said that some believed the list was as many as 30,000 people. Refugees

International in their report “Without Citizenship: Statelessness, Discrimination and Repression in Kuwait” published 13 May 2011, and quoted in the OGN argued 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. Activists were publicly warned by the government that participation in demonstrations could result in a permanent security block on their nationality files and possible deportation. Refugees International learned that since Kuwait could not deport the stateless individuals, because no other country had an obligation to accept them, it would use “deportation” jails. If ordered to be deported a Bidoon could thus spend years in jail awaiting an “amnesty” that might or might not come.

53. In early 2011 unrest in Kuwait over calls for reform and the situation of the stateless Bidoon manifested itself in public protests. Hundreds of stateless residents took to the streets on 18 February 2011 to demand their rights and dozens were treated for injuries in local hospitals and dozens more were detained by state security. According to Human Rights Watch, none of the detainees had been brought before judges. In response to the protests the government promised benefits including free healthcare, free education at private schools that primarily served Bidoon children, birth, marriage and death certificates, and improved access to jobs. The Bidoon had confirmed receiving many of these benefits but continued to cite problems accessing employment and increased difficulty in receiving passports. This information, quoted in the OGN, comes from the Human Rights Watch World Report of 2012 on Kuwait. There were further protests in October 2012, which led to a number of larger gap needed detentions.
54. The OGN confirms what is said in the Human Rights Watch report about “security flags” on the files of some members of the Bidoon community which causes their access to basic amenities, employment in particular, to be severely curtailed and often removed completely. The Bidoon committee has said that these flags are attached to the files of those who had been convicted of a crime, or who collaborated with Iraqi forces during the invasion. It is claimed by human rights groups and members of the Bidoon community that they are used arbitrarily by the Kuwaiti government and are often used to disincentivise members of the community from political activism. 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 subject to judicial supervision.
55. At paragraph 3.6.35 of the OGN, it is said that whilst some Bidoon have been able to make successful lives for themselves in Kuwait, others have suffered severe discrimination and significant problems remain. It is said that a grant of asylum will be appropriate in individual cases, and many of the Kuwaiti undocumented Bidoon will fall within that category, though a few may not, if for example they have had access to employment, the health services and education in Kuwait and have hence been able to rise above the general discrimination suffered by the undocumented Bidoon. The report goes on to

say that documented Kuwaiti Bidoon experience significantly fewer problems than undocumented Bidoon though they still suffer discrimination as a direct result of their familial and tribal affiliations. However, they are able to work and to access education, healthcare and employment and it is considered that the discrimination is not so severe as to amount to persistent and serious ill-treatment.

56. There is an item in the Secretary of State's bundle from the Kuwait Times headed "Naturalisation of 35,000 Bidoons Pending DNA Tests". In this article, which is dated July 2012, it is said that the Central Agency for Illegal Residents transferred to the criminal evidence general department 35,000 files for stateless residents who will be called for DNA tests to confirm paternity as part of the naturalisation procedures. It is said that so far 12,000 cases have been referred from the Central Agency since it started its work in 2010 for tests to issue birth certificates and prove lineage for stateless residents. It is said that the Central Agency was established a number of years ago in order to resolve the issue of the large number of stateless residents in order to determine who was living in Kuwait before the earlier census was carried out in 1965 and thus become eligible for naturalisation, in addition to residents who allegedly came afterwards and disposed of their passports so they might seek citizenship in Kuwait. It is also said that last year the Agency adopted measures to grant the Bidoon several rights, including obtaining marriage, birth and death certificates and that the Agency had been given a five-year ultimatum to resolve the decades-long issue that was often a source of criticism of Kuwait by international human rights groups.

The Submissions of the Parties

57. At the renewed hearing on 30 January 2013 we had an application by Mr Ali to amend his grounds to enable him to argue breach of Articles 6, 8 and 13 of the European Convention on Human Rights in conjunction with Article 14.
58. Mr Deller suggested that to an extent this was an obvious point flowing from the asylum basis of the claim and though the flagrant denial point was novel, it did not cause him difficulty.
59. We put to Mr Deller a concern that we had about the findings of fact and matters that had not been put to the appellant or the witnesses. We reminded him that it was the case that the findings of fact of the previous Tribunal had not been preserved and points, for example, in respect of the appellant's husband's detention and inconsistencies were matters Mr Ali would have to grapple with, but it was unclear for example how Mr Deller proposed to deal with the point concerning the son's visit visa.
60. Mr Deller thought it was difficult when factual findings were set aside but questions and answers were a matter of record. That was how he asked the Tribunal to proceed. They were a matter of record from the earlier hearing and did not need to be asked again.

61. As regards his closing submissions Mr Deller noted what was said in the Practice Direction that it was not necessary to follow country guidance cases unless there were good reasons not to do so. The situation now was somewhat akin to the position when HE [2006] UKAIT 00051 was decided. There were clearly continuing problems and a relevant question was whether there had been positive developments such as to cross the threshold. The Tribunal in HE had said that what had occurred subsequently was not enough to depart from the guidance in BA [2004] UKIAT 00256.
62. There was a wealth of material which was encapsulated in the OGN, and it was clear that the position was still not very good. Section 3.6 of the OGN had been complimented by the expert. Hopefully that addressed previous concerns about objectivity. There was much criticism of the slow progress in dealing with the position of the Bidoon including applications for nationality and, since HE, complaints made by the Bidoon about being dealt with rather harshly. The Tribunal would have to decide whether there had been progress or whether the situation was stalled.
63. The OGN rather tied Mr Deller's hands and it was the case that generally speaking an undocumented Bidoon had a pretty good chance of success in an asylum claim. There would always be exceptions, as for example in the case of Somalia.
64. With regard to updating HE it was necessary to consider the evidence as a whole. Mr Ali's skeleton referred to tokenism, and the problem of the difficulties confronting the Bidoon not being taken seriously. The expert had said why the regime would take notice of others. Everyone needed allies. With regard to the wider point taken by Mr Ali that the documented Bidoon were no better off because of what they were required to do to make a living in Kuwait, it was relevant to consider who they were, namely a transnational element of the population. Much had been made of the slowness of the process of obtaining nationality and it was relevant to note what was said in EM (Lebanon) [2008] UKHL 64 and in ST [2011] UKUT 252 (IAC). It was an exercise in obtaining and documenting nationality in contrast to ST. People were not being documented where they had the right, for political reasons. Here it was more ephemeral and it was unclear whether the entitlement existed and there was a question of eligibility for the nationality. The Kuwaiti authorities were entitled to take care, and it was a different question if a claimant had got other documentation when it would be a question of them being entitled to Kuwaiti nationality and being denied. If it was said that there was a persecutory denial of the nationality right, that was the only way in which the appellant could succeed on the basis of ST, and a small number of people had negotiated the hurdles, so it was not a targeting of the Bidoon in Kuwait but there was a need for a case-by-case approach. There was no need to show all members of the group would be persecuted in the same way and race was clearly a Convention reason here and particular social group also.

65. With regard to the question of flagrant breach of human rights of the Bidoon, Mr Deller argued that this needed a careful reading of what that meant. Clearly Article 3 was non-derogable. It was more complicated where a signatory was entitled to derogate, and the breach occurred in a non-signatory state. In such a case there was a very high threshold as explained in **EM (Lebanon)**. It was necessary to assess what exactly was going on in order to see if the line was crossed. It was a question of the resolution of claims to nationality which had to be looked at. It was a civil right but subject to domestic laws and international treaties. The United Kingdom, for example, could deny nationality if the circumstances permitted. It could also confiscate a passport subject to domestic remedies. It was a question of whether there was an established claim to citizenship being denied or a path which was being slowly dealt with and the question of why it was slow. It could be a question of not dedicating the necessary resources at a speed to satisfy critics of the system. It was helpful to have the views of the receiving state where possible.
66. With regard to breaches of Articles 3, 6 and 14 as contended, Mr Deller said it was a question of a discriminatory basis and the reasons for the asylum claim indicated Article 14 as a reason why the others were engaged. If it was a flagrant denial it was discriminatory, but it was necessary to look at what specific qualified rights were relied on. It should be questioned whether the argument could be said to be made out in general. If a flagrant denial was claimed then the existence of exceptions was always problematic for that submission. There was the question whether the documented Bidoon were still treated in a discriminatory manner. If they could not do anything then it would be a question of being potentially documented as another matter. **RT (Zimbabwe) [2012] UKSC 38** was clear as to what was being protected, the right to hold or not hold a political opinion. The existence of Bidoon roots per se would always have to be established and it was always a matter of individual circumstances which would lead to an appeal being won or lost in a Bidoon asylum claim. It was not entirely an intra-Kuwait problem. The **RT** issue could arise on the facts with people who obtained passports but there was a question of investigating an individual's mindset and acting discreetly could have a different context in different situations. If it was said that their obtaining of passports was a criminal action then that would have to be shown to be a crime. It should be questioned why a person would not be a national of the country for which they had a passport, but where they had a Bidoon heritage. The existence of such a subgroup, some of whom had acted against their will, could be an **RT** point. It could not be said that all Kuwaiti Bidoon were refugees. There were exceptions and they needed to be explored.
67. The Tribunal would need to address the question of the interaction between the Kuwaiti government and the Bidoon and the registered/documented point.
68. As regards the individual appeal, Mr Deller stated that there were some changes from the original situation. The relationship with the brother was

now accepted and the relevance of his asylum claim to the factual basis of the appellant's claim and his history also. There were evidential conflicts in this case. There were conflicts between the family's stories and the appellant's story. To a large extent the case was about what had happened to the appellant's husband in Kuwait. There was a significant attempt to point to the Bidoon/Iraqi collaboration issue and the question of the population's view and the expert's evidence on this. The initial arrest and conviction were for collaboration with a foreign power and then there was the later release and the narrative of subsequent re-arrests and detention. The Red Cross documentation helped the appellant's account and was relevant to her own treatment. Her documentation helped and hindered. In the skeleton at [2] reliance was placed on this to show her Bidoon roots and it could be said to be difficult to come by if she was Bidoon. There were credibility issues concerning her husband and the chronology of his time in prison. It was only the findings of fact of the judge that were set aside.

69. There was the question of the son's visa application and him saying the appellant was in Iraq at some point which all created doubts. The burden was on the appellant.
70. The history of the region was relevant. Borders had suddenly been created and a question arose as to what links the Bidoon had with the part of the region which was now a nation. There was some evidence of removal to a no-man's land between Iraq and Kuwait. The evidence mentioning Iraq had to be put into its proper context in respect of the appellant's claim. It was a question of whether the Bidoon preferred to be Bidoon. Origin in the particular territory did not presume that a person belonged there. It was necessary to consider the possibility that the appellant was Iraqi. It could be that the positive factors in her favour helped to decide it. There were concerns about parts of the evidence and there were gaps in the evidence. The Red Cross documents concerning the husband's imprisonment needed to be considered and were relevant to the husband's position and the question of whether any risk to him extended to her on the basis of shared characteristics or their relationship.
71. The appeal should be dismissed.
72. In his submissions Mr Ali commented that he and Mr Deller agreed that the undocumented Bidoon in Kuwait, subject to exceptions, should succeed in their asylum claims. The country guidance in **BA** and **HE** was still good.
73. With regard to the background evidence, the OGN provided a fairly accurate summary, and the expert concurred with it. Reference was made in particular to paragraphs 3.6.10 and 3.6.12-16 and also 3.6.23-26. This evidence showed institutional and societal discrimination and emphasised the across-the-board denial of basic rights. It was argued that there was a real distinction between being documented and being registered. If a person were documented then they had access to rights which foreign guest workers and most Kuwaitis would have. It was the case that some Bidoon had been

naturalised as citizens, though the numbers had not been published, it seemed there had been a few hundred a year in the last few years. They were seen as foreigners. They may have been there since the 1950s or 1960s or even earlier, and had previously been treated as citizens. The civil ID card was crucial. “Documented” and “undocumented” were not synonyms for the “registered” and “unregistered” distinction. Some had obtained false passports. In the light of the Arab Spring they had been singled out by the government.

74. The US State Department Report also provided a useful summary. The issue of the eleven privileges had been put to the expert by Mr Deller and in fact it was said that they had not been implemented but had been suspended. There were over 80,000 citizenship applications by Bidoon still pending.
75. Mr Ali attached significance to the Human Rights Watch report “Prisoners of the Past: Kuwaiti Bidoon and the Burden of Statelessness” 12th June 2011 at tab 5 of volume 2. He also attached weight to the Refugees International Report of 6 March 2012 at the volume 3 tab 3. This endorsed what was said in the Amnesty International and Human Rights Watch Reports. Only documented Bidoon were given an ID card, either as a foreign guest worker or as a Kuwaiti. If not, a person was undocumented. If a person was not registered with the Bidoon committee then they were probably in the worst situation.
76. The **RT (Zimbabwe)** principle was clear. If a person was required to deny something fundamental to their identity/existence to avoid persecution, then this was unacceptable. It was the appellant’s case that all the Bidoon in Kuwait were persecuted. Documentation or citizenship was the only route to escape.
77. On the **ST** point Mr Ali disagreed with Mr Deller. There were 100,000 people who were citizens before 1990. It was a dictatorship. There was an expectation of progress, but it was opaque, as could be seen in the OGN, and the process was stationary. Wasta, or influence, helped as anywhere. There was no serious process, and **ST** applied. The Bidoon had done what they were required to do but the Kuwaiti government could not care less. What had been done had been done to appease international criticism. It was clear that there was a brisk trade in false documents which people were forced to engage in, and it would be remarkable if this were not a criminal offence. The Tribunal in **IK (Turkey) [2004] UKIAT 00312** had not accepted that a person should lie in order to escape persecution. In order to access rights the process denied fundamental rights.
78. The amendment to the grounds to enable Mr Ali to argue breach of Article 6 outright or in conjunction with Article 14 had been accepted and this was a sequential argument, and if the Tribunal agreed with the primary argument it could be academic, but if it did not agree with the primary position it was of relevance. A flagrant breach was the same thing as a nullification of rights and the evidence about this was as set out. There was no access to those

rights as a matter of law, not practice, and it had been legislated. The facts spoke for themselves. Mr Ali referred in particular to paragraph 28 of his skeleton. The courts could not review the Bidoon committee's findings and this amounted to a flagrant breach. This linked into the Article 13 issue. There was no remedy, let alone an effective one. It was a question of breach of basic rights which affected an entire class of people in Kuwait including children whose mothers were Kuwaiti if their fathers were Bidoon. The Article 14 argument was a subset of this argument.

79. With regard to the points made by Mr Deller concerning the lack of speed of the regime, it was a matter of self-interest and a dictatorship. It was a question of whether the deliberate decision by the Kuwaiti government to a class of around 100,000 people to deny rights was a flagrant one. There would be an exception if on the facts of the case a person was able, via *wasta* etc., to manage. The evidential burden was on the Secretary of State to discharge. The factual presumption must be that they were all refugees as had been found in the case of Kosovans earlier in **Gashi [1996] UKIAT 13695**. There was therefore a legal precedent.
80. With regard to the particular situation of the appellant, reliance was placed on what was said in the skeleton about this. She had been born in the 1960s when circumstances were different and she was entitled to such documents as birth certificates and vaccination certificates, and her documents should therefore be seen in that context. The Tribunal had heard the appellant and her brother-in-law give evidence. The Red Cross had visited her husband in prison. That was the starting point. He was and is in Kuwait. His brother had accepted that he had lied to the Immigration Judge and the explanations had been accepted. It had not been a voluntary decision to leave. The relationship of the brother was accepted and he was a refugee. Her son had tried to come to the United Kingdom from Italy. People said a lot of things to get to the United Kingdom. The evidence should be taken as a whole. The negatives were peripheral and the core was credible and the burden had been discharged. If the Tribunal agreed then the appellant would win whether he was documented or not. The appeal should be allowed.
81. We reserved our determination.

Discussion

82. The above evidence reveals the existence of distinct categories of people in Kuwait. Leaving aside foreign nationals working temporarily in Kuwait, permanent residents consist first of those with civil ID cards who are citizens and are entitled to all the benefits that flow from that, including the right to purchase property, legally register as an employee and enrol in most school or educational institutions free, and also be entitled to free healthcare. Their numbers will include former Bidoon who have been granted citizenship.
83. The second category consists of Bidoon who hold security cards (also known as "green cards"). These are people who registered, presumably with the

Bidoon committee, between 1996 and 2000. It is said in the HRW report that most Bidoon carry security cards. The document is not proof of ID, and does not make it clear on its face to what the holder is entitled. However, it can be seen from the evidence that Bidoon who hold security cards are theoretically issued travel documents in the form of “temporary passports”, though in practice this is only for the purpose of travel for education, medical treatment or religious pilgrimage and typically remain valid only for the trip cited in the individual’s application. In addition, according to the HRW report, many Bidoon children attend private schools which provide Arabic language instruction and serve primarily Bidoon students, and though there are annual fees ranging between the equivalent of US \$860 to \$1,550 per child, and parents pay extra for textbooks and uniforms, in 2004 the government established a charitable fund to pay the educational expenses of children in need which pays primary and second school fees for many Bidoon students as well as expatriate children who wish to attend Arabic language schools. Those schools are inferior to government schools, and the fund does not meet the needs of all children, and several families interviewed stated that they received funding for some but not all of their children. Only Bidoon students with Kuwaiti citizen mothers may enrol in universities. This broadly accords with the evidence of Mr Shiblak as recorded at paragraphs 97 and 98 above. In general we found his evidence, both written and oral, to be helpful.

84. As regards healthcare, Kuwaiti citizens receive free healthcare and Bidoon with security cards can purchase health insurance through the government system which charges a fee of the equivalent of US \$21 for a year of coverage or \$39 for two years, with small charges for visits to government clinics and hospital visits. Several Bidoon interviewed said that this insurance does not cover all prescription medication and medical testing. Nor does it cover certain types of surgery.
85. As regards employment, though under Kuwaiti law only those with legal resident or citizen status can legally hold employment (so not including green card holders), the government has made limited exceptions and allowed Bidoon to hold certain government jobs, and in addition it is reported that the government has relaxed enforcement of laws prohibiting private sector employees from hiring illegal residents and inspections of private companies for Bidoon employees have become rare. Accordingly, private employers have become increasingly comfortable about hiring stateless people despite their lack of legal status in recent years, but it remains the case that the Bidoon have no legal protection for their right to work.
86. We have mentioned above the HRW report of 22 January 2012, in which it is said that many Bidoon have confirmed receiving many of the benefits promised by the government including free healthcare, free education at private schools primarily serving Bidoon children and birth, marriage and death certificates and improved access to jobs, but there are ongoing problems in accessing employment and increased difficulty in receiving passports. It is unclear quite how that impacts on the evidence we have set

out above. It must, however, be recorded as a step in the right direction, as must the naturalisation procedures set out at paragraph 107 above.

87. The third category consists of the unregistered Bidoon, as they are described in the HRW report, i.e. those who are not able to renew their security cards or people who have never obtained security cards. This group of people are denied all the benefits that are available to those with security cards, as set out above. Thus they cannot obtain passports of any kind, they are not provided with any educational funding and they are denied access to government clinics and hospitals altogether. Thus they are not even able to purchase low-cost health insurance through the government-administered program. Their only recourse is to seeking medical services from expensive private hospitals, which is clearly extremely problematic given their limited ability to find work.
88. It is important that we are clear about the relevant terminology. The Tribunal in **BA** distinguished between undocumented Bidoon, i.e. those who did not have civil identification documents, and documented Bidoon, i.e. those who had been documented as citizens of other countries, mainly Saudi Arabia and Syria. This documentation enabled them to obtain residency permits and other official papers.
89. In **HE** the Tribunal noted the distinction drawn in **BA**, and expressed the view that “civil identification documents” would include residence permits and other official papers issued by the Kuwaiti authorities, but would not include attendance cards, such as that held by **HE**, since it specified that it was not an identity card, or birth certificate where the parents were not Kuwaiti nationals or legal residents.
90. The March 2011 COIR, at paragraphs 19.32-19.34 draws a distinction between documented Bidoon (those registered with the Executive Committee for Illegal Residents (the Bidoon Committee) by June 2000) and undocumented Bidoon (those not so registered).
91. Human Rights Watch (HRW) in their report of 12 June 2011: “Prisoners of the Past: Kuwaiti Bidun and the Burden of Statelessness” employ the categorisation of registered and unregistered Bidoon. This essentially mirrors the categorisation in the COIR, as Human Rights Watch categorises the registered Bidoon as those who registered with the Bidoon Committee between 1996 and 2000 as stateless residents of Kuwait with claims to Kuwaiti nationality. In effect, according to HRW, from registration flows access to a security card, and from possession of a security card flows potential access to civil documents such as birth, marriage and death certificates and passports. It is clear from this report, which we have found to be especially helpful, that registration is the gateway to relevant and potentially significant documents. However, since it is clear that a person may be refused renewal of their security card, and the evidence shows that possession of a security card is crucial for access to the range of benefits set out at paragraphs 38-45 above, we conclude that the distinction between

documented and undocumented Bidoon remains the point of significance, albeit on the basis of possession of a security card rather than “civil identification documents” as held in HE.

92. The situation of the undocumented Bidoon on the basis of this more recent evidence appears to be essentially similar to that of the undocumented Bidoon as assessed in HE in terms of the significant lack of access to basic benefits and rights.
93. According to Article 9 of the Qualification Directive:

“1. Acts of persecution within the meaning of article 1A of the Geneva Convention must:

- (a) be sufficiently serious by their nature or repetition as to constitute a severe violation of basic human rights, in particular the rights from which derogation cannot be made under Article 15(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms; or
- (b) be an accumulation of various measures, including violations of human rights which is sufficiently severe as to affect an individual in a similar manner as mentioned in (a).

For discrimination to amount to persecution, measures must involve persistent and serious ill-treatment without just cause, and 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 their life intolerable if they were to return. Though, as we have set out above, we accept that that remains the position with the undocumented Bidoon, we do not consider that the evidence we have set out above shows that the position for the documented Bidoon is materially different from the situation considered in HE. We do not consider that the evidence concerning them, discriminatory though in a number of respects their situation is, is such as to cross the threshold and amount to persecution.

94. In this regard we bear in mind the points made in his skeleton by Mr Ali about RT (Zimbabwe) [2012] UKSC 38. He argues at paragraph 26 of his supplementary skeleton argument that in most cases the Bidoon in Kuwait have to commit criminal offences by obtaining and using false passports and holding themselves as citizens of one state or another in order to become documented Bidoon. We do not think the evidence goes this far. There is reference in the HRW report at page 13 of that report to “some unregistered Bidoon” telling HRW that in the past they had found ways to obtain passports from other countries, and at some point suspected or discovered these passports were counterfeit, and when they presented counterfeit passports and found they could not renew them, they discovered that their files with the Bidoon committee had been closed and they could not renew their security cards. The fact that some Bidoon in the past had obtained

passports from other countries cannot properly be extrapolated into a conclusion that in most cases the Bidoon have to commit criminal offences by obtaining and using false passports.

95. We do not consider that the evidence shows, as contended in Mr Ali's skeleton, that on the basis of the principles in **RT** the Bidoon, in order to avoid persecution and inhuman and/or degrading treatment, have to deny who they are, that is to say their race and/or their Kuwaiti nationality or their particular social group. In contrast, it seems clear that many Bidoon actively seek to establish or to have accepted their Kuwaiti nationality and the argument that most Bidoon seek to establish Kuwaiti nationality by obtaining and using false passports in significant numbers is not made out.
96. Mr Ali also places reliance on what was said by the Tribunal in **ST (ethnic Eritrean - nationality - return) Ethiopia CG [2011] UKUT 252 (IAC)**. He places particular reliance on what was said at paragraphs 75 to 81 in the context of Article 15(2) of the Universal Declaration of Human Rights and the impact on a person of arbitrary deprivation of nationality. Mr Ali argues that a refusal to determine the nationality applications of the Bidoon is persecution because of the consequences for them as a direct consequence of this failure.
97. **ST** was concerned, among other things, with the deprivation of the appellant's ID card and the issue of the right to return in the context of an arbitrary deprivation of nationality. It is unclear what the position of the Kuwaiti authorities is concerning return of a documented Bidoon, and it is also important to bear in mind that the authorities' position is that significant numbers of the Bidoon in fact have nationalities of other countries, and that investigations are ongoing, albeit very slowly, to establish their backgrounds and to decide whether or not they are entitled to nationality. The limit of 200 people a year being considered in this context is hardly indicative of an urgent process, but we do not find anything in **ST** that particularly assists the argument that has been made in this regard. Clearly, as we have set above, the documented Bidoon are entitled to a range of what might be described as benefits which, although they fall some way short of the entitlements of citizens, are nevertheless such as in our view not to amount to persecution. The fact that they are denied citizenship does not, in our view, amount to persecution, particularly bearing in mind also the tortuous but nevertheless ongoing process of evaluation carried out by the Bidoon committee.
98. Nor do we consider that the evidence identifies flagrant breaches of protected rights as identified in **EM (Lebanon) v Secretary of State for the Home Department [2008] UKHL 64**. We have noted in passing breaches of various international conventions that are part and parcel of the discriminatory attitude towards the Bidoon in Kuwait, but we do not consider that, as was said in **EM**, that the right "will be completely denied or nullified in the destination country". We therefore do not accept this argument.

99. Nor do we accept that the refusal of the Kuwaiti state to determine the nationality of Bidoon other than in a very slow way amounts to a flagrant and disproportionate breach of their right to enjoy their rights to family life and private life under Article 8 and have their civil rights determined under Article 6(1) of the European Convention on Human Rights. We do not consider that the discrimination that exists is such as to give rise to a breach of their Article 13 and Article 14 rights for the reasons set out above.
100. Our conclusion is therefore that the evidence relating to the documented Bidoon does not show that they are at real risk of persecution or breach of their protected human rights. The undocumented Bidoon, however, do face a real risk of persecution and breach of their human rights.
101. The distinction made in previous country guidance in respect of Kuwaiti Bidoon, between those who are documented and those who are undocumented, is maintained, but the relevant crucial document, from possession of which a range of benefits depends, is the security card, rather than the "civil identification documents" referred to in the previous country guidance in HE [2006] UKAIT 00051. To that extent the guidance in HE is amended.
102. The evidence relating to the documented Bidoon does not show them to be at real risk of persecution or breach of their protected human rights.
103. The evidence concerning the undocumented Bidoon does show them to face a real risk of persecution or breach of their protected human rights.
104. It must be assumed that Bidoon who did not register between 1996 and 2000, and hence did not obtain security cards, are as a consequence undocumented Bidoon, though this must be seen in the context of the evidence that most Bidoon carry security cards.
105. We turn to the facts of the appeal before us. We have set out the oral evidence of the appellant and her brother-in-law A in an appendix to this determination.
106. At the screening interview the appellant said that she had never had her own national passport as Kuwait did not give Bidoon passports. She had travelled on a passport provided by the agent. She did not look inside it except very briefly. The agent had taken away the passport. A boarding pass in someone else's name was found in her bag but she said she did not know anything about it but thought that the agent might have put it there. She produced birth certificates for herself and her husband, both of which had blank spaces under the heading "nationality". The fact that they had birth certificates, which might seem surprising in light of some of the background evidence we have set out, is explained by Mr Shiblak on the basis that they would have been obtained at a time when the Bidoon were entitled to birth certificates, the position having hardened subsequently. In the screening interview she said that her husband was currently in jail in Kuwait. At interview she said

that he had been in prison since 2005. He had been imprisoned for distributing leaflets collected from different stores about promotions or sales in the stores and he was imprisoned on this account because he was Bidoon and not entitled to work. He had been in the navy previously as at that time Bidoon were allowed to work. He had first been arrested in 1991 and he was accused of being aligned with the Iraqi military but after a year in prison he was released. That was because they had announced forgiveness for prisoners at that time. He was next arrested in 1997 when he was illegally working, selling sheep, and released after six months. His next arrest was the arrest in 2005. He said that he had never been politically involved.

107. She said she had never had a green card in Kuwait. She thought that probably her husband had applied for one for her though she had not witnessed him doing this.
108. As regards the leaflets for which her husband was arrested she said that the government denied the leaflets were about shops and said it was something against the government. She herself had been taken and questioned in 2007 in a raid but released on the same day and had not been questioned or arrested subsequently. A number of family members had provided from their savings the US \$10,000 which was the agent's fee for bringing her to the United Kingdom.
109. At interview the appellant was also asked about family in the United Kingdom and named her brother S, who had come to the United Kingdom in 2006 and claimed and was granted asylum on the basis of being Bidoon.
110. She was also asked about the sponsorship by her brother-in-law A of K in 2010 and said she did not know anything about this. She accepted that K was her son. She thought his visa application had been declined. She had earlier been asked whether any of her children had applied to come to the United Kingdom and said no, and she said that according to her knowledge none of them applied. She did not recall which country K had applied for. She said that their friends applied for her son but it failed. She did not know when the application was made but it was made to help him leave the country. She had asked them to make this application. She thought that a birth certificate had been used when his application was made but it was different from hers in that it was a casual paper with details rather than being documented by the government. She had been given her son's birth certificate by the midwife. She was referred to the visa application form of the person who had applied who had said his mother was born in Iraq. She said it was not true.
111. The determination in the appeal of S is to be found in the bundle. The judge noted discrepancies in his evidence, albeit not major ones, and accepted on the lower standard that he had established that he was an undocumented Bidoon.

112. Also in the bundle is the determination in the case of A. He was found credible and it was accepted that he had been persecuted in the past on account of his Bidoon ethnicity and had been deported from Kuwait along with a number of family members. The hearing of his appeal took place in July 2004. At paragraph 6 of the determination it is noted that he confirmed that his brother S was still in prison in Kuwait and they would contact him by telephone when the prison allowed this. He had last spoken to him a year ago. He said that S's wife and children were in Basra.
113. In his witness statement A confirmed that the appellant is an undocumented Bidoon. He referred to an incident in 2011 when he went to Kuwait to see his brother S (the appellant's husband) and stayed at the time at his brother K's house. S had been released a couple of weeks earlier but while A was in Kuwait there was a raid on K's house and K and S were taken by the state security service that day, K was questioned and released the next day but S was returned to the central prison. A also confirmed that he had sponsored K, his brother's son, to come to the United Kingdom from Italy. He said that in terms of K describing himself as Iraqi, although he himself did not know about this at the time he found out about it subsequently and K told him an agent had advised him to say he was Iraqi so as to obtain a visa.
114. In her oral evidence the appellant said that she had been sent the marriage certificate which she had now produced by her sister in Kuwait. She also produced a census document with translation and also a receipt for that document and a document entitled "certificate of good manners and well behaviour" concerning her husband S who, it was said, had been taken into custody on 5 April 1991 and was sent to prison on 5 April 2011 having been indicted of collaboration with a foreign state. The certificate had been given on his request because he was of good manners and well behaved. He had been sent that document by A. She confirmed that her husband had been arrested on three occasions, in 1991, 1997 and 2005. He had again been released for less than a month in 2011 and then re-arrested until now. She was referred to the reference in the certificate to the 1991 matter being a question of collaboration with a foreign state and stood by her answers at interview.
115. When A gave oral evidence before us he accepted that it was not the case that the appellant and the children had been in Basra as she had refused to be deported there because her husband was in prison in Kuwait and hence she was returned. As regards why he had said his brother was in prison in 2005, as recorded at paragraph 6 of his determination, he said that his brother was in prison then but he did not accurately know the dates when his brother was in prison and released as his brother had been in prison many times and the period of time was quite long. When we asked A about his confirmation that in 2004 S was in prison he said it was his understanding that he could be in prison at that time but he was not very sure, though he accepted that when he had said that at his hearing it was close to being contemporaneous.

116. It will be clear therefore that there are some unexplained discrepancies in the evidence, such as regards the periods of time when the appellant's husband was in prison, the claim by her son when he applied to enter the United Kingdom that he was Iraqi, the varying accounts of the appellant being in Basra and the curious and anomalous nature of the good conduct certificate of the appellant's husband. On the other hand there are the preserved findings that S is the appellant's full brother and is an undocumented Bidoon. Such documents as the appellant has produced do not show that she is documented, relating as they do to a period when, as we have noted above, we accept that documentation of that kind was made available to the Bidoon. Any damage to the appellant's credibility due to the discrepancies we have identified does not go to refute her claim to be unregistered, nor to her claim to be from Kuwait, not Iraq. Consequently, in accordance with our conclusions on the background evidence set out above, we find that as an undocumented Bidoon she succeeds in her claim under the Refugee Convention and under Article 3 of the Human Rights Convention. Her appeal is therefore allowed on both those bases.

Signed

Date

Upper Tribunal Judge Allen

APPENDIX

1. In her oral evidence the appellant was referred to her statement signed on 8 January 2013 and confirmed that the contents had been explained to her and she was happy to adopt it as her evidence. Likewise with respect to her earlier statement of 14 April 2011, the contents had been explained to her and she was happy to adopt it as her evidence today.
2. With regard to the most recent statement, she was referred to paragraph 10 and was asked what she meant by saying that her husband was currently being treated badly. She said that she had meant to say that he was very tired in the prison. The question was repeated and she did not understand it. Mr Ali then asked her what bad treatment had she been told he was experiencing and she said he was tortured or hit by the staff in the prison and due to his mental situation he was very tired.
3. She was referred next to the documents, copies of which were to be found at pages 116 to 129 of the bundle. It was confirmed that the expert had seen the copies but not the originals. With regard to the birth certificate at page 116, she had obtained this from the Kuwaiti state. The document at page 164, for which at that stage no translation had been provided, was her marriage certificate. She was asked why it had arrived more recently than the other documents and she said that it was because she left some of the original documents in Kuwait. She had been sent it by her sister in Kuwait through DHL. Her sister was NF. It was put to her that the DHL envelope referred to NM and she said that this was her sister's full name and M was her surname.
4. She was shown the document at page 124-5 (census document with translation) and said it was included with the other documents sent to her and the same was true of the documents at page 126-7 (census receipt with translation). The document at page 128-9 (certificate with translation) had been sent to her by her brother-in-law A.
5. When cross-examined by Mr Deller the witness was asked whether she had any more information about her son K's asylum application in Italy and she said no but she knew he was in Italy. He was waiting for papers there and was working.
6. It was put to her that in her statement she had said that she thought it might have been said that she was in Iraq when K made his visa application and said she was from Iraq. It was put to her that she had said the agent told him to say that and she was asked how she knew what the agent had said had to be done. The appellant had some difficulty in understanding the question but when it was repeated she said it was through a telephone call and he (her son) had explained everything to her later on.
7. She was referred to paragraphs 35 to 37 of the refusal letter, and it was put to her that it was strange that in the screening interview she had not said she had been questioned by the authorities and she said she had not been asked.

She was asked whether she had not thought it was important to her case that she personally had been of interest and she said no. She knew later that it was very important but at that time she was very tired.

8. She was asked whether she could confirm when her husband was arrested and she asked whether this was a reference to the first or second time. She was asked to name each time if there had been more than one. She said that 1991 was the first time and the second time was 1997, for seven months and then in 2005 and the last time was in 2011 when he had been released for less than a month and then rearrested until now.
9. She was asked whether she knew what the last re-arrest was for, and said she did not know: she had been in the United Kingdom. She agreed that she had been speaking to him on the telephone and after arresting him they had contacted her on the telephone. She said she knew he had been arrested but the reasons and other relevant information she had no idea about.
10. She agreed that she had provided the documents at page 128 and 129 which was a Ministry of Interior General Administration of Rehabilitation Institutes Central Prison Administration Certificate of Good Manners and Well Behaviour in her husband's name together with its translation. It was put to her that this document said that the 1991 matter was a question of collaboration with a foreign state which she agreed. It was put to her that the account she had given of his 2005 arrest was that he was arrested for handing out leaflets or promotional material. She was referred to her answers at questions 15 and 16 at interview and said that she stood by that. She also stood by her answer to question 21. He had been released after a year in prison and had then been arrested in 1997 for illegal working. He had been working as a shepherd in the market then.
11. Mr Ali had no questions on re-examination.
12. We had a few questions for the appellant. She agreed that A was her brother-in-law and that he had come to the United Kingdom in 2003. He had knowledge of her husband. She was asked how he had knowledge of her husband's position and said as he was his brother so he had known a lot of things about him. She was asked whether it was correct for A when he gave evidence to the court in 2004 to say that her husband was in prison in 2003 and she said no, not in 2003, and she had no idea why he said that. She had never lived in Basra. With regard to A having told the court that she and the children were in Basra when her husband was in prison, she said actually she had not gone to Basra. She had been supposed to be deported there with her children but it had not happened as her husband was not with her. She had never been to Basra.
13. There was no re-examination.
14. The next witness was A, the appellant's husband's brother. He was referred to his statement dated 19 April 2011. He was aware of the contents which

had been explained to him in Arabic and was happy to adopt it for today's hearing.

15. He was referred to the evidence he had given in his appeal hearing in 2004 when he had said, as recorded at paragraph 6 of the judge's determination, that he confirmed that his brother S was still in prison in Kuwait, that he himself was last in Kuwait on 16 March 1993 and was able to contact S by telephone and the prison allowed it. He last spoke to him about a year ago when S's wife and children were in Basra. He did not maintain that that was true. He had been deported together with his brothers to Basra, but as regards the appellant and the children they had refused to accept her so she was returned because she refused to be deported to Basra as her husband was in prison in Kuwait. Because of her refusal she was returned. He was asked whether he had said this in 2004 and had spoken to his brother in 2003 a year previously. He said that he remembered he contacted his brother on the telephone but could not remember whether he was in prison then. It was read to him what was said at paragraph 6 of the determination and he said his brother was in the prison in 2005. He was asked why then he had given the impression recorded and said that since he had left Kuwait there was no connection between them, but when he entered the United Kingdom he started to communicate with his brothers. That was why he did not accurately know the dates when his brother S was in prison and released, as his brother had been in prison many times and the period of time was quite long.
16. He was referred to the documents at pages 60 to 63 of the first bundle and was asked how he got them and said he got them through the British Red Cross. He had a case with them in order to track the situation of his brother. As regards the two emails at page 166 and how they were generated, he said this was also through the British Red Cross. He had contacted them and asked them for these specific documents and they had referred him to the Amnesty organisation for whom they were an agent, and they had contacted his brother in Kuwait. They had gone to Kuwait to meet him but were not allowed to. They had done their best but were unsuccessful. Then they had contacted him and told him they were not able to see him and he had asked them to see his other brother K in Kuwait as he had more information than the witness did about S's case.
17. With regard to paragraph 7 of his statement, the reference to meeting his brother in Kuwait in 2011, he had asked him how he had been treated in prison and he had said he told him he had been tortured frequently at different times, specifically by hitting. A group of people would come into the cell and torture him and other prisoners. He was asked whether S had said why they were doing this and he said it was because they were Bidoon, or according to the case they had been arrested for. He was asked whether the Kuwaiti authorities told S any details of the offence for which they had arrested him and he said that as S had been arrested many times, once because of collaborating with the Iraqi government. On the last time they accused him of distributing specific leaflets against the government while

distributing sales and promotions and job leaflets. It was on the information that he was an anti-government agent.

18. He was referred to the document at page 128 of tab 2 of bundle 1. This was the Certificate of Good Manners and Well Behaviour referred to above at paragraph 10. He recognised it from the last time he was in Kuwait. S had been released from the prison and he had met him. He was released on 8 March 2011 and rearrested on 2 April. He had been arrested from their home, that is to say the home of their brother K. He had obtained this document via K. K had applied to get it from the prison and that was how he had obtained it.
19. He agreed that it seemed from the wording of the document that it had been requested by Salem, but he himself had received it via K. He had needed it to hand it to the British Red Cross organisation.
20. Mr Ali referred to documents that the witness had with him and it was agreed that there was no need to produce documents to prove the visits to Kuwait, which was accepted.
21. The witness was asked when he had provided the certificate to the representatives and said he could not remember. He had given it to the appellant and she had given it to the solicitors. He could not remember accurately. He had obtained it in 2011. He was asked whether it was before or after the hearing before Judge Grant in May 2011 and he said to his understanding it was after that date. He remembered very well that he had shown the judge his passport with the Red Cross documents and they were the only documents he had shown.
22. He was asked about the new document at 64A tab 1 (a tracing enquiry letter from the Home Office) and how he got it and he said he got it via the British Red Cross.
23. When cross-examined by Mr Deller the witness said that he left Kuwait to claim asylum on 16 March 1993. He had been deported to Iraq. His evidence was that S was meant to be deported at the same time. He was asked to clarify his evidence as to why the appellant and the children were in Iraq. He said that as they were Bidoon they had all been got together in a specific area to be alone over there and this place was on the border between Kuwait and Iraq, a sort of no-man's land. They were there for about three days but the appellant and her children refused to go there with them as her husband was not with her. He had been there with his mother and brother. During that time his father was in Iraq. They had been ordered to go inside Iraq. His brother had brought a sponsor who helped them to get inside Iraq. This was his brother M. He had a total of three brothers and five sisters. His brothers were all in Europe now except for K in Kuwait and S in prison there. He and the other brother M had left Kuwait on 16 March 1993.

24. He had been there when the Kuwaiti authorities raided their house in April 2011. They had been sitting in the reception area of K's house when suddenly they were attacked by a group from the authorities who captured S specifically and beat him and took K also. They had tried to capture and arrest him but he had told them he was a British citizen. They had released K after two days but kept S until now. He had left the house and stayed in a hotel and came back to the United Kingdom.
25. He was asked whether, before he established his British identity, he had had any idea as to what the raid was about and said he had no idea. Later on they had known that the authorities were after S specifically. He was asked what they were accusing him of then and said until now there had been no specific reason and that was why they had contacted Amnesty International to find out what he was accused of. The authorities who detained S had been lightly armed.
26. In re-examination he was asked where M was and said he was in Canada where he was married to a Canadian lady having followed her there. Three of his sisters were in Canada, one in Germany and one in Norway and were all naturalised.
27. We referred the witness back to what he had said in 2004 at the hearing that S was still in prison in Kuwait in 2003. He said that that was probably for a very short time even for a few weeks. His period in prison was not long and his telephone contact was always with K and only rarely with S. With regard to him being recorded as having said that he spoke to S when the prison allowed he said that was true but he was in prison for a short period of time, but he was not very sure of that. It was suggested that he was sure in 2004 and he said he had contacted S by telephone in 2003 and he was in prison for a short time. As to what S was in prison for, he said he did not remember exactly but he could be arrested just by walking in the streets as a Bidoon and it was probably for a short time. As to why he had confirmed in 2004 that S was still in prison, he said that it was to his understanding that he could be in the prison at that time but he was not very sure. He had been eighteen years away from his brothers without any connection or communicating with them and it was hard to remember dates. He agreed, however, that what he had said in 2004 was near-contemporaneous to events in 2003.
28. Mr Ali had no further questions.