REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO. 71687/99

AT AUCKLAND

Before:	S Joe (Chairperson) P Millar (Member)
Counsel for Appellant:	R Chambers
Representative for NZIS:	No Appearance
Date of Hearing:	24 September 1999
Date of Decision:	28 September 1999

DECISION

This is an appeal against the decision of the Refugee Status Branch of the New Zealand Immigration Service (RSB), declining the grant of refugee status to the appellant, a stateless Bedoon from Kuwait.

INTRODUCTION

The appellant arrived in New Zealand on 31 August 1999 together with his wife and seven children and applied for refugee status upon his arrival at Auckland airport. His wife and children are detailed as being included in his refugee application. The appellant was detained under the provisions of section 128 of the Immigration Act 1987 and subsequently held in custody at Mount Eden prison. He was interviewed by the RSB in respect of his application on 7 September 1999 and by letter dated 15 September 1999 the application was declined. It is from this decision that the appellant presently appeals.

Prior to the commencement of the appeal hearing, counsel submitted to the Authority a casebook containing written submissions and comprehensive country

information in support of the appellant's appeal. Further original documents such as the appellant's marriage certificate, birth certificates relating to the appellant, his wife and children, and the appellant's driver's licence which refer to his status as a non-Kuwaiti were also submitted in support of this appeal. The Authority has considered this material in determining this appeal.

BACKGROUND

The appellant is a married man in his early thirties from Sl, Kuwait. The appellant's wife is a national of Kuwait. The couple have seven children from this marriage. The appellant claims that he is a Bedoon (that is, one without nationality) whose family roots originate from Iran.

The word "Bedoon' is from the Arabic phrase "bedoon jinsiyya", literally meaning either "without nationality" or "without citizenship." The term Bedoon refers to the residents in Kuwait, many of them Shi'I, who for one reason or another are without nationality (see *The Bedoons of Kuwait: citizens without citizenship* New York: Human Rights Watch, August 1995, 14-15: "Origins of the Bedoons"). In very general terms when Kuwait regulated its citizenship on the eve of independence in 1961, the authorities attempted to register all residents and identify citizens. Prior to 1985, Kuwait authorities treated Bedoons as citizens and distinguished them only from other foreign residents and other groups of stateless residents such as Palestinians from Gaza who were regulated by legislation regulating foreign residence and employment. There was no attempt to apply those laws to Bedoons. Nevertheless, although the Bedoons continued to be treated as citizens, their applications for citizenship were mostly shelved (ibid, 14-15). After decades of treating Bedoons as citizens and repeatedly promising to confer formal citizenship on them, the Kuwaiti government reversed its practice and declared them to be illegal residents in 1985. Policies adopted by the government since 1985 have resulted in widespread dislocation and extreme hardship for the Bedoon and this has intensified since the government was restored to power following the victory of the Desert Storm Campaign. Since 1985 the Government has eliminated the Bedoon from the census rolls, discontinued their access to government jobs and free education, and sought to deport many Bedoon (see United States Department of State *Country Reports on Human Rights Practices for 1998: Kuwait* (April 1999), Volume II, p1737).

THE APPELLANT'S CASE

The appellant's father, now deceased, was the first generation of his family to be born in Kuwait around 1929. He applied for Kuwaiti citizenship on four different occasions between 1967 and 1980, all of which were declined. The appellant's mother, similarly a Bedoon, remains living in Kuwait with the appellant's sisters.

The appellant has five brothers and four sisters. The whereabouts of his brother H since being arrested by the Kuwait security police in 1991 remain unknown. The remainder of the appellant's brothers live in SI, Kuwait city. Some of his brothers have small pick up trucks but since the Iraqi invasion were unable to obtain drivers' licences due to their status as Bedoon. Similarly, none of the appellant's siblings have been able to obtain employment given further measures taken by the Kuwaiti authorities immediately following Liberation, which prohibited Bedoon from being employed and effectively deprived them of their civil rights. In this regard, the appellant stated that Bedoons who did manage to earn their living clandestinely, even on a casual and sporadic basis, did so at the risk of being arrested and charged with violating the labour and residence laws, resulting in arbitrary detention or even deportation to Iraq or Iran. On rare occasions the appellant stated that a few of his brothers did take this risk by going out on occasion in their small pick-up trucks to earn money as taxi drivers even though they did not have any valid drivers licences. The appellant's family therefore barely manage to eke out an existence and are dependent upon the charity of others, including the appellant's wife's family.

The appellant described SI, the residential area where he and his family originally lived, as being a poor area mainly comprising Bedoon. Even after the appellant married his wife, a Kuwait national, he continued to live with his wife in SI with his mother and siblings. The appellant stated that there are four main exits which can be used to go to the city from SI, and this was also where ad-hoc checkpoints would be set up by the authorities. Checkpoints were established by a variety of authorities, either the traffic, local police, state security or intelligence officers. Invariably those Bedoon who were arrested due to their lack of a drivers licence or a passport (which only Kuwait nationals were given), would be sent to the police station and sometimes transferred to be dealt with by the state security authorities.

In the event of the latter, the appellant claims, most Bedoon detainees never returned.

The appellant claimed that as the situation stood in 1985 prior to the Iraqi invasion, the Kuwait authorities had prohibited Bedoons from being engaged in private employment and from obtaining a driver's licence (unless employed in the police or armed forces). In such circumstances, the appellant considered that, given his Bedoon status, becoming a policeman was the easiest way for him to be gainfully employed. The appellant stated that such applications by Bedoons were not automatically accepted and that in his case it was simply a matter of luck that his application was in fact successful. He was required, however, to undertake a six month training course as opposed to the standard two month course required of Kuwaiti nationals. In any event, in May 1985 the appellant was accepted by the Ministry of the Interior to join the police force. Initially he held no rank and was assigned ordinary police duties.

In 1986 the appellant was also able to enrol at a university in Kuwait and commence studies towards a Bachelors degree in Islamic (Shari'a) Law. Ordinarily, employees were required to obtain leave from their employers in order to be admitted to the university. The appellant, knowing that as a Bedoon it was likely that he would not be given clearance to attend university studies, did not declare himself to be employed and was therefore able to bypass this requirement.

Although the appellant considers himself fortunate to have been allowed to work as a policeman, he claimed that as a Bedoon he was not treated on an equal basis to his Kuwaiti counterparts within the police. Bedoon policemen were given more dangerous assignments, such as dealing with fires and guarding criminals, and because they did not have any alternative employment opportunities, Bedoon policemen could not afford to disregard the orders they were given, however undesirable, nor refuse to perform the work that was delegated to them. Bedoon police officers were often subject to minor assaults and could be easily dismissed in such circumstances for what could be regarded as minor transgressions. In this regard, the appellant gave evidence that around 1988 he was detained for some 10 days in a military prison and subject to a reduction in salary for having attended at a fire to which he was assigned marginally late. The appellant claimed that his area manager made specific reference to the fact that he was a Bedoon and was accordingly punished more severely than a Kuwait police officer would have been in similar circumstances. The appellant considered that more allowances were

made for Kuwait police officers who were late for their work, as they would usually receive a warning only and were able to leave their work place early if they chose.

At the time of the Iraqi invasion on 2 August 1990, the appellant was on leave and therefore did not participate in the war, although he did help on a local level within his neighbourhood distributing bread. Subsequently, however, the appellant, his wife and children fled to Saudi Arabia. When they arrived at the Saudi Arabia border, the appellant was told by border guards that he had to go to a camp run on behalf of the Kuwait government. The appellant met up with one of his commanding officers who was also head of the Kuwait Committee who warned him against declaring himself to be a Bedoon. The appellant was told that Bedoons were being allocated to a special camp in a desert area remote from the other camps and with less facilities and that he would have to be a Kuwaiti to re-enter Kuwait.

The relevance of the appellant and his family disguising the fact that they were Bedoon can best be understood having regard to country information which states that most of the Bedoons who attempted to return to Kuwait following Liberation were blocked at the Kuwait borders. Thousands of Bedoon were refused admission into Kuwait, were stranded for eight months at a displaced persons camp in the middle of the desert at al-Abdali border post. Thousands of Bedoon have tried to return to Kuwait but were turned back at the border (see *The Bedoons of Kuwait: citizens without citizenship* New York: Human Rights Watch, August 1995 at 26-27). Further, it is clear that the Kuwait government did not wish to see the return of the Bedoon who departed Kuwait during the Gulf War, and frequently delayed or denied issuing them entry visas (see DIRB response to Information Request KWT19840.3 *Information on whether the Kuwaiti government would deny re-entry to a Bedoon* (31 March 1995)). In the case of the appellant and his wife and children, with the help of the Kuwait officer referred, they remained undetected in a Kuwait camp, and following Liberation, on 26 February 1991, were able to return to Kuwait without any difficulty.

The appellant's brother, H, was not so fortunate. He was arrested by Kuwait authorities at a checkpoint while attempting to return to Kuwait from Saudi Arabia. The appellant stated that given that H had no personal identification with which to identify himself, he believed that the police must have become suspicious and, given that he was a Bedoon, may have suspected that he was an Iraqi or allied to them. The appellant told the Authority that most of those Bedoon who were

arrested at that time were arrested for similar reasons. As a result of enquiries made by H's wife and children, they were informed that H had been sent to the National Security department. After a lengthy absence, H's wife and family went to further enquire as to his whereabouts in 1992 but were subsequently arrested. The appellant does not know what happened to H and his family or whether they may have been deported, as many Bedoon were at that time, to Iraq or elsewhere.

The appellant stated that his nephew, (his elder brother's son) was also arrested by the police following Liberation in 1991 in Kuwait city. His nephew was having a party with his friends outside his house when police set up a checkpoint nearby. He was arrested having been found without any identification papers and taken to the state security office. The appellant stated that until now, they did not know what happened to him or whether he had been deported but, in any event, his family were too afraid to approach the authorities about him.

In 1993-1994 the appellant's elder brother E was stopped by traffic officers at a checkpoint and detained in prison for two weeks given that he had no identity documentation except for an expired driver's licence. He was assaulted and maltreated by prison guards during this detention period and suffered high blood pressure, a condition which required medical attention. His car was also impounded for six months. The appellant claimed that his brother was able to be released due to his old age and the fact that he had been apprehended by the traffic police, a law enforcement unit distinct from the state security authorities.

Following Liberation, anti-Bedoon policies carried out by the Kuwait authorities prohibited the appellant, like thousands of other Bedoon, from resuming employment within the police force (For further information see *The Bedoons of Kuwait: citizens without citizenship* New York: Human Rights Watch (August 1995) 29 "The Bedoons and the Military"). The appellant remained unemployed from February 1991 until September 1993 and he and his family were supported through the assistance of his wife's brother who had a government job as a telephone operator. Similarly, following Liberation, the appellant, like all other Bedoons, was prevented from re-enrolling at university to complete his studies in 1991. However he was allowed to do so in 1992 and managed to compete his degree without any further problems.

It was the appellant's evidence that prior to the Iraqi invasion, the Bedoon were essentially the backbone of the police and military authorities and tended to be

more highly educated whereas the majority of Kuwaiti policemen did not hold university degrees. Given that Bedoon were prevented from working in 1991 and 1992, by 1993 there was a pressing need for some of the vacancies to be filled by Bedoon officers to keep their departments functioning. The appellant stated that it was a matter of luck as to who was re-hired as so many Bedoon were seeking to join. The appellant's application to be re-hired was initially declined, but subsequently was approved in September 1995 after his wife approached the area manager for assistance in his readmission on the basis that her brother was a prisoner of war. The appellant considers that the fact that his wife was a Kuwait national and her brother a martyr were factors which, when combined, resulted in the authorities reconsidering his application. The appellant was nevertheless made to sign a contract accepting that his term of employment could be terminated at any time at will, that he forfeited any rights and that he must obey all responsibilities and tasks assigned to him. The appellant claimed that he was obliged to accept the employment contract on these terms simply to be able to support his family financially. His salary was less than that paid to Kuwaiti police officers and the appellant was not eligible to receive the additional allowances normally accorded to those married and with children. The appellant stated that he was mainly sent to attend at assignments in the industrial area of Kuwait city, where fires frequently occurred and on other occasions attended to clerical assignments.

In March 1995, special committees were established by the Ministry of the Interior to more pro-actively target the Bedoon. Orders that were given by these committees were to be implemented by the police authorities and were wide ranging. Examples of orders as alleged by the appellant included orders to detain any Bedoon driver found driving without a driver's licence and to confiscate their car, detain any Bedoon found without identification (who would then be regarded as an illegal resident) and to shoot to kill if any Bedoon suspected of illegal activity attempted to escape or flee. With regards to the latter, the appellant claimed that if a Bedoon fled, such an act would now be construed by the police, under orders of these committees, as sufficient evidence that the Bedoon was a suspected criminal. Officers were given the added incentive of being awarded two to three days leave for every Bedoon arrested.

The appellant claimed that he was asked by one of the officers on this committee, whom the appellant considered had a personal dislike of Bedoons, to join. The appellant accounted for his being invited to join to the fact that the Kuwait

government's main goal after Liberation was to reduce the number of Bedoon in the country as much as they could and therefore, if he had felt obliged to join, this would have further served their objectives in creating conflict and further difficulties for the Bedoon. The appellant declined to join and as a result was reported on to the state security authorities. In contrast, although some of the Kuwait police officers had similarly refused to join, no disciplinary measures were taken against them. Generally speaking, the appellant claimed that there were sufficient Kuwait policemen who were willing to volunteer to join these committees in view of the incentives offered.

Subsequently the appellant was arrested by two state security policemen and taken from the police station to a room at the offices of the state security department. His hands were tied behind his back and his eyes blindfolded as he walked up the floors of the office building. He was verbally abused as he walked, hit in the face and kicked. Subsequently the appellant was interrogated for some six hours by three state security officers. He was asked why he was not co-operating with the committees, whether he was trying to defend the Bedoon and told that he was himself a Bedoon, and would stay and die a Bedoon. The appellant responded by saying that although he had been asked to join such a committee but that he nevertheless had the right to decline their invitation, as other Kuwaiti police officers had done similarly.

Prior to being released, with his eyes still blindfolded, the appellant was made to sign four copies of a document, the contents of which are unknown, and prints of his fingerprints were also taken. The appellant was then told to return to the headquarters of the state security office (i.e. the city police station) in his civilian clothes with all of his original documents such as his marriage certificate, birth certificates of he and his children, and his degree certificate. He was warned that if he did not return as directed, that they knew how to bring him back to the office, either dead or alive and that if he did not, that he might meet the same fate as his brother, presumably H. He was then taken downstairs underground, and then beaten by a man with a stick. After being told not to forget to return on time, he was taken out of the building to the main entrance of the state security gate where his blindfold was removed. He was then hit on the back causing him to fall down the stairs and released.

Subsequently the appellant returned home and told his wife and her family what had happened. The appellant's brother-in-law advised against his returning to the

state security headquarters and that he should instead change addresses as quickly as possible. The appellant, his wife and children therefore initially moved to stay with his wife's family in Sb, some 30 to 40 kilometres away from their home district, Sl. After some two to three days, the appellant learned from his former neighbour that in view of his failure to present himself to the state security headquarters, state security officials came to his house looking for him. The appellant was told that they initially knocked on the front door of his house and upon receiving no reply, broke through the windows.

Upon receiving this news, the appellant, his wife and children moved again, finding a small house to rent in Sb. They were able to afford rental accommodation with the financial support of the appellant's brother-in-law. Whereas in Sl the majority of residents were Bedoon, in Sb the majority of residents were Kuwaiti. The appellant's mother and sisters similarly changed their address in fear of the authorities.

At around the end of 1995 or the beginning of 1996, wary that the state security authorities would be able to locate them, the appellant moved with his family to F, a further five to seven kilometres away. The appellant stated that his brother-in-law had also told them that he felt that he was also "being watched" and also advised them to move.

Since fleeing Sl with his wife and children, the appellant and his family's living was supported largely through the efforts of his brother-in-law. In 1996 his brother-in-law bought the appellant a taxi (which was registered in the brother-in-law's name) which the appellant could use to earn his living as a taxi driver. He warned the appellant against venturing outside F in case he was stopped by the police at a security checkpoint. The appellant claimed that despite having a car, he did not have a driver's licence and therefore ran the risk of being stopped at any security checkpoint that was suddenly set up. He stated that he needed to be very careful and that most days he did not go out in his taxi to avoid the risk of being detected. He would drive for a couple of days and would then stay at home for the next five or six days and if he saw from the traffic that there was a security checkpoint ahead, he would park his car and walk away leaving the car behind. The appellant also told the Authority that he often contacted his brother-in-law in such situations, who would then collect the taxi for him.

The appellant similarly stated that he would not leave the house even for a walk unless sure that there were no officials about and even then, if he felt uneasy, simply returned home. The appellant in such circumstances managed to avoid the security officials.

On one occasion in 1996, the registration plates of the taxi were confiscated by the authorities and his brother-in-law as the registered owner was required to report to their office to claim it. His brother-in-law admitted that he was the driver of the abandoned car and on this basis the authorities retained the registration plates for a further six months. During this time, in the absence of any means of even attempting to earn an income, the appellant stated that his brother-in-law tried to give them as much financial assistance as possible.

In 1996/1997 the appellant attended a short course (of two to three months duration) in computing and upon completion obtained an Advanced Certificate in Computing. The appellant stated that the Institute at which he attended his classes was only a short distance from his home in F and therefore he managed to avoid such difficulties as traversing checkpoints in travelling to and from that Institute.

It was the appellant's evidence that he had previously decided to leave Kuwait in 1995 but that he did not have the means to do so at that time. While he had applied for travel documentation and received the necessary approval from the Ministry of the Interior, he did not receive the final approval required from the state security authorities. The appellant had similarly lodged an application for residence in Canada in 1998 but this application was unsuccessful. Around late 1998 and early 1999, however, the appellant's brother-in-law informed the appellant that he was going to get married and therefore could not support the appellant and his family financially any more. Another of the appellant's brother-in-laws also wanted to get married. It was therefore suggested to the appellant that he try to leave the country.

To this end the appellant's brother-in-law obtained a loan to help fund the appellant's family's airline tickets and sold the taxi he had bought for the appellant's use. The appellant stated that his wife sold other items such as her jewellery and furniture. The appellant gave evidence that an officer friend whom he knew before the Iraqi invasion, and who was aware of the appellant's circumstances, agreed to use his influence and obtain the necessary travel

documentation with which he and his family could leave Kuwait. This officer was due to retire in six months time and therefore was willing to assume the risk of assisting him. In doing so, he obtained the travel documents for the appellant without seeking the final security clearance from the state security authorities.

In June 1999, after a month's delay, the appellant's wife obtained her Kuwait passport with which she could leave the country. In this regard the appellant stated that the ordinary processing time for such an application for a Kuwait national was two to three days, and he therefore believed that the fact that she was married to a Bedoon must have accounted for the delay. The appellant and his children also received their travel documentation (which detailed their correct names and details) from the appellant's officer friend which allowed them to travel to Syria. On 6 August 1999, the appellant, together with his wife and family, left Kuwait for Syria. After some time the appellant and his family were able to obtain tickets through an agent in Syria to travel to New Zealand and accordingly arrived in this country on 31 August 1999.

Since their arrival in New Zealand the appellant's wife has had contact with her family in Kuwait. According to information received from his in-laws, the appellant stated that the officer who helped obtain travel documentation has since been detained by the state security authorities and is under investigation and that the state security officials are likely now aware of the fact of the appellant's departure and that it was by illegal means. The appellant's wife's attempts since her arrival in New Zealand to obtain facsimile copies of documents from her family in Kuwait to submit in support of the appellant's refugee case is also presumed to have come to their attention. The appellant's wife was also warned by her family that if she returned to Kuwait she may also be confronted with the problem of her nationality being withdrawn. In this regard, the appellant told the Authority that there were eight subcategories of the nationality status accorded to Kuwaitis, the highest level affording to the holder full citizenship rights such as the right to vote and work, and the lowest level which applied to Bedoons, where they had no such rights and could not contact the authorities if a family member was detained. The appellant's wife was recognised as having level seven status. The appellant's wife was similarly told that the Kuwait authorities were continuing its trend which began in late 1997 or early 1998 to pressure those who were married to Bedoons to divorce. The appellant claimed that around this time whenever his wife visited government departments or even when visiting her children's schools, she would

be asked by the authorities why she continued to be married to a Bedoon and why she had not divorced him.

It is also relevant to record that the appellant received, inter alia, from his wife's family by facsimile, a copy of a Ministerial Resolution issued in 1996 which "released" the appellant from service in the police force "for the public good".

The appellant expressed a number of fears as regards his return to Kuwait. Essentially the appellant stated that as a Bedoon he is regarded by the authorities as an illegal resident in Kuwait, and therefore subject to arbitrary arrest and deportation. The appellant had also been wanted by the state security authorities since his failure to report to them with all of his documentation in 1995. It was also likely in view of his officer friend now under investigation that the state security authorities would also be aware of the illegal manner in which he exited Kuwait. Aggravating factors over and above his Bedoon status are his adverse family background, originating from his brother H's detention in 1991, and the fact that the appellant was formerly a police officer who had left Kuwait in suspicious circumstances. Moreover, assuming that he was not arbitrarily detained in relation to any of these matters, the appellant nevertheless considered that the way in which Bedoons were treated in Kuwait by the government authorities and their lack of any civil rights also gave rise to his having a well-founded fear of persecution.

The appellant also claimed that he feared that his children would also be persecuted upon their return to Kuwait. In this regard he stated that Bedoons faced discrimination when trying to register the births of their children and could not obtain for them Civilian Cards. In November 1985 the appellant's wife gave birth to their first child, a son, and subsequently in 1986 and 1989 respectively, gave birth to two further children, both daughters. While in Saudi Arabia the appellant's wife gave birth to a daughter in 1990. In the case of his daughter born in 1990 in Saudi Arabia, the Kuwait authorities did not register the fact of her birth, but merely issued her with an age registration card. Following their return to Kuwait, the couple had another son who was born in August 1992, a daughter in 1994 and finally their seventh child was born in 1997.

The process by which registrations of Bedoon births is carried out in Kuwait was outlined by the appellant in considerable detail to the Authority. In general terms it was far more cumbersome and bureaucratic than the process governing Kuwaiti nationals, requiring the father to personally present himself at almost each stage of

the process, and much paperwork which resulted in lengthy delays. In contrast, Kuwait nationals can receive birth certificates within three days and did not need to make any personal appointments. Moreover following registration, Bedoon children were denied the issuance of Civilian Cards and were instead merely allocated Civil Numbers, which were of statistical value only. Civilian Cards replaced Identity Cards around 1984-1985 and could be issued to a Kuwait national or a non-Kuwaiti who is a passport holder and entitled the holder such rights as the right to work, to travel within Kuwait, and apply for a driving licence. Civilian Cards could also be used as an Identity Card. Bedoons were issued only with birth certificates and any educational certificates. The appellant considered this to be another example of the way in which the Kuwait authorities were systematically working towards the marginalisation of the Bedoons. Given that his children had no Civilian Cards, the appellant similarly feared that if they returned to Kuwait they would continue to be deprived of their civil rights because of this.

Further, although they were able to receive schooling prior to leaving Kuwait, due to the fact of the wife's Kuwaiti citizenship, the appellant understood that new legislation passed in 1998 or 1999, which was published in all Kuwait newspapers, now prevented his children from continuing. Under this legislation, Bedoon Committees were to liaise with other government departments to issue Clearance Certificates certifying that a Bedoon did not have a criminal record or have any pending matters against them and these Certificates were required to be submitted to the school at which any Bedoon children sought enrolment. The appellant claimed that because Bedoons had to personally attend to obtain the Clearance Certificate, they ran the risk of being arbitrarily detained due to their illegal residence status.

Counsel submitted that the appellant's fear of persecution was by reason of his recorded status as a non-Kuwaiti, his inability to be acknowledged as a citizen and national of Kuwait, the land of his birth, his status as a Bedoon or 'stateless person', the discrimination suffered by him at the hands of the Kuwait Government because he is Bedoon and the maltreatment suffered by him at the hands of security officers as agents of the Government of Kuwait. Counsel concluded therefore in his submissions that the appellant would suffer persecution owing to his well founded fear by reason of his lack of nationality and his membership of the social group known as Bedoon and as such will be unable to effectively receive the protection of the Kuwaiti government.

THE ISSUES

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

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

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

1. Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to the country of nationality?

2. If the answer is yes, is there a Convention reason for that persecution?

ASSESSMENT OF THE APPELLANT'S CASE

We first consider the issue of the appellant's credibility.

The Authority found the appellant to be a frank and forthcoming. His evidence was detailed, more so than the written statement that was initially submitted in support of his refugee claim, a matter which the Authority attributes to his circumstances in detention with minimal access to his counsel at Mount Eden prison. Apart from a few minor peripheral discrepancies, the appellant's claim as articulated in his initial written statement, containing the essential elements of his refugee claim, his interview before the RSB and that given before this Authority was materially consistent and further supported by country information submitted, regarding the treatment of Bedoons in Kuwait. The Authority is therefore prepared to accept the appellant's account as genuine and credible.

The Authority has previously recognised in its decision Refugee Appeal No. 1/92 (30 April 1992) 77-78 that, in terms of paragraph 2 of Article 1A of the Refugee Convention, those who have a well founded fear of persecution for a Convention reason potentially fall into three categories, namely those who have a single nationality, those who have more than one nationality, and those who have no

nationality at all (ie those who are stateless). In each case, they must satisfy the criteria of a well founded fear of persecution for a Convention ground in terms of the Refugee Convention. In the case of a person who has no nationality, that person must be outside the country "of his former habitual residence" and must be unable or, owing to the well-founded fear, be unwilling to return to it.

The Authority went on to state in that case that if the nationality of a candidate for refugeehood is indeterminable, it would be best in keeping with the Convention, as well as with the humanitarian spirit underlying the instrument, to give the applicant the benefit of the doubt. This would mean in some cases considering him a national of his country of origin (the country where he fears persecution) but should it, for some reason, be more favourable for a person of indeterminable national status to be considered a stateless person, he should be considered as such (supra at 81).

On the particular facts of this case, the Authority is prepared to accept counsel's submission based on the country information available, that the appellant, a Bedoon, is a stateless person. Indeed this would the most favourable view of the facts of his refugee claim in any event. For if he were to be regarded as a Kuwaiti national for the purposes of this appeal, the appellant would arguably not be in fear of the Kuwait authorities as the persecution he claims to fear stems from his very *lack* of nationality. Accordingly the Authority will treat the appellant as a stateless person. Further the Authority in Refugee Appeal 1/92 (30 April 1992) 83, adopted for the purposes of that case the definition of a "stateless person" in Article 1 of the 1954 Convention Relating to the Status of Stateless Persons, namely:

> "For the purpose of this Convention, the term "stateless person" means a person who is not considered as a national by any State under the operation of its law."

The Authority similarly adopts this definition for the purposes of this refugee appeal.

While the Authority accepts that statelessness in itself does not give rise to a claim to refugee status, the Authority has previously held that the "nationality" ground of persecution in Article 1A(2) does include statelessness. That is, persecution *for reasons of nationality* is also understood to include persecution for *lack* of nationality (supra at 84-54).

Further, according to the preparatory work of the 1951 Refugee Convention, the country of former habitual residence in terms of Article 1A is "the country in which he had resided and where he had suffered or fears he would suffer persecution if he returned" (see Grahl-Madsen, The Status of Refugees in International Law Volume 1 160; Handbook on Procedures and Criteria for Determining Refugee Status paragraph 193; Stenberg, Non-expulsion and Non-refoulement 78, as cited with approval by the Authority in Refugee Appeal No. 1/92 (30 April 1992) 86). The Authority finds in this case that the appellant's country of former habitual residence within the meaning of paragraph 2 of Article 1A of the Refugee Convention is Kuwait.

As to whether the appellant has a right of return or will be accepted for return to Kuwait, counsel submits that there is a real chance in light of the country information which documents the Kuwait authorities' attempts to drive out the Bedoon from Kuwait that the appellant would not be accepted for return to Kuwait. There is a suggestion that the Kuwaiti authorities have allowed many Bedoon to get no-return visas on their laissez-passers, which permit the holder to leave the country but clearly state that the holder cannot re-enter Kuwait (see for example, DIRB response to Information Request KWT 18837.e *Information whether Bedoons are issued passports*. (8 December 1994); DIRB response to information request KWT 19840.e *Information on whether the Kuwaiti government would deny re-entry to a Bedoon* (31 March 1995)). According to the 1995 Human Rights Watch report, Bedoon are no longer issued laissez-passers by the government unless they accept a no-return exit visa stamped on their travel document, effectively leaving them stranded outside Kuwait (see for example *The Bedoons of Kuwait: citizens without citizenship* New York: Human Rights Watch, (August 1995) 36). Further, in The United States Department of State *Country Reports on Human Rights Practices for 1998: Kuwait Volume II* (April 1999) at 1737 the Government does not routinely issue travel documents to Bedoon, and if Bedoon travel abroad, they risk being barred from returning to the country unless they receive advance permission from the immigration authorities. Marriages pose special hardships because the offspring of male Bedoon inherit the father's undetermined legal status.

The appellant gave evidence at the appeal hearing that the travel documents with which he and his family used to leave Kuwait were not stamped with a no-return exit visa, and that they merely specified that they were valid documents for travel to Syria and identified that the appellant was a non-Kuwaiti. The Authority is left

with a residual doubt as to whether the appellant would be refused entry by the Kuwaiti authorities in light of this evidence and in the context of the country information cited. In such a situation, the Authority is prepared to give the appellant the benefit of the doubt and in doing so, this case falls to be decided on the assumption that the appellant does indeed have a right to return to Kuwait or can, at the very least, be refouled to that country, and upon the further assumption that he has no such right to return to or be refouled to any other country.

Addressing therefore the issues as framed, the Authority will now consider whether there is a real chance that he would be persecuted if he returned to Kuwait.

Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to the country of nationality?

1. As a preliminary matter, the Authority notes that there is some country information to suggest that in limited cases Bedoon are being naturalized in Kuwait, although this is being done on a piecemeal basis and in very small numbers. The United States Department of State *Country Reports on Human Rights Practices for 1998: Kuwait Volume II* (April 1999) *1737-1738* states that in May 1998 the National Assembly passed a government-sponsored bill that resulted in the naturalization of 732 Bedoon (a tiny fraction of the country's approximately 114,000 Bedoon population) on the basis that the individuals concerned were adults (i.e. over 21 years) when their fathers were naturalized. The bill also confers citizenship on the minor grandchildren of naturalized citizens provided that the child's father is deceased. Further piecemeal legislation has been proposed that, if passed, would lead to the naturalization of an additional 10,000 Bedoon, but there has been no significant progress in regards to this issue (ibid, 1738).

   The Authority cannot confidently say that the appellant would, in light of this most recent information be eligible to acquire Kuwait citizenship and therefore will proceed to consider the well-foundedness of his fear on the basis of his Bedoon status.

2. There is clear country information documenting the fact that the Kuwaiti government appears to be pursuing an attempt to expel the Bedoon population from Kuwait. After Liberation, the Bedoon community were placed under a cloud of suspicion and threat of expulsion and Bedoons

were deemed ineligible for residency permits because they could not produce foreign passports (see *The Bedoons of Kuwait: citizens without citizenship* (supra at 34)).

The appellant failed to report as required to the state security authorities in 1995 after having been ordered to return in civilian clothing with his original documents, circumstances which would appear to indicate an intention that the appellant was about to be arbitrarily detained or possibly even deported. According to The United States Department of State *Country Reports on Human Rights Practices for 1998: Kuwait Volume II* (April 1999) *1731,* the Government may expel noncitizens (including Bedoon) if it considers them security risks or "foreigners" if they are unable to obtain or renew work or residency permits. With respect to the latter, Bedoon essentially remain in detention because their stateless condition makes the execution of a deportation order impossible (ibid, 1731). There is therefore a real chance, in the Authority's view, that should he now return to Kuwait, the appellant as a Bedoon could be arbitrarily detained for a variety of reasons (including his failure to report as required, the unauthorised nature of his departure from Kuwait, or just generally due to his illegal residence status as a Bedoon) in violation of article 9 of the 1966 International Covenant on Civil and Political Rights.

3. These matters aside, the Authority further accepts from the country information available that the Kuwait government practises a system of institutionalised discrimination against the Bedoon. Since 1985 they have been declared to be illegal residents and as a result are vulnerable to harassment and exploitation. These policies have intensified since the Liberation of Kuwait. Since 1985 the Government has eliminated the Bedoon from the census rolls, discontinued their access to government jobs and free education, and sought to deport many Bedoon (ibid, at 1737). Bedoons face difficulties finding employment as they have been dismissed from most government services, and private businesses have also been told not to re-hire Bedoons. This loss of income has had a severe impact on Bedoons as they are not entitled to welfare (see *The Bedoons of Kuwait: citizens without citizenship* New York: Human Rights Watch (August 1995) 34, 37). The Bedoon today live in abject poverty and are not entitled to welfare. Having been denied employment and other sources of income, most Bedoons live in squalid slums threatened with eviction from their

homes. Many have exhausted their limited savings and are living on charitable donations, which provide them with little more than subsistence levels of existence - in a land enjoying one of the highest standards of living in the world (ibid, 1). Some work informally driving water trucks or taxis, or street vending, though this exposed them to arrests and fines (ibid, 37).

The appellant conceded before the Authority that compared to other Bedoons, he and his family were able to eke out some form of an existence largely at the charity of his brother-in-law whom, according to the appellant's evidence which we accept, can no longer continue to provide them with such support. Save for the years 1991 and 1992, the appellant had been gainfully employed as a police officer, albeit at a lower salary to Kuwait policemen until 1995, when he was detained by the state security authorities for refusing to join the specialist Bedoon committee. As a consequence, the appellant struggled to provide for his family while in hiding until he was able to leave Kuwait. The Authority considers both on the facts and in light of the country information that there is a real chance that the appellant would continue to be unemployed if he returned to Kuwait and that such a substantial deprivation of the appellant's right to earn his living when considered cumulatively together with the other measures which the Authority accepts there is a real chance of occurring, constitutes persecutory treatment. Thus, aside from the risks of arbitrary and indefinite detention referred in paragraph 2 above, there is a real chance, in the Authority's view, that restrictions on the appellant's social and economic rights would continue to operate against him if he now returned to Kuwait. These include the right to work (article 6) and the right to an adequate standard of living (article 11) enshrined in the 1966 International Covenant on Economic, Social and Cultural Rights.

4. As for the appellant's evidence regarding recent legislation as to the issuance of Clearance Certificates and moves to pressure Kuwait nationals to divorce their Bedoon partners, the Authority has not found any country information to corroborate this aspect of his claim. As stated, the Authority does accept the general proposition, however, that the Kuwait government has for many years institutionalised a systematic form of discrimination against the Bedoon in an effort to drive them out of the country. Such measures applied against the appellant would undoubtedly also impact on his wife and children and there is a real chance that as a by-product of such

measures family separations and further hardship would occur for them. In this regard, the Authority observes from the country information that children of Kuwaiti mothers married to Bedoon are also considered by the Kuwait authorities to be Bedoon, similarly rendering them stateless and similarly subjecting them to the same restrictions to their civil and political status.

Persecution is defined as the sustained or systemic denial of basic or core human rights or the denial of human dignity in any key way (see Hathaway *The Law of Refugee Status* (1991) 104, 108 as adopted in Refugee Appeal No. 2039/93 (12 February 1996) at 15). Taking all of these matters into consideration, the Authority finds that there is a real chance if the appellant returned to Kuwait that he would be subject to the discriminatory measures referred to above which, when considered cumulatively together with the precariousness of his existence in such circumstances, constitutes persecutory treatment. Accordingly the Authority finds that the appellant's fear of persecution is well-founded.

2. If the answer is yes, is there a Convention reason for that persecution?

Turning now to the issue of Convention ground, as previously stated, the Authority has accepted that persecution *for reasons of nationality* is also understood to include persecution for *lack* of nationality (see discussion in Refugee Appeal No. 1/92 (30 April 1992) 84-85). The Authority therefore finds that the appellant's fear of persecution in the present case would be for reason of the Convention ground of nationality. Given this finding, it is not necessary to consider the merits of the further Convention ground advanced by counsel, namely the particular social group defined as Bedoon.

CONCLUSION

Accordingly, for the reasons given, the Authority finds the appellant is a refugee within the meaning of Article 1(A)2 of the Refugee Convention. Refugee status is granted. The appeal is allowed.

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Chairperson