



OPERATIONAL GUIDANCE NOTE

KUWAIT

CONTENTS

<u>1. Introduction</u>	1.1 – 1.
<u>2. Country assessment</u>	2.1 – 2.
<u>3. Main categories of claims</u>	3.1 – 3.7
The Bidoon	3.8 – 3.8.20
Prison Conditions	3.11 – 3.11.5
<u>4. Discretionary Leave</u>	4.1 – 4.2
<u>Minors claiming in their own right</u>	4.3
<u>Medical treatment</u>	4.4 – 4.4.7
<u>5. Returns</u>	5.1 – 5.4
<u>6. List of source documents</u>	

1. **Introduction**

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

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

http://www.homeoffice.gov.uk/rds/country_reports.html

- 1.3 Claims should be considered on an individual basis, but taking full account of the guidance contained in this document. In considering claims where the main applicant has dependent family members who are a part of his/her claim, account must be taken of the situation of all the dependent family members included in the claim in accordance with the Asylum Instruction on Article 8 ECHR. If, following consideration, a claim is to be refused, case owners should consider whether it can be certified as clearly unfounded under the case by case certification power in section 94(2) of the Nationality Immigration and Asylum Act 2002. A claim will be clearly unfounded if it is so clearly without substance that it is bound to fail.

2. **Country assessment**

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

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

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

<http://centralcontent.fco.gov.uk/resources/en/pdf/human-rights-reports/human-rights-report-2009>

3. **Main categories of claims**

- 3.1 This Section sets out the main types of asylum claim, human rights claim and Humanitarian Protection claim (whether explicit or implied) made by those entitled to reside in Kuwait. It also contains any common claims that may raise issues covered by the Asylum Instructions on Discretionary Leave. Where appropriate it provides guidance on whether or not an individual making a claim is likely to face a real risk of persecution, unlawful killing or torture or inhuman or degrading treatment/ punishment. It also provides guidance on whether or not sufficiency of protection is available in cases where the threat comes from a non-state actor; and whether or not internal relocation is an option. The law and policies on persecution, Humanitarian Protection, sufficiency of protection and internal relocation are set out in the relevant Asylum Instructions, but how these affect particular categories of claim are set out in the instructions below.

- 3.2 Each claim should be assessed to determine whether there are reasonable grounds for believing that the applicant would, if returned, face persecution for a Convention reason - i.e. due to their race, religion, nationality, membership of a particular social group or political opinion. The approach set out in *Karanakaran* should be followed when deciding how much weight to be given to the material provided in support of the claim (see the Asylum Policy Instruction on considering the protection (asylum) claim and assessing credibility).

- 3.3 If the applicant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. If the applicant qualifies for neither asylum nor Humanitarian Protection, consideration should be given as to whether he/she qualifies for Discretionary Leave, either on the basis of the particular categories detailed in Section 4 or on their individual circumstances.

- 3.4 All Asylum Instructions can be accessed via the on the Horizon intranet site. The instructions are also published externally on the Home Office internet site at:

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

- 3.5 **Actors of protection.** Caseowners must refer to the Asylum Policy Instruction on considering the protection (asylum) claim and assessing credibility. To qualify for asylum, an individual not only needs to have a fear of persecution for a Convention reason, they must also be able to demonstrate that their fear of persecution is well founded and that they are unable, or unwilling because of their fear, to avail themselves of the protection of their home country. Caseowners should also take into account whether or not the applicant has sought the protection of the authorities or the organisation controlling all or a substantial part of the State, any outcome of doing so or the reason for not doing so. Protection is generally provided when the authorities (or other organisation controlling all or a substantial part of the State) take reasonable steps to prevent the persecution or suffering of serious harm by for example operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the applicant has access to such protection.

- 3.5.1** The security services in Kuwait comprise the Army, the Police and the National Guard. The Army is responsible for external security, the Police for internal security and the National Guard for the provision of emergency and supporting duties. The Kuwait National Police number approximately 4,000 officers. They are a semi-military organisation, capable of dealing with violent disorder in addition to normal policing duties. They are directly responsible to the Emir of Kuwait through the Ministry of the Interior (MOI); over 90% of MOI heads of departments are senior police officers.¹
- 3.5.2** The National Police has several departments, including Criminal Investigation, Logistics, Traffic and Rescue, Nationality and Travel Documents, Immigration Affairs, the Department of Criminal Evidence, the General Department of Investigation and the Airport Police. There are also Special Security Forces who protect important buildings and installations. Police units are based in all major cities, but the majority are based in Kuwait City.²
- 3.5.3** The law prohibits arbitrary arrest and detention, and the government generally observes these prohibitions. There have been some reports of police arbitrarily arresting non-nationals. The police are generally considered to be effective in carrying out their core responsibilities, but corruption is sometimes reported. There are reports that the police tend to favour citizens over non-citizens, and do not always take seriously the requests of complainants, particularly foreign nationals. However, there is no evidence that the police operate with impunity, and allegations of police abuse are investigated and referred to the courts.³
- 3.5.4** In February 2011, hundreds of Bidoon people ('illegal residents') took to the streets in protest, demanding their civil and political rights, with a particular emphasis on the issue of statelessness, and claims for citizenship. According to local observers, the protesters numbered between 300 and 500 people. They reported that the protestors were primarily peaceful, although following the use of water cannons, teargas, smoke bombs and concussion grenades by the security forces, some protestors did hurl rocks at security personnel. At least 120 people were arrested and detained and approximately 30 people were treated for injuries in hospital. The Kuwaiti government has stated that people should not gather in public, notwithstanding Kuwait's commitment under international law to protect the right to peaceful assembly.⁴
- 3.5.5** **Internal Relocation.** Caseowners must refer to the Asylum Policy Instructions on both internal relocation and gender issues in the asylum claim and apply the test set out in paragraph 3390 of the Immigration Rules. It is important to note that internal relocation can be relevant in both cases of state and non-state agents of persecution, but in the main it is likely to be most relevant in the context of acts of persecution by localised non-state agents. If there is a place in the country of return where the person would not face a real risk of serious harm and they can reasonably be expected to stay there, then they will not be eligible for a grant of asylum or humanitarian protection. Both the general circumstances prevailing in that part of the country and the personal circumstances of the person concerned including any gender issues should be taken into account, but the fact that there may be technical obstacles to return, such as re-documentation problems, does not prevent internal relocation from being applied.
- 3.5.6** **The Constitution** generally allows for freedom of movement for Kuwaiti citizens, both within the country and for foreign travel. However, women and Bidoon are likely to face problems in undertaking foreign travel. In October 2009, the Constitutional Court issued and began enforcing a final ruling confirming a woman's right to obtain a passport without her husband's approval. Husbands may still request a 24 hour travel ban, which may be

¹ COIS Report, Kuwait, March 2011

² COIS Report, Kuwait, March 2011

³ USSD Human Rights report: [Kuwait 2010](#)

⁴ Human Rights Watch: [Bidun crackdown: Feb 2011](#)

extended by a court order. Some Bidoon are permitted to travel on "Article 17 passports" which are effectively temporary travel documents. Many Bidoon are unable to obtain these (see below, section 3.8).⁵

3.7 Credibility

3.7.1 This guidance is **not** designed to cover issues of credibility. Case owners will need to consider credibility issues based on all the information available to them. For guidance on credibility see the Asylum Policy Instruction on considering the protection (asylum) claim and assessing credibility. Case owners must also ensure that each asylum application has been checked against previous UK visa applications. Where an asylum application has been biometrically matched to a previous visa application, details should already be in the Home Office file. In all other cases, the case owner should satisfy themselves through CRS database checks that there is no match to a non-biometric visa. Asylum applications matched to visas should be investigated prior to the asylum interview, including obtaining the Visa Application Form (VAF) from the visa post that processed the application. Case owners must ensure that Eurodac checks are conducted in all cases, and also that appropriate checks are made to identify applicants who may have arrived via a third country.

3.8 Bidoon

3.8.1 Most applicants will apply for asylum or make a human rights claim based on ill treatment amounting to persecution at the hands of the State due to their ethnicity and undocumented status.

3.8.2 **Treatment.** The Bidoon (from the Arabic term 'bidoon jinsiya', meaning "without" as in "without citizenship") are Arabs who have residency ties to the country, some over many generations and some for shorter periods, but who lack or have failed to produce documentary evidence of their nationality. They include:

- Individuals who attempted to claim citizenship under the Nationality Law and earlier citizenship regulations and whose applications were accepted for consideration but never acted upon by the Kuwaiti authorities;
- Individuals who migrated to Kuwait from nearby countries to work and over time lost links to their country of origin, effectively losing their nationality citizenship of that country, as well as children of such migrants who failed to establish nationality in their parents' country of origin;
- Children of Bidoon parents, including notably the children of Kuwaiti mothers and Bidoon fathers;⁶

3.8.3 Most Bidoon are descended from Bedouin tribes that roamed freely across the borders of lands now designated as Kuwait, Saudi Arabia, Syria and Iraq. Most of the Bidoon had/still have legal documentation proving settlement in Kuwait prior to the establishment of the State. However, because their ancestors did not understand the importance of citizenship, were living outside the city walls or were illiterate, they did not apply for nationality. The 1959 Nationality Law defined Kuwaiti nationals as persons settled in Kuwait prior to 1920, and who had continued to reside there until the law was published. At that time, approximately one third of the population was classified as 'bidoon jinsiya'. It remains possible for individual families to include members with full citizenship, and members classified as 'bidoon jinsiya'.⁷

3.8.4 The government considers the Bidoon people to be 'illegal residents' who desire Kuwaiti citizenship, but have no legal status in Kuwait. In fact, many Bidoon families have lived in Kuwait for many generations, since or before the founding of the State of Kuwait, but failed

⁵ COIS Report, Kuwait, March 2011

⁶ 'Futures Denied' 2008 page 13: [Refugees International](#)

⁷ Refugees International: [Kuwait: Still Stalling on Statelessness 2010](#)

to apply for nationality then. They are now unable to bring citizenship claims before the courts, because the 1959 Nationality Law prohibits judicial review of these claims.⁸ The legal status of Bidoon residents remains unresolved. The exact number of Bidoon residents is unknown but is estimated to be more than 100,000. A report released in June 2007 from the Ministry of Planning put the number of Bidoon at 104,424 at the end of 2006 (the last year that the government collected these statistics). The Foreign and Commonwealth Office noted in 2010 that an estimated 100,000 Bidoon still remain in Kuwait. The government continues to actively discriminate against Bidoon in the areas of education, healthcare, employment and freedom of movement. The authorities make it difficult for Bidoon to obtain official documentation, i.e. for employment or travel, or to obtain birth certificates, marriage certificates, civil identification cards or driving licenses.⁹ Generally, most Bidoon are stateless, and are considered by the authorities to be illegally resident in Kuwait. They do not have citizenship rights and the majority live in poor conditions.^{10 11}

- 3.8.5** Citizenship is derived solely from the father in Kuwaiti law; consequently children born to citizen mothers and non-national fathers (including Bidoons) do not inherit citizenship unless the father dies, or the mother divorces her husband. Although this condition also pertains to children of Kuwaiti mothers and other non-Kuwaiti fathers, most Bidoon have in fact lived in Kuwait for many generations, unlike other non-nationals.¹² In addition, there is no clearly defined process for gaining Kuwaiti nationality.
- 3.8.6** In July 2010, the Ministry of the Interior issued a regulation allowing female citizens to sponsor their non-national children (including adult children) and husbands for residency permits. In March 2010, the National Assembly's Health and Labour Committee issued a two-month ultimatum for the Ministry of Health to issue newborn Bidoons with birth certificates. In May 2010, the Council of Ministers passed a resolution to issue birth certificates to all children of citizens married to Bidoon women. This was due to certain legal precedents (court orders) arising in 2009. However, neither the justice ministry nor the health ministry complied with the 2009 court orders or the resolution of the Council of Ministers, and the situation has not yet been resolved.¹³
- 3.8.7** Education for Bidoon children is neither free nor compulsory, although for citizen children it is free through to university level, and compulsory throughout primary and secondary level. Many Bidoon children are unable to attend school at all. A charity fund now administered by the Ministry of the Interior, the Ministry of Islamic Affairs, and the Ministry of Education, has paid private school fees for over 11,000 children since its initiation by a member of the royal family in 2003, but this only represents a small percentage of Bidoon children.¹⁴ Kuwait has ratified the UN Convention of the Rights of the Child; following this, the government declared that all children who are born in Kuwait, of *unknown* parentage are to be granted the Kuwaiti nationality. The government automatically grants citizenship to orphaned or abandoned infants, including Bidoon infants; however the number of children affected by this provision is necessarily small.¹⁵
- 3.8.8** In May 2009, the Ministry of Health passed a resolution allowing free access to government health clinics for any Bidoon child with a Kuwaiti citizen mother, although not for the children of Bidoon mothers; however, access ceases at the age of 18, whereas citizen children retain free access for life. This resolution also allows for life-long free access to healthcare clinics for Bidoons who have been deemed by the government to be disabled.¹⁶ Government spokespersons stated, in response to the Universal Periodic Review of June

⁸ Human Rights Watch: [Deliver Promised Rights Reform May 2010](#)

⁹ USSD Human Rights report: [Kuwait 2010](#)

¹⁰ COIS Report, Kuwait, March 2011

¹¹ Freedom House: [Kuwait 2010](#)

¹² COIS Report, Kuwait, March 2011

¹³ USSD Human Rights Report: [Kuwait 2010](#)

¹⁴ COIS Report, Kuwait, March 2011

¹⁵ COIS Report, Kuwait, March 2011

¹⁶ COIS Report, Kuwait, March 2011

2010¹⁷, that a number of services had been offered to illegal residents (including Bidoon) which included healthcare, education, housing and social security benefits. In addition, they have the right to gain access to the courts, and to state their opinions, although they are unlikely to be able to afford legal representation.¹⁸ However, the Kuwait Society for Human Rights stated that unlike Kuwaiti citizens, Bidoons are required to pay for medication and hospital visits, causing many to go without treatment. Bidoons are also required to pay for primary education for their children, including school fees and textbooks.¹⁹

- 3.8.9** Travel documents (historically) were not routinely issued to Bidoons so many have no means of leaving Kuwait. However, some Bidoon have been given temporary travel documents under Article 17 of the Kuwaiti Nationality law which allows the issue of a Kuwaiti travel document to any person deemed by the authorities to require it. They are often issued to Bidoons in government service travelling abroad on official business, and to their families. According to the Department of Nationality and Travel Documents, Article 17 documents may be issued to Bidoons for medical treatment outside Kuwait; for study at university overseas; or, for amendment of a Bidoon individual's legal status in Kuwait.²⁰
- 3.8.10** Article 17 documents look almost identical to Kuwaiti passports, the key difference being that they do not confer nationality on the holder. They are issued only in Kuwait and may only be renewed through the Ministry of the Interior. According to the Kuwaiti Passport Office all Kuwaiti travel documents, including Article 17 documents, allow re-entry into Kuwait as long as they are within their validity date. However the situation is not straightforward, as some Article 17 documents bear different endorsements. Holders of Article 17 documents applying for visas for travel abroad may seek a letter from the Ministry of Foreign Affairs stating that there is no objection to the applicant leaving Kuwait and that they will be re-admitted on return.²¹
- 3.8.11** Lack of legal status impacts every area of life for undocumented Bidoons. They are subject to numerous infringements of their civil and human rights. They are generally unable to obtain essential state-issued documents, such as birth certificates, marriage licenses and death certificates. This means they cannot legally own property, and their family relationships are effectively illegitimate. Those adults who do succeed in obtaining Kuwaiti ID cards have reported that the renewal process is tantamount to interrogation, and that the authorities make the process as difficult as possible. Consequently, some Bidoons resort to the use of counterfeit passports.²² Conditions for Bidoons who have been able to obtain documentation are discriminatory, although they represent some improvement on conditions for undocumented Bidoons because they are allowed to work. They tend not to have the same rights as Kuwaiti citizens, but are treated similarly to registered foreign migrant workers. They are no longer recruited into the public sector, but those who were employed earlier have been able to retain their positions. The Kuwaiti Ministry of Defence and the Police no longer recruit Bidoons, but the police still had approximately 1,700 registered Bidoon people working for them in 2007.²³
- 3.8.12** All Bidoon people are subject to various types of discrimination, but the Government has attempted to address this in some areas. However, the process required applicants to prove residency prior to 1965, and therefore still excluded the great majority of Bidoons.²⁴ Due to their lack of legal status, they have no right to work, and consequently are disproportionately affected by poverty. They are not allowed to participate in the political process; being disenfranchised they are unable to improve their conditions through political pressure, except by public protest or demonstrations. Undocumented Bidoons are

¹⁷ UN Human Rights Council [Kuwait 2010](#)

¹⁸ COIS Report, Kuwait, March 2011

¹⁹ Human Rights Watch: [Deliver Promised Rights Reform May 2010](#)

²⁰ COIS Report, Kuwait, March 2011

²¹ COIS Report, Kuwait, March 2011

²² Refugee Documentation Centre (Ireland) Compilation of sources: [Treatment of undocumented Bidoons in 2010](#)

²³ COIS Report, Kuwait, March 2011

²⁴ Minority Rights Group International: [World Directory of Minorities: Kuwait: Bidoon](#)

constantly at risk of arrest or detention on grounds of being stateless or illegal residents.²⁵ During 2009 and 2010, the government did not grant citizenship to any Bidoon, despite there being more than 80,000 applications pending in the system in December 2010.

3.8.13 Most Bidoon are unable to provide sufficient documentation establishing their nationality or residency ties to Kuwait, and the government maintains that the majority are concealing their true nationalities.²⁶ There have been a number of proposals in Kuwait's Parliament to address the civil and social rights of the Bidoon, giving them a legal status approximately equivalent to citizenship. To date, these proposals have not resulted in any positive action to improve the lot of the Bidoon.²⁷

3.6.14 Caselaw.

BA and others UKIAT [2004] 00256 CG

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

HE [2006] UKAIT 00051 CG

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

3.8.15 Conclusion Case owners must assess the credibility of the applicant and the evidence they submit in accordance with the relevant Asylum Instructions (see para 3.7.1 above). The majority of Bidoons live in what is now the State of Kuwait, but there are also Bidoons living in Saudi Arabia, Syria, Iraq and other parts of the Middle East. Accordingly, case-owners are advised that nationality issues must also form part of the consideration of such cases. Notwithstanding the acknowledged difficulties faced by Kuwaiti Bidoons in securing documentation, case owners are reminded that the possession of a forged passport is not, by itself, an indication that the applicant is in fact a Kuwaiti Bidoon. The Bidoon people have an extended tribal and familial identity which is sufficient to bring them within the meaning of the term 'race' under the 1951 Convention.

3.8.16 An asylum claim from a Kuwaiti Bidoon may be accompanied by a claim to stay in the UK on the grounds of statelessness. A stateless person is someone who is not considered as a national by any country under the operation of its law.

3.8.17 The UK is a signatory to the 1954 UN Convention Relating to the Status of Stateless Persons. The 1954 Convention is the primary international instrument that regulates the status of non-refugee stateless persons and ensures that stateless persons enjoy human rights without discrimination. The 1954 Convention does not however require signatories to grant leave to stateless persons. There is no provision in primary legislation, the

²⁵ Refugee Documentation Centre (Ireland) Compilation of sources: [Treatment of undocumented Bidoons in 2010](#)

²⁶ USSD Human Rights Report: [Kuwait 2010](#)

²⁷ Refugees International: [Kuwait: Still Stalling on Statelessness 2010](#)

Immigration Rules or UK Border Agency published policy that requires the UK Border Agency to grant leave to stateless persons on the sole basis that they are stateless.

- 3.8.18** Whilst some Bidoon have been able to make successful lives for themselves in Kuwait, others have suffered severe discrimination, and significant problems remain. For discrimination to amount to persecution, measures must involve persistent and serious ill treatment without just cause. They must be of a substantially prejudicial nature and must affect a significant part of the individual's or group's existence to the extent that it would make the individual's life intolerable if they were to return to the country in which they are likely to be persecuted. A grant of asylum will therefore be appropriate in individual cases.
- 3.8.19** Many of the Kuwaiti undocumented Bidoon will fall within that category, however a few may not and if there is strong evidence that an individual has been treated differently and would be able to rise above the general discrimination that undocumented Bidoon suffer then they should be refused asylum. Such claimants may have had access to employment, health services, and education in Kuwait.
- 3.8.20** Documented Kuwaiti Bidoon experience significantly less problems than undocumented Bidoon. Documented Bidoon still suffer discrimination as a direct result of their ethnicity, however they are able to work and to access education, health care and employment, and the discrimination is not so severe as to amount to persistent and serious ill treatment. It is therefore unlikely that a Bidoon who has documentation would be able to demonstrate that return to Kuwait would put him/her at a real risk of persecution, and a grant of asylum will therefore not be appropriate in these cases.

3.9 Prison conditions

- 3.9.1** Applicants may claim that they cannot return to Kuwait due to the fact that there is a serious risk that they will be imprisoned on return, and that prison conditions in the Kuwait are so poor as to amount to torture or inhuman treatment or punishment.
- 3.9.2** The guidance in this section is concerned solely with whether prison conditions are such that they breach Article 3 of ECHR and warrant a grant of Humanitarian Protection. If imprisonment would be for a Refugee Convention reason or in cases where for a Convention reason a prison sentence is extended above the norm, the claim should be considered as a whole but it is not necessary for prison conditions to breach Article 3 in order to justify a grant of asylum.
- 3.9.3** ***Consideration of prison conditions.*** Kuwait has a Central Prison Complex comprising three prisons: one low-security prison for men, one high-security prison for men, and one women's prison. The prison complex continued to slightly exceed its capacity of 3,200 persons. In 2010 there were 201 inmates in the women's prison, and 3,978 inmates in the men's prisons. There is also a deportation centre in Talha which is not part of the prison complex; this has a capacity of 1000 persons, and is used as a holding facility for expatriate labourers). Since the construction of new prisons for men in 2006, conditions have generally improved, although some detention centres continue to lack sufficient sanitation and sufficient medical personnel. In 2010, there were reports of security forces abusing prisoners.²⁸
- 3.9.4** In 2009 the Ministry of the Interior (MOI) gave unrestricted access to prisons, to some NGOs, including the Al-Takaful Prisoner Care Society. In July 2009, the parliamentary Human Rights Committee visited the Central Prison Complex; the chairperson of the committee expressed satisfaction that the MOI had dealt with sanitation problems and a lack of medical staff observed during earlier visits. In August 2009 the Kuwait Human Rights Society (KHRS) criticised the MOI for barring its representatives from visiting the low-security men's prison. However, in 2010, the government did not obstruct the KHRS from visiting prisons and several prisoners throughout the year. In addition, the Ministry of the Interior permitted independent monitoring of prison conditions by international human

²⁸ USSD Human Rights Report: [Kuwait 2010](#)

rights groups, the media and the International Committee of the Red Cross (ICRC). It was reported that prisoners had reasonable access to personal visitors, and were permitted religious observance. The authorities also permitted prisoners and detainees to submit complaints to judicial authorities without censorship, and to request investigation of allegations of inhumane treatment, where these were credible.²⁹

3.9.5 Conclusion. Prison conditions have improved in recent years, and conditions are unlikely to reach the Article 3 threshold. Therefore even where claimants can demonstrate a real risk of imprisonment on return to Kuwait a grant of Humanitarian Protection will not generally be appropriate. However, the individual factors of each case should be considered to determine whether detention will cause a particular individual in his particular circumstances to suffer treatment contrary to Article 3, relevant factors being the likely length of detention the likely type of detention facility and the individual's status, age, and state of health. Where in an individual case treatment does reach the Article 3 threshold a grant of Humanitarian Protection will be appropriate.

4. Discretionary Leave

4.1 Where an application for asylum and Humanitarian Protection falls to be refused there may be compelling reasons for granting Discretionary Leave (DL) to the individual concerned. (See Asylum Instructions on Discretionary Leave) Where the claim includes dependent family members consideration must also be given to the particular situation of those dependants in accordance with the Asylum Instructions on Article 8 ECHR.

4.2 With particular reference to Kuwait the types of claim which may raise the issue of whether or not it will be appropriate to grant DL are likely to fall within the following categories. Each case must be considered on its individual merits and membership of one of these groups should *not* imply an automatic grant of DL. There may be other specific circumstances related to the applicant, or dependent family members who are part of the claim, not covered by the categories below which warrant a grant of DL - see the Asylum Instructions on Discretionary Leave and on Article 8 ECHR.

4.3 Minors claiming in their own right

4.3.1 Minors claiming in their own right who have not been granted asylum or HP can only be returned where (a) they have family to return to; or (b) there are adequate reception and care arrangements. Those who cannot be returned should, if they do not qualify for leave on any more favourable grounds, be granted Discretionary Leave for a period as set out in the relevant Asylum Instructions.

4.4 Medical treatment

4.4.1 Applicants may claim they cannot return to Kuwait due to a lack of specific medical treatment. See the IDI on Medical Treatment which sets out in detail the requirements for Article 3 and/or 8 to be engaged.

4.4.2 Please see the COI Report for Kuwait, March 2011, for more detailed information regarding the availability of medical treatment in Kuwait.

4.4.3 Kuwaiti healthcare is based on a layered system of delivery. Primary healthcare consists of health centres, general and family health clinics, maternal and child health clinics, diabetic clinics, dentistry, and a range of preventive interventions, i.e. vaccination programmes and school health services. Ambulance services and police health care services are also included. Primary healthcare clinics deal with preliminary examinations and routine medical

²⁹ USSD Human Rights Report: [Kuwait 2010](#)

checks; where necessary, patients are referred to hospital specialists. Foreign residents are entitled to access primary healthcare services.³⁰

- 4.4.4** Secondary healthcare is provided via six large regional hospitals, and nine specialist hospitals, including maternity, infectious diseases, mental health and cancer hospitals. There is a total bed capacity of 4575. The percentage of the population with access to local health services in both urban and rural areas was reported to be 100% in 2007.³¹ Foreign nationals are required to pay towards the cost of their treatment (usually a nominal sum). On May 21 2009, the Ministry of Health passed a resolution allowing free access to government health clinics for any Bidoon child with a Kuwaiti mother; the free access ending when the child turns 18, in contrast to Kuwaiti citizens who have life-long free access to government clinics.³²
- 4.4.5** The level of HIV infection is quite low, proportionate to the population. In 2008, the estimated number of people living with HIV was between less than 1000 and less than 2000: the prevalence rate in adults is approximately 0.2%. Kuwait provides all retroviral drugs for the treatment of HIV/AIDS free of charge. There is 100% testing of all blood and blood products prior to transfusion, and the country has not imported any blood or blood products since 1976.³³
- 4.4.6** Mental health treatment is universally available in Kuwait, although it is reported that standards of care are lower than in most developed countries. Cultural and societal issues have resulted in people with mental illness being stigmatised, and community care facilities are not well developed. The WHO World Mental Health Atlas reported that primary care and treatment for severe mental health disorders is the responsibility of the family doctor, and that facilities need to be developed further. A wide range of psychiatric drug treatments are available.³⁴
- 4.4.7** **Conclusion:** The Article 3 threshold will not be reached in the majority of medical cases and a grant of Discretionary Leave will not usually be appropriate. Where a case owner considers that the circumstances of the individual applicant and the situation in the country reach the threshold detailed in the IDI on Medical Treatment making removal contrary to Article 3 or 8 a grant of Discretionary Leave to remain will be appropriate. Such cases should always be referred to a Senior Caseworker for consideration prior to a grant of Discretionary Leave.
- 5. Returns**
- 5.1** There is no policy which precludes the enforced return to Kuwait of failed asylum seekers who have no legal basis of stay in the United Kingdom.
- 5.2** Factors that affect the practicality of return such as the difficulty or otherwise of obtaining a travel document should not be taken into account when considering the merits of an asylum or human rights claim. Where the claim includes dependent family members their situation on return should however be considered in line with the Immigration Rules, in particular paragraph 395C requires the consideration of all relevant factors known to the Secretary of State, and with regard to family members refers also to the factors listed in paragraphs 365-368 of the Immigration Rules.
- 5.3** Kuwaiti nationals may return voluntarily to any region of Kuwait at any time in one of three ways: (a) leaving the UK by themselves, where the applicant makes their own arrangements to leave the UK, (b) leaving the UK through the voluntary departure

³⁰ COI Country of Origin Information Report: Kuwait 29 March 2011 (section 24)

³¹ COI Country of Origin Information Report: Kuwait 29 March 2011 (section 24)

³² COI Country of Origin Information Report: Kuwait 29 March 2011 (section 19)

³³ COI Country of Origin Information Report: Kuwait 29 March 2011 (section 24)

³⁴ COI Country of Origin Information Report: Kuwait 29 March 2011 (section 24)

procedure, arranged through the UK Border Agency, or (c) leaving the UK under one of the Assisted Voluntary Return (AVR) schemes.

- 5.4** The AVR scheme is implemented on behalf of the UK Border Agency by Refugee Action, co-funded by the European Refugee Fund. Refugee Action will provide advice and help with obtaining any travel documents and booking flights, as well as organising reintegration assistance in Kuwait. The programme was established in 1999, and is open to those awaiting an asylum decision or the outcome of an appeal, as well as failed asylum seekers. Kuwaiti nationals wishing to avail themselves of this opportunity for assisted return to Kuwait should be put in contact with Refugee Action as the service provider for the delivery of AVR programmes. Details can be found on Refugee Action's web site at: www.refugee-action.org/ourwork/assistedvoluntaryreturn.aspx

6. List of source documents

A full list of source documents cited in footnotes in this guidance is set out below:

- Home Office COI Service Kuwait Country of Origin Information Report 29 March 2011 at http://www.homeoffice.gov.uk/rds/country_reports.html
- The US State Department Human Rights Report: Kuwait 2010 <http://www.state.gov/g/drl/rls/hrrpt/2010/nea/154465.htm>
- Refugees International, 2010: Kuwait, Still Stalling on Statelessness 2010 [Kuwait: Still Stalling on Statelessness | Refugees International](http://www.refugeesinternational.org/kuwait-still-stalling-on-statelessness)
- Human Rights Watch 2010: [Deliver Promised Rights Reform May 2010](http://www.hrw.org/kuwait)
- Human Rights Watch 2011: [Bidun crackdown: Feb 2011](http://www.hrw.org/bidun)
- The National: <http://www.thenational.ae/article/20090203/FOREIGN/323396983/1011>
- Refugees International: Futures Denied ['Futures Denied' October 2008](http://www.refugeesinternational.org/futures-denied)
- Freedom House: [Kuwait 2010](http://www.freedomhouse.org/kuwait)
- UN Human Rights Council: [Kuwait 2010](http://www.unhcr.org/refugees/kuwait)
- Refugee Documentation Centre (Ireland) Compilation of sources: [Treatment of undocumented Bidoons in 2010](http://www.refugeedocs.ie/kuwait)
- Minority Rights Group International: [World Directory of Minorities: Kuwait: Bidoon](http://www.minorityrights.org/kuwait)