

Asylum and Immigration Tribunal

HE (Bidoon – statelessness – risk of persecution) Kuwait CG [2006] UKAIT 00051

THE IMMIGRATION ACTS

**Heard at Birmingham
On 22 March 2006**

**Determination Promulgated
On 21 June 2006**

Before

**SENIOR IMMIGRATION JUDGE ALLEN
DESIGNATED IMMIGRATION JUDGE MCCARTHY
MR A SMITH**

Between

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A White, Counsel, instructed by Freemans Solicitors
For the Respondent: Mr I Neale, Home Office Presenting Officer

DETERMINATION AND REASONS

Though there has been some progress in their situation, stateless Bidoon remain at risk of persecution and breach of their Article 3 rights in Kuwait. There has been no material change since BA and Others (Bidoon – statelessness – risk of persecution) Kuwait CG [2004] UKIAT 00256 was decided.

1. The appellant is a stateless Bidoon from Kuwait. He appeals to the Tribunal against the Secretary of State's decision of 11 January 2006 refusing leave to enter the United Kingdom. The hearing before us took place on 22 March 2006. Ms A White, instructed by Freemans, appeared on behalf of the appellant and Mr I Neale appeared on behalf of the Secretary of State.

2. The appellant arrived in the United Kingdom on 18 September 2005 and claimed asylum on that day. A screening interview took place on 19 September 2005 and an SEF was completed on 22 September 2005. That included a detailed statement. The appellant was interviewed on 20 October 2005, and he has also provided a further statement dated 17 February 2006 which formed part of the bundle.
3. At the hearing the appellant confirmed the truth of the contents of the two statements. Both had been interpreted to him in Arabic. However, although he recalled going to the Home Office for the interview, it had not been interpreted back to him so he did not know, he said, what was on the record.
4. Ms White referred him to documents which it was said he had produced on arrival in the United Kingdom. Copies of these were to be found in the Home Office bundle. He confirmed that the documents referred to at A8 to A10 were the relevant documents, and translations of these were to be found at C24 onwards. With regard to the attendance card document at C27 and C28, headed Executive Committee for Illegal Residence Affairs that was not any form of residence card. C26 was a translation of that document and was headed 'Executive Committee for Illegal Residence Affairs'. He said it meant that they were not resident in a legal way and were illegal. The card expired on 5 May 2003. He had only shown these documents to the Home Office at the short interview and not any other identification papers.
5. As to how he had obtained the attendance card [as the Executive Committee for Illegal Residence Affairs document was headed], he said that the government had made an announcement and invited all Bidoon people to apply to be provided with such cards. He did not remember exactly when that was but thought it was about five years ago. His father had gone and applied and after his father had died the appellant personally had contacted them. He was given the card a year before its expiry date of 5 May 2003. The card was valid for one year. It was the only card that he had from the Kuwaiti government.
6. He was asked what he had used the card for and he said it was for nothing. It was a trick by the Kuwaiti government to trap them.
7. He was next referred to the document described as a summoning order, at C29 and C30. He said that a while after he left the house one of his friends had visited the house and found this document behind the door and he had taken it with him and told the appellant about it. The appellant could not remember where he was then. He himself had the original. He had not brought it into the United Kingdom but it had been posted to him and he produced an envelope and said it was on 24 September 2005. He was asked how it was that he was able to show this document to the Home Office on 19 September 2005 if that were the case, and he said that what he had shown to the Home Office was a photocopy and he had had the photocopy with him and this had been the instruction of the agent. He was asked whether he recalled when and where he photocopied it and he had said that he had not photocopied it, but the agent had done it from the original and he had kept the photocopies with him. He was asked why he had not brought the original with him to the United Kingdom and he said he did not know and he had been instructed by the agent to do so. He had only seen the document when the agent gave it to him on the plane. He was asked when he had first seen the original document and he said

that his friend showed it to him and his friend got it at the house. He had brought the originals of the documents with him to court today. He also produced the letter from his GP which was at A4 of his bundle.

8. When cross-examined by Mr Neale the appellant was asked how he got his birth certificate originally. He said that it was issued by the Ministry of Health and it generally delivered a duplicate, but it had not been delivered to him as he was not a Kuwaiti. If you were a Kuwaiti you could go and be issued with one or if you had good contacts. He said that this was a duplicate. He was asked whether he was saying it was not issued to him officially, and he said that persons who were Bidoon could not have official birth certificates, but they gave them duplicates. He had got it approximately two years ago. He was asked why he had got it then and he said that he had not personally chosen the time but he had a friend who had offered to help him and had advised him to get it done and to keep it with him. The document was not recognised as an ID by the Kuwait authorities, but his friend had told him it would benefit him to have it. There was no apparent reason for that but they had been talking and his friend had suggested it to him.
9. He was asked why he thought the attendance card was a trick by the Kuwaiti government. He said that when Bidoon like him were invited to come and obtain IDs they were pleased about this, but when they got them they found out it was done only to have their details. Previously they were not registered and the authorities did not have their addresses or details. Now their task was easier and they could come and get them and arrest them. It was clear from the card that it could not be used as an ID. He was asked what they had said the purpose for which it was issued and he said they had not told them anything but just asked them to come and register and they would be given IDs.
10. As regards the address on it, he was asked who owned the house he lived in and he said it was rented and it was an extension, not a house, and was rented privately. People who helped those in need were paying the rent. It was the case that Kuwaitis who carried ID cards were also required to register their details with the authorities.
11. He was asked about the Medical Foundation letter. He had kept the appointment referred to on that day. They had not provided a report. He then said that he had not chosen to go on that day. He had gone on 18 October 2005 but he did not instigate the appointment. A nurse had come to him at his previous accommodation and had seen him and said that she would send him somewhere. He had not been examined by the Medical Foundation on 18 October 2005. He had not seen a doctor. A lady had talked to him for a while and told him to go home and they would send him some details and later he got a letter from them saying that his treatment was available from his GP's surgery so he had gone there and got treatment.
12. With regard to paragraph 17 at C22, this being his first statement, the people who had paid money into the fund from which the agent was paid were friends. It had been done through a friend of his who was Kuwaiti and it was likely the money had come, in turn, from other Kuwaitis, as the Bidoon did not have money. But he did not know definitely how the friend had managed to get the money.

13. As regards what he had said at paragraph 13 about selling items on the streets, he said that this was earrings and rings and similar items which somebody in the market owned. Bidoon like him would sell them and take him the money and get commission. In Kuwait it was necessary to have a permit to sell goods in the street and he had not had one. He had sold goods anywhere in the street but not in the market. He did not know the procedure so he did not know whether he would have invited prosecution in the court. It would apply also to Kuwaitis that if they sold goods without a permit on the street they would be prosecuted. However, he said that the authorities were particularly after the Bidoon. Bidoon like him moved from place to place to avoid them.
14. Ms White had no re-examination.
15. In his submissions Mr Neale emphasised that the appellant had arrived in the United Kingdom unlawfully and with a forged French passport and this was of relevance to the application of s.8 of the 2004 Act and credibility. He had also had what he said were copies of a birth certificate and what appeared to be an ID card which was explained to be an attendance card. The birth certificate, he had said, could be obtained by any Bidoon with influential friends, but that was what one would expect him to say. The evidence of that document showed that he was documented and registered by the state. There was no evidence that such documents could readily be obtained unlawfully and its very existence indicated that the appellant as a Bidoon was registered with the state.
16. As regards the attendance card, there was confirmation from the Kuwaiti embassy in Canada that documents of this kind had been issued at the time when the appellant said. The appellant said it was a trick, but Mr Neale argued it was simply a means for putting the Bidoon population on the same basis as the Kuwaiti population for administrative purposes.
17. He referred us to page 13 of the US State Department Report for 2006. There was now free education for Bidoon children and free health care for the Bidoon also and there was a significant improvement. The attendance card should therefore not be seen as sinister.
18. The appellant had claimed that he had been detained and tortured many times between 1995 and 2005, but he had failed to seek international protection until late 2005. There was no evidence of torture beyond his own assertions. The Medical Foundation had not thought it necessary to do any more than refer him to his GP as the GP's letter was very brief. While in Kuwait the appellant seemed to have been able to support himself without his father's assistance for a long time. What he had done without a permit was unlawful for all in Kuwait, he accepted, so he would be likely to run away when he saw the authorities.
19. There was a lot of objective evidence relating to the situation some years ago, but it should be balanced against the recent changes and also the predicament of the Kuwaiti government in dealing with a large influx of foreign nationals from surrounding under-developed countries. This did not excuse human rights abuses but it was a relevant matter. Also, the appellant was able to distinguish himself from

most Bidoon by the fact of the birth certificate which proved his descent via his parents in Kuwait. The summons referred to a failure to produce an ID and this was unpersuasive and would apply equally to a Kuwaiti national.

20. We made the point to Mr Neale that there might be an issue as to what ID the appellant could have produced and he referred to the attendance card, but it was clear from that, as we suggested to him, that it was not an ID card. Mr Neale argued that it was nevertheless a document showing that he was a recognised resident of Kuwait given his name and address. The Kuwaiti authorities could be contrary, but whether a person was Bidoon or Kuwaiti, failure to produce ID would be seen as adverse by the authorities. He was a Bidoon who could prove his ancestry in Kuwait through his parents. It was argued that he was documented as he had a birth certificate. The removal documentation would show that he would be returned to Kuwait and a fresh document would be issued to that effect.
21. In her submissions Ms White referred to and adopted her skeleton argument. She argued that the appellant was undocumented. The incidents of persecution of the appellant and his father had been set out. As it was illegal for all to work as street traders without licensing she did not rely much on that, but argued that the more recent arrests for lack of ID and having Bidoon leaflets and the incidents in 2004 and 2005 were incidents of persecution. The Human Rights Watch report had been referred to in **BA**, the country guidance case, and this was typical of the approach of Kuwait to the Bidoon.
22. It seemed that the appellant has been refused on the basis of credibility and a claimed improvement in the situation for the Bidoon in Kuwait. It was true that as the US State Department Report showed there was now medical treatment for the Bidoon in education and there was some improvement, but the Tribunal should also bear in mind the Operational Guidance Note of August 2005, in particular at paragraph 3.6.11 referring to this as no more than a slight improvement. There was a lack of official documentation and an inability to come and go from Kuwait as other Kuwaitis could. It was clear from the appellant's birth certificate that his parents were recorded as non-Kuwaiti so the birth certificate would be of little assistance. It was not a document he could use in order to obtain the kind of documentation which would enable him to become a documented Bidoon.
23. The Tribunal was referred to paragraphs 27 and 53 in particular in **BA** and also to background evidence about recent events. The documents produced should be seen in the context of his evidence which should be found to be credible. The attendance card had expired. The summons should be accepted as being genuine. As regards credibility, there was a high level of consistency in his evidence. He had explained why he had failed to leave earlier as he had no passport and left when it was clear that his life was under threat after the second detention in May 2005. The issue of coming in on a forged passport was not fatal to credibility and indeed it could be said to corroborate what he said. There had been no significant change in the situation in Kuwait and it had been said by the Tribunal in **BA** at paragraph 3 that there would have to be a material change of circumstances for a different conclusion to be reached.

CONCLUSIONS

24. To succeed, the appellant must show a reasonable degree of likelihood or a real risk that he would be persecuted or his human rights breached on returning him to Kuwait, should that be possible.
25. We consider first the issue of credibility. Mr. Neale rightly makes the point that the application of s.8 of the 2004 Act is in issue in this case, since the appellant entered the UK in possession of a forged French passport. This is a matter that must be taken as damaging to the appellant's credibility. In the refusal letter it is said that his claim to have suffered persecution through being beaten and arrested is not substantiated by documentation to assist in this regard. It is also said at paragraph 16 of the refusal letter that the appellant had never been charged with an offence and had always been released with the help of a bribe or help from a family member, that he had never tried to leave the country despite his claim to have been badly treated on each occasion and also that he would not have been able to leave as easily as claimed if he was seen as a threat to the authorities. It is also said, at paragraph 17, that with regard to the detention in September 2004 and May 2005 when he was told he had to obtain a passport or he would be killed, that the fact that the threat was not carried entailed that his account of the alleged detentions was not credible.
26. It is the case, as Ms White argued, that the appellant's evidence has been generally consistent, and we have had the benefit also of hearing him give evidence and observing him before us. The absence of corroborative evidence of his claimed depression and the short note from the doctor is, to our mind, a neutral factor. The letter cannot indicate what the source of the depression is, but in any event serious damage to the appellant's mental health does not form part of his claim, and as we say, we see it no more than as a neutral factor, noting on the one hand his claimed depression as a consequence of what happened to him in Kuwait and on the other hand the lack of medical evidence to substantiate this.
27. As regards the other challenges to credibility, we consider that there is force in Ms White's submission that the appellant only sought to leave when things got to the point when his life was being threatened. We also accept the submission that the cat and mouse approach of detention, ill-treatment and release is perfectly consistent with what is said in the background evidence about the ways of the Kuwaiti authorities; and we do not consider that it forms any part of the appellant's claim that the authorities saw him as a threat. The fact, as is said at paragraph 17 of the reasons for refusal letter, that there is a likelihood that he was not detained is no doubt correct. But we have to bear in mind the low standard of proof. We have concluded, notwithstanding the fact that use of a forged French passport is damaging to his credibility, that the appellant has given a credible account of his experiences in Kuwait. In that latter regard we also see force in Ms White's submission concerning the relevance to credibility of the fact that the appellant, as he says, was only able to leave Kuwait on the basis of forged documentation and arrive in the United Kingdom with that. Although it is of relevance to credibility we consider that overall it does not damage his credibility to the point where we do not believe the account that he has given.

28. It is now important that we turn our attention to the country guidance determination of the IAT in **BA [2004] UKIAT 00256**. It is clear from paragraph 3 of that determination, and indeed it is a factor in all country guidance determinations, that a country guidance decision is to be followed unless there has been a material change of circumstances. In that determination the Tribunal considered a good deal of evidence in particular an expert report from Mr Abdas Shiblak, who had been a research fellow at the Refugee Study Centre at the University of Oxford since 1992. The Tribunal drew a distinction between documented and undocumented Bidoon. The essential characteristic of an undocumented Bidoon, as mentioned initially in the determination at paragraph 53, is a person who lacks civil identification documents. Mr Shiblak's evidence had explained the background to the problems of the Kuwaiti Bidoon, and it would be redundant for us to repeat that or indeed a lot of the other background material which was so carefully considered in **BA**. The reference to Article 17 passports at paragraph 17 of the determination is not a material issue before us, save in that the appellant has never possessed a Kuwaiti passport nor indeed, it seems, any passport other than the forged French passport. Neither has he possessed an Article 17 Kuwaiti passport issued to those considered Kuwaiti citizens in accordance with the Nationality Law at the time or a passport granted by the Ministry of Interior to non-Kuwaiti civil servants working for government agencies if carrying out official duties abroad and only for the duration of the assigned mission. The absence of having held such a passport is therefore, albeit in a negative sense, relevant.
29. There is reference at paragraph 65 in **BA** to the UN Human Rights Committee in its concluding observations of 26/27 July expressing particular concern about the denial to the Bidoon of a significant number of civil and political rights guaranteed by the International Covenant on Civil and Political Rights (ICCPR), in particular Kuwaiti refusal to grant many Bidoons living in Kuwait any kind of nationality. There is also reference to concerns about provisions of Kuwait law involving deportation of stateless persons for failure to regularise their status and references in the US State Department Report of 2002 highlight similar concerns and refer also to the risk of deportation as illegal residents for those who did not register by the 27 June shut off date for naturalisation applications. That was summarised by Mr Shiblak as follows:
- ‘They live under the most appalling conditions, denied the right to travel, free medical care, to register marriages and in some cases to have a driving licence’.
30. The Tribunal also commented at paragraph 66 that the dramatic fall in the number of Bidoon in Kuwait over the last two decades, some 120,000 people having left in circumstances often tantamount to forced deportation, spoke for itself.
31. The Tribunal did not specify exactly what it meant by civil identification documents, and that is a matter to which we shall have to return shortly. As regards Bidoon who were seen as being so documented, either on the basis of having appropriate civil identification documents or having been documented as citizens of other countries, they would in the latter case have been able to obtain residency permits and other official papers. It seems that the Bidoon who have civil identification documents are insulated from the problems of the undocumented Bidoon. The latter's problems are summed up at paragraph 69 as being prevented from working

with few exceptions in the public or private sectors or from receiving the most basic government services, and being denied rights to medical treatment, housing, documentation, education and driving licences. It is clear that documented Bidoon, by contrast, are not excluded from employment entirely and a small number remain in public sector employment. There was restricted access but not complete exclusion from health care but they could access medical clinics on payment of a fee. Bidoon children remained excluded from the state education system but were not precluded from private education. Difficulties in obtaining accommodation appeared to relate to Bidoon without civil identification certificates. Nor did the documented Bidoon appear to experience difficulties in registering births, deaths, marriages and with driving licenses.

32. The Tribunal concluded that whereas documented Bidoon experienced significant measures of discrimination, this did not give rise to persecution, but undocumented Bidoon, who represented the majority of Bidoon, were more seriously discriminated against than this, and their situation gave rise to a risk of persecution.
33. An essential issue before us is whether the improvement that can be said now to exist in the situation for the undocumented Bidoon is such as to make a material difference to the previous situation. In this regard it is common ground, to be found at page 13 of the 2005 US State Department Country Report on Human Rights Practises in Kuwait, that free education for all children of Bidoon parents was approved as from the opening of the 2004/2005 school year. It is also said that the Bidoon began to receive free health care. During the year the WAQF Health Fund, a partially government funded programme, signed contracts with several insurance companies to pay the fees for Bidoon health services. It is said also that the legal status of tens of thousands of Bidoon residents remained unresolved. Since the mid-1980s the government had actively discriminated against the Bidoon in areas such as education, employment, medical care and mobility.
34. It is also relevant to note the Operational Guidance Note on Kuwait of August 2005. In the conclusions paragraph, paragraph 3.6.11, it is said that the most recent country information suggests some slight improvement for the situation of undocumented Bidoon. Though some Bidoon will have evidently made very successful lives for themselves in Kuwait, others will have suffered severe discrimination. It is said that for the 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. It is said that most 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 Bidoons suffer, they should be refused asylum. It is said that such claimants may have had access to employment, health services and education in Kuwait.
35. The matter is quite finely balanced. In our view, however, the more recent improvements in education and health care are not such as to tip the scale. We are conscious, as paragraph 3 of **BA** reminds us, that there must have been a

material change in a country for country guidance cases not to be followed. It is also important to bear in mind the wording of Practice Direction 18.2:

‘A reported determination of the Tribunal or one of the IAT bearing the letters “CG” shall be treated as an authoritative finding on the country guidance issue identified in the determination, based upon the evidence before the members of the Tribunal or the IAT that determined the appeal. As a result, unless it has been expressly superseded or replaced by any later ‘CG’ determination, or is inconsistent with the other authority that is binding on the Tribunal, such a country guidance case is authoritative in any subsequent appeal, so far as that appeal:

- (a) relates to the country guidance issue in question; and
- (b) depends upon the same or similar evidence.’

Though these recent improvements represent changes of clear relevance and may be indicative of an improving attitude on the part of the authorities towards the Bidoon, nevertheless there remain other significant problems to which we have referred above. There remain for example the difficulties, forming part of the appellant's case itself, of facing charges on account of not carrying an ID. In the appellant's case it is clear that the attendance card is not an identity card as it says as much on it. We do not agree that the birth certificate can properly be regarded as an identity card or indeed that it can be regarded as a civil identification document. It makes it clear that the appellant's parents are both non-Kuwaiti and it is, as Ms White suggested, really of little relevance. It would appear therefore that the appellant, like other undocumented Bidoon, is in a position where he would not be able to produce proper ID and would therefore always be at risk of charges of the kind that we accept had been brought against him being repeated. That is an aspect of the risk to undocumented Bidoon generally. We 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 we remain of the view that undocumented Bidoon are at risk as concluded in that determination. We should add, returning to the issue we raised at paragraph 31, 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 the appellant (which specified that it is not an identify card) or birth certificates where the parents were not Kuwaiti nationals or legal residents.

36. We go on to say with regard to the particular appellant before us that clearly he falls into that category for the reasons that we have given. We do not consider that he can be regarded as being documented, given the nature of the documents he has produced as we do not regard these as being properly characterised as civil identification documents. In his particular case, he faces the further risk of prosecution on the basis of the summons that has been produced and that is no doubt an extra factor in his case but is also, as we have set out above, an example of the kind of risk factors faced by undocumented Bidoon generally.

37. We therefore conclude that the appellant has made out his claim under the Refugee Convention and under Article 3. His appeal is allowed.

Signed
Senior Immigration Judge Allen

Date

Index of Country Materials Considered

- (1) USSD Country Report on Kuwait: 2005
- (2) Home Office Operational Guidance Note on Kuwait : August 2005

Caselaw considered

- (1) BA and Others (Bedoon – statelessness – risk of persecution) Kuwait CG [2004] UKIAT 00256.