



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

KUWAIT

IAA reference: IAA22/10303

Date and time of decision: 15 July 2022 16:04:00

R Mathlin, Reviewer

Decision

The IAA affirms the decision not to grant the referred applicant a protection visa.

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 473EC(2) of the Migration Act 1958 and replaced with generic information which does not allow the identification of a referred applicant, or their relative or other dependant.

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be a stateless Bidoon who was born in Kuwait and resided there until his departure for Australia. He arrived in Australia by boat, without a visa, [in] February 2013. On 1 August 2017 he lodged an application for a temporary protection visa (TPV application).
2. The applicant claims to fear harm on return to Kuwait as a Bidoon, a stateless Bidoon, a stateless Bidoon suffering from mental illness, and because of his actual or imputed political opinion.
3. On 28 April 2022 a delegate of the Minister for Home Affairs (the delegate) refused the grant of the visa. He accepted that the applicant is a stateless Bidoon whose country of former habitual residence is Kuwait. He noted that statelessness, of itself, does not establish a well-founded fear of persecution. He accepted that the applicant is a documented Bidoon, meaning that while he would face some discrimination, this would not be sufficient to amount to serious or significant harm. He accepted that the applicant's mental illness is being treated in Australia with medication and counselling but, based on country information about the availability of medical care for Bidoons, was not satisfied that the applicant would not be able to access such treatment in Kuwait. He accepted that the applicant had briefly attended a political demonstration in 2011, but found that there was no real chance that he would face harm for reason of his political opinion and was satisfied that the applicant would not seek to express his political opinion should he return to Kuwait. The delegate considered it likely that the applicant had departed Kuwait on a temporary passport for Bidoons which was properly issued to him, and found that he would not face harm on return because of the circumstances of his departure, or because he had sought asylum in Australia.

Information before the IAA

4. I have had regard to the review material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
5. The applicant's pro bono representative has provided to the IAA a statement made by the applicant dated 31 May 2022 and a series of submissions.
6. The applicant's statement reiterated some claims made before the delegate. He claimed that he would definitely be imprisoned for leaving Kuwait on a fraudulent passport. He stated that he was too scared to ask his relatives in Kuwait to send documents to him in case they were intercepted; he requested that the IAA interview him, and also speak to his mother over a secure phone connection so that she could confirm what he had said. His representative argued that it would not be open to the IAA to make adverse credibility findings in respect of matters his mother could clarify unless it spoke to her.
7. The applicant stated that he has [medical condition 1] for which he takes [a medication]. He has mental health problems and has lost all but two of his upper teeth. He claimed that he did not have [medical condition 1] or dental problems in Kuwait, and that his mental health was better than it is now. He claimed that he will not be able to receive treatment or medication for these conditions if he returns. Although there were general claims before the delegate about the applicant's ill health and about his mental health and dental problems, the

information about his [medical condition 1] is new. The applicant has not identified when the [medical condition 1] developed and has not satisfied me that the information could not have been given to the delegate before the decision was made. However I am satisfied that this is credible personal information which may have affected consideration of his claims. As the issue of the availability of medical treatment is a central aspect of his claims, I am satisfied that there are exceptional circumstances to justify considering this information. Both limbs of s.473DD are satisfied.

8. The applicant claims that his uncle, who he worked for previously, is elderly and has now retired and the applicant does not have the capital to start his own business. He cannot get other work because of the discrimination against Bidoons. The claim that his uncle has retired is new information and the applicant has satisfied me that the changed circumstances post-date the delegate's decision, and that it is credible personal information which may have affected consideration of his claims. Taking those matters into account, and because the applicant's capacity to subsist in the face of discrimination against Bidoons is a central part of his case, I am satisfied that there are exceptional circumstances to justify considering this new information. Section 473DD is satisfied.
9. The representative's submissions generally take issue with the delegate's findings, in particular a finding that the applicant would be able to access medical services and employment in Kuwait, and draw attention to aspects of the country information that was before the delegate, but to which he did not refer in his decision record. To this extent the submissions do not contain new information and I have considered them. To the extent that the representative's submissions also refer to the new information contained in the applicant's statement, I am satisfied that, for the same reasons given above, s.473DD is satisfied and I have considered it.
10. I have considered whether to exercise my discretion to interview the applicant, but have decided not to. Section 473DB(1) of the Act provides that subject to Part 7AA, the IAA must review a fast track reviewable decision without accepting or requesting new information and without interviewing the referred applicant. Section 473DC(2) further provides that there is no obligation on the IAA to get, request or accept any new information, including getting new information from an applicant in the form of an interview; and s.473DD limits the circumstances in which the IAA is permitted to consider new information. Section 5AAA of the Act provides that it is the applicant's responsibility to specify all particulars of his or her protection claim, and that the Minister does not have any responsibility or obligation to assist in specifying any particulars of the claim or in establishing the claim. The statutory framework thus makes clear that the IAA is not required to interview a referred applicant either for the purpose of procedural fairness, or in order to reach the necessary state of satisfaction as to their claims. While the IAA may obtain new information from a referred applicant at an interview, it can only consider any such new information where there are exceptional circumstances to justify doing so. However, in some limited circumstances, the IAA may need to invite further information from an applicant, including by interview.¹
11. In this case, the applicant was interviewed by the delegate by remote video link; his representative was also present. At the interview the delegate raised a number of concerns about the credibility of the applicant's claims, explained the reasons for his concerns and invited the applicant to provide comments and further information. The applicant provided some further information and his representative made oral submissions at the interview, and subsequently lodged written submissions and additional information. I am satisfied that the

¹ See for example *ABT17 v MIBP* [2020] HCA 34, *DPI17 v MHA* [2019] FCAFC 43 and *MIBP v CRY16* [2017] FCAFC 210.

relevant issues were identified at the TPV interview, and that the applicant has had ample opportunity to comment on those. In particular, it was made very clear to the applicant that there were concerns about the documentation he had provided which, in turn, raised questions as to his status in Kuwait. He was requested to ask his mother, with whom he had indicated he communicated every couple of days, to provide further documents. In response the applicant initially said that his mother was already concerned about her safety, having sent the first set of documents, and he did not want to press her any more. At the end of the TPV interview the applicant raised a new claim, that about two months earlier his mother had been questioned about him by the Kuwaiti authorities, who had indicated that their “communication devices” were monitored. Since then they had communicated much less often, and his mother had refused to send further documents. As noted above, the applicant now asks that his mother be interviewed by phone.

12. I share the delegate’s concerns about the applicant’s claims about his status in Kuwait and the documents he has provided in support of those claims. In my view he has been given ample opportunity to request further documents from his mother and provide them. I have doubts about his reasons for declining to do so, given the shift in his evidence, and the new claim raised for the first time at a late stage of the TPV interview that she had been questioned by security authorities about the applicant. Moreover, if it is the case that his mother is too scared to send scanned documents using her mobile phone because she fears that their communications are being monitored, it seems surprising that she, and the applicant, would be willing for her to be interviewed by phone. I have taken into account that the applicant specified that she should be interviewed via a “secure connection” but it is not clear what he means by a “secure connection”, or how this could be achieved in the circumstances. In any event, the applicant’s mother’s oral evidence could hardly be considered to be independent corroboration of the applicant’s own claims; the best evidence, as has been made clear to him, are the documents themselves. Leaving aside the question of whether she would be willing to speak openly on the phone, I do not consider that his mother’s oral evidence would reliably add to the applicant’s own evidence, in the absence of the requested documents. In my view the applicant’s claims have been fully explored with him and he has had ample opportunity to address the concerns raised by the delegate, some of which I share. As will become apparent, where I have made credibility findings that are different from those of the delegate, these are not based on the applicant’s demeanour at the TPV interview but rather on internal inconsistencies in his own evidence, and inconsistencies between his evidence and the country information. Having regard to all the circumstances, including the statutory framework, I do not consider that an interview - of the applicant and/or his mother - is warranted in this case.

Applicant’s claims for protection

13. The applicant’s claims can be summarised as follows:

- He was born in [year] in [Town 1], Kuwait. His parents and grandparents were nomadic people who were born in the desert, and his father was a herdsman.
- His father and [siblings] were killed in a car accident in 1990. His mother and surviving sister reside in [Town 1], either in his mother’s brother’s household, or in accommodation paid for by him.
- The applicant attended school for [number] years, and then from about the age of [age range] he worked as [an occupation 1] in his uncle’s business, which had one other employee. In the TPV application the applicant stated that they had many Kuwaiti customers and they always had to be careful not to upset or offend them, as this could

lead to trouble; he said that he knew many other [occupation 1] in the same area who had the same issue. At the TPV interview, however, the applicant stated that he did not know who the customers were as they did not ask, but he indicated that they were Bidoons, not Kuwaitis. In return for his work, the applicant's uncle provided support to the applicant's family; at the TPV interview the applicant specified that his uncle provided help with accommodation, food and medication.

- The applicant travelled to and from work with his uncle by car. He and his uncle were often stopped at checkpoints and asked to present their identity cards which confirmed that they were stateless. During the period 2009 - 2013 when there were many demonstrations by Bidoons, they were stopped at checkpoints more frequently. The applicant wanted to take part in the demonstrations, but his uncle "prohibited" this, because the applicant could have been beaten, detained and interrogated, or shot. The applicant knows people who were detained in 2011 and have not been released.
- The applicant left Kuwait because he could not live freely. He had to pay for health care and was restricted in his access to jobs. He fell in love with a woman from [Country 1] but could not marry her because as a stateless person he is unable to travel.
- The applicant left Kuwait using the passport of a Kuwaiti national named [Alias A], whose photograph was in the passport. He fears that he will be imprisoned on return because he left on a "fraudulent" passport. His representative submitted that it is reasonable to assume that he would be detained and questioned on arrival, and that he would be denied re-entry without Kuwaiti citizenship documents, and/or because he left on a false passport. Since his departure he has been told that Bidoons are now prevented from leaving the country, and Bidoons returning to Kuwait have been arrested on arrival.
- In August 2021, shortly before the TPV interview, the applicant provided a statutory declaration claiming that his mother had recently told him that the Kuwaiti government had refused to renew her review card or issue a new one; he also stated that his mental health has deteriorated since he has been in Australia, and he cannot work.
- At the TPV interview held on 9 August 2021, he claimed that his mother had been questioned as to his whereabouts about two months earlier.
- He claims that on return he will be unable to earn a livelihood, subsist or access necessary medical services because he is a stateless Bidoon. He also claims that he will be targeted by the authorities and risks being arbitrarily detained and tortured, apparently both because of his political opinion or a political opinion imputed to him, or because he left using a fraudulent passport.

Refugee assessment

14. Section 5H(1) of the Act provides that a person is a refugee if, in a case where the person has a nationality, he or she is outside the country of his or her nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself or herself of the protection of that country; or in a case where the person does not have a nationality—is outside the country of his or her former habitual residence and owing to a well-founded fear of persecution, is unable or unwilling to return to it.

Well-founded fear of persecution

15. Under s.5J of the Act ‘well-founded fear of persecution’ involves a number of components which include that:

- the person fears persecution and there is a real chance that the person would be persecuted
- the real chance of persecution relates to all areas of the receiving country
- the persecution involves serious harm and systematic and discriminatory conduct
- the essential and significant reason (or reasons) for the persecution is race, religion, nationality, membership of a particular social group or political opinion
- the person does not have a well-founded fear of persecution if effective protection measures are available to the person, and
- the person does not have a well-founded fear of persecution if they could take reasonable steps to modify their behaviour, other than certain types of modification.

Identity and residential status in Kuwait

16. The applicant claims that he is a documented Kuwaiti Bidoon, whose family was not registered in the 1965 census. According to a UK Home Office (UKHO) report² which draws extensively on information from a range of sources, and which was before the delegate and was also relied on by the applicant’s representative, Bidoons are a stateless Arab minority in Kuwait who were not included as citizens at the time of the country’s independence or shortly thereafter. Until the mid-1980’s stateless Bidoons faced few disadvantages compared to Kuwaiti citizens, but from about 1986 their rights began to be restricted and stripped away.

17. Documented Bidoons are registered with the Central System to Resolve Illegal Residents’ Status, and are issued with review cards which must be renewed periodically. Documented or registered Bidoons are generally able to access government services, gain public and private sector employment and access healthcare and private education. Undocumented Bidoons, who do not possess a review card, are generally unlikely to be able access basic services such as education, employment, medical care and civil documents such as birth, marriage or death certificates.³

18. By way of identity documents, the applicant has provided a copy of his birth certificate, with a translation, stating that both his parents are “non-Kuwaiti”; and an uncertified greyscale copy of one side of his mother’s review card. He claims that his own review card, which he said was green and did not have an expiry date, was lost on the way to Australia. When asked at the TPV interview, which was conducted on 9 August 2021, to provide copies of both sides of his mother’s and sister’s review cards, he said that two months earlier (therefore in about June 2021) his mother was questioned about the applicant’s whereabouts by the Kuwaiti “security authorities”. She was concerned that their communication was being monitored and refused to send further copies of any documents to the applicant. On 7 August 2021, prior to the TPV interview, the applicant provided a further statutory declaration claiming that his mother had recently told him that the Kuwaiti government had refused to renew her review card; however,

² Country Policy and Information Note - Kuwait: Bidoons, UK Home Office, 6 April 2021, 202110408092508 (UKHO report)

³ Ibid

at the TPV interview the applicant indicated that in fact his mother's review card was currently valid.

19. The applicant's claims about his and his family's identity documents are of concern. First, country information indicates that since 2000, all review cards have been time limited, and therefore should show an expiry date. Based on some country information indicating that green cards, which the applicant claims he possessed, were issued between 1996 and 2000,⁴ the delegate thought it likely that the applicant had not been resident in Kuwait after 2000, and that he was not a stateless Kuwaiti Bidoon at all. However, other country information that was before the delegate states that green review cards were issued up until 2012.⁵ The country information is consistent, however, in stating that all review cards are issued for limited periods and should show an expiry date. It is difficult to reconcile the applicant's claim that he possessed a green card without an expiry date up until his departure in 2013 with this independent information. The copy of his mother's review card also does not show dates of issue or expiry, and the fact that the applicant has provided a copy of only one side of his mother's card might indicate that the reverse contains information that might not assist his other claims. The late claim that his mother had been visited by security authorities in about June 2021 appears to have been made to support his assertion that he is unable to obtain more documents on the basis that his mother is afraid to send them following this visit. However, in the statutory declaration of 6 August 2021, the applicant did not mention that his mother had been questioned by security authorities, even though, according to his evidence, this would have occurred in about June 2021; and although he did state in the statutory declaration that renewal of her review card had been refused – a statement that he later contradicted - he did not say why. At the TPV interview he indicated that the questions about him might have been to do with his mother's attempt to renew her card, and that the absence of a family member from the household was an issue here. If it were the case that inquiries were made of the applicant's mother, it is plausible, as the delegate suggested at the TPV interview, that she might have been asked about the whereabouts of the applicant as part of the routine processing of her review card. However, I consider it implausible that the security authorities would have been interested in the applicant's whereabouts for this, or any other reason, especially given that he had been absent from Kuwait since 2013 and he does not claim that inquiries had been made about him at any earlier stage. Given the late stage at which this claim was raised, and particularly given that the applicant did not mention this highly relevant information in the statement of August 2021, I am not satisfied that the security authorities did question the applicant's mother about him in June 2021, or that they told her that their communications were monitored. I am not satisfied that as a consequence of this questioning the applicant's mother was too afraid to send further copies of her identity documents to the applicant. I consider it probable that the applicant does not wish to provide the documents because they do not assist his case. I further consider that the late introduction of this claim reflects poorly on the applicant's credibility, indicating a willingness to embellish his claims.
20. There is an allegation on the Department's file to the effect that the applicant described himself as an Iraqi national. The delegate put the substance of the allegation to the applicant for comment and he denied having said that he is an Iraqi national. It is not apparent how the applicant was identified as the subject of the allegation, which is vague and lacking in detail - for example, as to the context in which the applicant described himself as an Iraqi national - and which appears to be somewhat malicious. Even if the applicant had described himself as an Iraqi citizen to some individual, this does not mean that the statement is true, and I give the allegation no weight.

⁴ UKHO report at 5.3

⁵ Kuwait: The Biduns' review cards, Landinfo, 24 August 2020, 20210128153306

21. Nonetheless, as already indicated, I have concerns about whether the applicant has been completely truthful about his circumstances. The information he provided about his green review card not having an expiry date is not consistent with the country information. He claims that he applied for Article 17 passports – temporary passports issued to Bidoons for certain specified purposes - on a basis which does not appear to be available, according to the country information: he stated that his mother had applied for Article 17 passports on several occasions so that they could visit the Shia Imam Hussein shrine, and according to the representative’s post-interview submission they wanted to travel for Muharram. The country information, however, indicates that Article 17 passports are issued for the Hajj and there is no information before me to indicate that an Article 17 passport would be issued for any other pilgrimage. His claim to have departed Kuwait, without apparent difficulty, on a passport belonging to someone else and containing their photograph, appears highly implausible. Further, the applicant has declined to ask his mother to provide additional identity documents, for a reason which I do not accept. However, despite some misgivings, I have insufficient material before me to make firm findings (which were suggested by the delegate) that if he were, at some time, a stateless Kuwaiti Bidoon, the applicant has acquired Kuwaiti nationality or the nationality of some other country. Accordingly, his claims will be assessed on the basis that his identity is as claimed, and that he is a stateless, documented Kuwaiti Bidoon whose family was not included in the 1965 census, apparently because they were desert nomads. Kuwait is the receiving country for the purposes of s.5J of the Act.
22. However, because I consider that the applicant has not been entirely truthful - even having regard to the submissions that his mental health may have affected his capacity to present his claims, despite the absence of medical evidence to explicitly support this - I am not prepared to accept all of his claims at face value.

Discrimination as a documented stateless Bidoon

23. As noted above, country information indicates that documented Bidoons are generally able to access government services, gain public and private sector employment and access healthcare and private education, the latter two through special Charitable Funds, although some information suggests that the granting of these facilities has been inconsistent, and it is often difficult for Bidoons to avail themselves of the services due to “bureaucratic red tape”.⁶ One source cited in the UKHO report suggests that medical care for children is provided through the charitable fund, while adults are supposed to be covered by low cost insurance which provides only limited coverage and may not cover all types of testing, medication or surgical care. Otherwise, they must pay for treatment in private facilities. Bidoons are required to regularly renew their review cards, in a process which is at the discretion of the state and which is often arbitrary and opaque. Available evidence states that some individuals may be unable to renew their review card as a result of various administrative hurdles. If an individual is unable to renew their review card they may become de facto undocumented, even if they previously held a card. This would mean that they would be unlikely to be able to access education, employment, medical care and civil documents.⁷
24. The applicant’s representative submitted to the IAA that because of his long absence from Kuwait the applicant would likely be unable to renew his review card. However, this contention does not sit well with the applicant’s own evidence that his card did not have an expiry date: although this appears unlikely, it is a claim that he has maintained, and he has never himself claimed that he is, or would be, an undocumented Bidoon. I also note his contradictory

⁶ UKHO report at 5.1.6 and Section 6

⁷ UKHO report at 2.4.7-2.4.8

evidence as to whether his mother's card remains valid, or whether she was unable to renew it in mid-2021. While the country information indicates that renewal of review cards can be problematic for a number of reasons, nowhere does it state that cards which have expired cannot be renewed. Given the unsatisfactory evidence provided by the applicant which nonetheless does not indicate concern that he would be unable to renew his card on the basis that it had expired - given that he claims it does not have an expiry date - I am not satisfied that there is a real chance that he would be unable to renew his review card on return, leaving him in the position of an undocumented Bidoon with no access to basic services. It has been claimed that the applicant might be subject to a "security flag"⁸ which would mean that he would be unable to renew his review card. However, on the credible information before me I see no reason why the applicant would be subject to a security flag: even accepting that he attended a demonstration for ten minutes in 2011, he did not face consequences prior to his departure in 2013, and it is not credible that this would have come to light since; and I have not accepted that security authorities visited his mother in June 2021 because of any adverse interest in the applicant. I am satisfied that on return to Kuwait the applicant would continue to be a documented Bidoon who is registered with the relevant authority, and that he would have access to the facilities and services generally available to documented Bidoons.

25. The applicant claims that should he return to Kuwait he will be unable to access the medical treatment he needs. Various assertions have been made about the applicant's mental and general health issues, however very little medical evidence has been provided as to his mental health, and none as to his physical health: the applicant and his pro bono representatives have indicated that he suffers (or suffered, as at the TPV interview he stated that he has an upper denture which was noted by the delegate) from dental problems requiring ongoing treatment, and he has told the IAA that he has [medical condition 1] which [is] treated with medication. He and his representatives have referred to his deteriorating mental health, and to mental health issues which first emerged in Kuwait as a consequence of the discrimination he faced as a person without citizenship; he claims he cannot work in Australia because of these mental health problems and has provided a certificate issued for Centrelink to this effect. The Centrelink certificate, which was issued by his treating doctor and covers the period July to October 2021, indicates that he was being treated for PTSD with anxious depressed mood, with anti-depressant medication and counselling. In an email sent on 26 October 2021 his representative referred to the applicant having been prescribed new anti-psychotic medication which had resulted in some improvement in his condition, but this is not confirmed by medical evidence, and it is therefore not clear what medication the applicant is currently taking. At the TPV interview the applicant said that the only medication he had taken that day was for "[medical condition 1]". Reports written by a social worker and a caseworker in 2019 indicate that the applicant was referred to the Service for the Treatment of Survivors of Torture and Trauma suffering from symptoms consistent with post-traumatic stress disorder (PTSD), anxiety and depression. The severity of his symptoms is not addressed, nor is the cause of the PTSD, but reference is made to his distress at separation from his family. At the TPV interview the applicant referred to previous mental health issues in Kuwait caused by his precarious existence, which had been exacerbated by the long wait for resolution of his status in Australia, which he believes has resulted in the termination of his lengthy relationship with a woman who decided not to pursue it because of the applicant's inability to travel to her country to meet her parents and propose in accordance with tradition.
26. The applicant also stated at the TPV interview that the provision of medication - although he did not specify what medication - was one of the ways in which his uncle supported his family. He also stated in the TPV application that he had been obliged to pay for medical treatment in

⁸ UKHO report at 7.1.7

Kuwait and did not indicate that he was unable to do so. While the country information states that accessing medical treatment can be difficult and can incur some costs, it does not suggest that documented Bidoons are effectively unable to access, or are denied access to medical treatment: they are able to access some services but their ability to access a full range of testing, treatment and medication depends on their individual circumstances. The applicant's evidence indicates that prior to his departure he and his family were able to access medical treatment and medication, assisted by his [uncle]. The applicant claims that his uncle has now retired, but even if this is the case, I am not satisfied that this new circumstance means that the applicant is now without means of support. Apart from claiming that he could not afford to start his own business and would not be able to get other work (which I address later), he did not identify any other ramifications of his uncle's retirement. On the state of the evidence, including all the evidence about the precarious existence of some Bidoons, and the applicant's family's history including the support provided by his [uncle] after his father's death, I consider it highly unlikely that the uncle would have retired voluntarily due to his age, as claimed by the applicant, in circumstances that would leave his dependents without sufficient means of support. Based on the available information, and having regard to the information that the applicant's uncle has now retired, I am not satisfied that, should he return to Kuwait, the applicant would be without the means to pay for any treatment that he was unable to access through the facilities available to documented Bidoons.

27. I accept that the applicant suffers from mental health conditions such as PTSD, anxiety and depression, but given the limited medical evidence available I cannot be satisfied as to the severity of these conditions or precisely what treatment he requires for them. I am therefore not satisfied that the applicant would be unable to access necessary treatment should he return to Kuwait, nor that any inability to access such treatment would result in serious or significant harm for the purposes of either the refugee criterion or the complementary protection criterion. Even accepting that he requires medication for [medical condition 1] and unspecified treatment for dental issues, on the information before me I am not satisfied that the applicant would be unable to access necessary treatment should he return to Kuwait, nor that any inability to access such treatment would result in serious or significant harm.
28. Aside from lack of access to health care, the country information indicates that Bidoons can face discrimination of various kinds. The applicant says that he only attended school for [number] years as his family had to pay for schooling, and pursuing his education would have been pointless because he would not have been able to get a job or go to university. The country information indicates that while access to public education is restricted, most Bidoon children can attend private school, subsidised by the government and by charitable funds.⁹ In any case, as the applicant is now an adult, any past discrimination in relation to his educational opportunities is not relevant to my assessment of the future risk of harm he faces.
29. Country information confirms the applicant's claims that employment opportunities are limited for Bidoon, although documented Bidoons are not prohibited from working; it is reported that public sector work is available, albeit at worse pay and under less favourable conditions than for citizens, and many Bidoons work in the informal sector.¹⁰ I am not satisfied on the basis of the available information that the applicant would be unable to obtain work of any kind because he is Bidoon, and/or because of his mental health. I note that he was employed for over ten years in his uncle's business and referred in his TPV to other [occupation 1] that he knew in their area. While he says he does not have the capital to start his own business, I note that his uncle provided financial support to the applicant before, including funding his travel

⁹ UKHO report at 6.1.5-6.1.6

¹⁰ UKHO report at 6.1.6

out of Kuwait. As noted above, I do not accept that the applicant's uncle would have retired leaving him or his extended family and dependents without means of support, and the applicant did not explicitly make this claim. Having regard to all of the evidence, including country information concerning the difficulties for some Bidoons, and the support provided to the applicant's family by his [uncle] since his father died, I consider it highly unlikely that the uncle would have retired in circumstances that would leave his dependents without sufficient means of support. Even if his uncle could no longer employ him in his business, the applicant has not suggested that his uncle would not be able to assist him to find alternative employment, or with funds to establish a business if he were to return. I am not satisfied that there is a real chance that the applicant would be denied the capacity to earn a livelihood of any kind, or that there is a real chance he would face significant economic hardship, in such a manner as would threaten his capacity to subsist; or that any difficulty finding employment would constitute any form of serious harm for the purposes of the refugees criterion.

30. The applicant claims that his precarious existence in Kuwait resulted in an unspecified, but mild mental health condition. He is now clearly distressed and resentful that his inability to resolve his citizenship and to travel has meant the end of his relationship with a woman whom he loved. Given the difficulties involved and the very limited number of Bidoon who are granted citizenship in Kuwait each year, I accept that the applicant and his family members may not be able to obtain Kuwaiti citizenship. However, as noted elsewhere and in the delegate's decision, statelessness in and of itself does not give rise to protection obligations. Having regard to the undoubtedly difficult existence forced on many Bidoons and the discrimination which they do face I am nevertheless not satisfied that the applicant has in the past experienced a level of discrimination or other harm so serious as to constitute persecution. On the evidence before me, and having regard to his uncle's retirement and accepting that there has been a deterioration in the applicant's physical and mental health - although as noted above, the medical evidence does not establish the extent or impact of these conditions, or what specific ongoing treatment is required - I am not satisfied that there is a real chance that as a stateless but documented Bidoon the applicant may experience more serious harm on return, now or in the reasonably foreseeable future, that would constitute persecution.

Political opinion

31. The country information indicates that political expression and the right to criticise the government are curtailed.¹¹ Demonstrations by Bidoons in 2011 were met with excessive force, and there were numerous arrests.¹² In 2019 fifteen advocates for the rights of Bidoons were arrested and charged after taking part in a protest; however two subsequent convictions were overturned, and others were acquitted or released on good behaviour bonds.¹³ In the TPV application the applicant claimed that he had wanted to attend the 2011 protests by Bidoons, but his uncle had "prohibited" this. At the TPV interview he indicated that he had in fact attended the demonstrations but when questioned further, stated that he had attended one demonstration for ten minutes, but his uncle had pulled him away. The change in his evidence about this causes me some concern as to his credibility, in that it indicates a tendency to embellish claims; it was evident from what was said at the TPV interview that the applicant is desperate for a positive resolution to his application and extremely upset, understandably, about the length of time taken to process it. I have significant doubts about his claims that he

¹¹ See for example, 'Country Reports on Human Rights Practices for 2020 - Kuwait', United States Department of State, 30 March 2021, 20210401150854

¹² Refugees International Report, see applicant's post interview submission

¹³ Freedom in the World, post interview submission; see also 'Country Reports on Human Rights Practices for 2020 - Kuwait', United States Department of State, 30 March 2021, 20210401150854

wished to attend demonstrations in 2010-2011 and was dissuaded by his uncle, or that he in fact did attend for ten minutes, but was removed by his uncle. I consider that this last claim, which was made for the first time at the TPV interview, is not consistent with his earlier statement that he did not attend at all, and I do not accept it. In any case, the applicant says that there was no consequence of the claimed brief attendance during the period of some two years that he remained in Kuwait afterwards, and I am satisfied that even if the applicant did briefly attend a demonstration in 2011 there is no real chance that this would be known to the authorities, and would not give rise to any risk of harm should he return. Based on his past conduct, I am satisfied that the applicant would not (and would not wish to) attend demonstrations in future, should he return to Kuwait. I consider that if the applicant was really intent on attending demonstrations, he would have done so despite his uncle's admonitions. I am not satisfied that the applicant would be forced to refrain from attending demonstrations or from expressing his political views about the treatment of Bidoons because of a fear of persecution, such that his inability to express his political opinion would itself constitute persecution. I am not satisfied that the applicant faces a real chance of persecution such as being detained and tortured for reason of his actual, or imputed political opinion. There is no persuasive, or independent evidence before me to suggest that Bidoons are imputed to hold political opinions against the Kuwaiti government or ruler merely because they are Bidoon.

Will the applicant face harm because of the circumstances of his departure or as a failed asylum seeker

32. The applicant has consistently claimed that he left Kuwait on a Kuwaiti passport issued to an individual called [Alias A], and containing that person's photo. He claims that should he return he could be prosecuted for use of a fraudulent document, for which he could be imprisoned. If he is imprisoned he will be ill-treated and he will not be able to access the mental health treatment that he needs. He also claims that his mother has told him that Bidoons are no longer allowed to leave the country, and those who return are imprisoned.¹⁴ In their submission the applicant's representative expressed concern that he may not be permitted to return to Kuwait either because he is stateless, or because he left on a fraudulent passport.
33. The delegate had doubts about the applicant's claim that he left on another person's passport for two reasons. He had difficulty accepting that "such unsophisticated fraud was likely to go undetected", either at the point of departure, or at any other airport through which the applicant had passed; ultimately, though, he accepted that this was not impossible. Secondly, he noted country information¹⁵ indicating that Kuwaiti citizens might need to show a civil ID card on departure - which, if he were a stateless Bidoon, the applicant would not have been able to do. The delegate did not consider this information definitive, and nor do I. Secondly, although the applicant stated that he had been refused an Article 17 passport - temporary passports issued only to Bidoons for travel for certain specified purposes, which do not confer nationality - the delegate considered that it was more likely that he had been issued with an Article 17 passport which he had used to leave Kuwait, than that he had left on a fraudulent passport.

¹⁴ According to the UKHO report at [5.6.2] it is the case that issue of Article 17 passports was suspended indefinitely in August 2019.

¹⁵ Country Policy and Information Note - Kuwait: Bidoons', UK Home Office, 06 April 2021, 20210408092508, 5.2.1; 'No residence stickers on passports from 10th March – Exit and entry using Civil Id', Arab Times (Kuwait), 05 March 2019, 20220310133249; 'Passport & ID 'must' to enter, exit Kuwait', Arab Times (Kuwait), 07 March 2019, 20220310140055; 'Civil ID to be proof of residency after iqama sticker scrapped', Kuwait Times, 06 March 2019, 20220310134313; 'Expats can travel without Civil IDs', Arab Times (Kuwait), 06 June 2020, 20220310141546

34. On the available evidence, I am unable to make a firm finding as to the way in which the applicant left Kuwait. As noted by the delegate, and in the absence of any further explanation as to how he was able to manage it, it appears highly unlikely that the applicant would have been able to successfully leave, undetected, employing the “unsophisticated fraud” involved in using a Kuwaiti passport belonging to another person and containing that person’s photograph. I therefore have significant doubts about the applicant’s claim that he was able to leave Kuwait using a “fraudulent” passport - that is, a passport belonging to someone else. On the other hand, based on the country information which indicates that Article 17 passports are issued in limited circumstances only for a number of specified purposes, it is not evident that the applicant would have been issued with one as readily as the delegate suggests. Given that I do have some doubts as to whether the applicant has been entirely truthful in presenting his claims, and given the inherent problems in accepting either of the possible means of his departure from Kuwait, I am unable to be satisfied as to the manner of his departure. In these circumstances, I am not satisfied that he would face serious harm, or indeed, any adverse consequences, on return.
35. Even if I were to accept that the applicant did leave on another person’s passport, there is no independent information before me from any source to support the applicant’s contention that he would be imprisoned for leaving Kuwait on a passport belonging to another person. On the available material I am not satisfied that even if it were the case that the applicant had departed on another person’s passport, this would be discovered should he return to Kuwait; nor am I satisfied in any event that this would result in adverse consequences amounting to serious or significant harm for the purposes of the refugee or complementary protection criteria. Likewise there is no independent information to support the applicant’s contention that all Bidoons now returning to Kuwait are arrested and if this were really the case, I would expect that it would be reported.
36. I accept that the applicant no longer has a travel document of any kind, and that he would probably not return willingly to Kuwait. It would therefore be necessary for the Australian authorities to seek the assistance of the Kuwaiti authorities in order to remove him and I am satisfied that on return to Kuwait the applicant may be deduced to have applied for asylum in Australia. There is little information before me to suggest that the Kuwaiti authorities are concerned about stateless Bidoons having spent time residing outside Kuwait - unless they have acquired the nationality of another country - or having sought asylum. One report which appears to date from 2011 notes that most Bidoon who seek protection are not given it and are returned to Kuwait where “some” face problems with the authorities and “physical and psychological cruelty amounting to torture has been described to Refugees International by interviewees”.¹⁶ Other information dating from 2010 states that UNHCR is not aware of stateless Bidoons being harmed in these circumstances.¹⁷ In the absence of details as to the particular circumstances in which Refugees International states that Bidoons may face problems on return, what kind of harm they face and how often it occurs, and noting that UNHCR, which I consider would likely be aware of such incidents if they were occurring to a significant degree, was not aware of any such harm in 2010, and that there are no more recent reports of such harm occurring, I am not satisfied that in the case of this applicant there is a real chance of serious harm on return to Kuwait, as a stateless Bidoon who has spent time outside Kuwait and/or applied for asylum.
37. The applicant has also expressed concern about whether he would be able to return to Kuwait, as a stateless Bidoon. The only available information, which was referred to both by his

¹⁶ Refugees International Report, post interview submission.

¹⁷ RRT Country Information Request - KWT37848, Australia: Department of Foreign Affairs and Trade (DFAT), CX255372

representative and by the delegate, is somewhat dated and is not definitive,¹⁸ stating that “UNHCR believes a stateless Bidoon would be able to obtain a replacement travel document, though this may depend on the circumstances,” but also raising the possibility that a failed asylum seeker might be denied re-entry if they had travelled on an illegally obtained passport (the advice was issued in relation to a Bidoon, but does not specify whether being denied re-entry would be more likely in the case of a Bidoon). Based on the state of the evidence overall, I am not satisfied that the applicant would not be issued with a travel document or be denied re-entry to Kuwait, and as discussed above, I am not satisfied that there is a real chance that he would be subjected to harm during, or as a result of this process. Nor am I satisfied that if the applicant were unable to re-enter Kuwait, this would constitute serious harm involving systematic and discriminatory conduct, rather than the non-discriminatory application of Kuwait’s immigration laws and policies.

Refugee: conclusion

38. The applicant does not meet the requirements of the definition of refugee in s.5H(1). The applicant does not meet s.36(2)(a).

Complementary protection assessment

39. A criterion for a protection visa is that the applicant is a non-citizen in Australia (other than a person who is a refugee) in respect of whom the Minister (or Reviewer) is satisfied Australia has protection obligations because there are substantial grounds for believing that, as a necessary and foreseeable consequence of the person being removed from Australia to a receiving country, there is a real risk that the person will suffer significant harm.

Real risk of significant harm

40. Under s.36(2A), a person will suffer ‘significant harm’ if:

- the person will be arbitrarily deprived of his or her life
- the death penalty will be carried out on the person
- the person will be subjected to torture
- the person will be subjected to cruel or inhuman treatment or punishment, or
- the person will be subjected to degrading treatment or punishment.

41. The expressions ‘torture’, ‘cruel or inhuman treatment or punishment’ and ‘degrading treatment or punishment’ are in turn defined in s.5(1) of the Act.

42. The applicant has made no specific claims that he requires protection under the complementary protection criterion, separate from those claims made in relation to the refugees criterion.

43. While I accept on the basis of country information that stateless Bidoons may experience discrimination of various kinds, the credible evidence about the circumstances of this applicant does not indicate that he has in the past been subjected to discrimination that constitutes any

¹⁸ Ibid

form of significant harm, and I find that there is no real risk that he would, in the reasonably foreseeable future, suffer discrimination amounting to significant harm. I am not satisfied that there is a real risk that the applicant would face harm of any kind because of his actual or imputed political opinion. I am not satisfied that there is a real risk that the applicant would face a penalty, including imprisonment, or any kind of harm because he departed on a fraudulent passport.

Complementary protection: conclusion

44. There are not substantial grounds for believing that, as a necessary and foreseeable consequence of being returned from Australia to a receiving country, there is a real risk that the applicant will suffer significant harm. The applicant does not meet s.36(2)(aa).

Decision

The IAA affirms the decision not to grant the referred applicant a protection visa.

Applicable law

Migration Act 1958

5 (1) Interpretation

In this Act, unless the contrary intention appears:

...

bogus document, in relation to a person, means a document that the Minister reasonably suspects is a document that:

- (a) purports to have been, but was not, issued in respect of the person; or
- (b) is counterfeit or has been altered by a person who does not have authority to do so; or
- (c) was obtained because of a false or misleading statement, whether or not made knowingly

...

cruel or inhuman treatment or punishment means an act or omission by which:

- (a) severe pain or suffering, whether physical or mental, is intentionally inflicted on a person; or
- (b) pain or suffering, whether physical or mental, is intentionally inflicted on a person so long as, in all the circumstances, the act or omission could reasonably be regarded as cruel or inhuman in nature;

but does not include an act or omission:

- (c) that is not inconsistent with Article 7 of the Covenant; or
- (d) arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

degrading treatment or punishment means an act or omission that causes, and is intended to cause, extreme humiliation which is unreasonable, but does not include an act or omission:

- (a) that is not inconsistent with Article 7 of the Covenant; or
- (b) that causes, and is intended to cause, extreme humiliation arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

receiving country, in relation to a non-citizen, means:

- (a) a country of which the non-citizen is a national, to be determined solely by reference to the law of the relevant country; or
- (b) if the non-citizen has no country of nationality—a country of his or her former habitual residence, regardless of whether it would be possible to return the non-citizen to the country.

...

torture means an act or omission by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person:

- (a) for the purpose of obtaining from the person or from a third person information or a confession; or
- (b) for the purpose of punishing the person for an act which that person or a third person has committed or is suspected of having committed; or
- (c) for the purpose of intimidating or coercing the person or a third person; or
- (d) for a purpose related to a purpose mentioned in paragraph (a), (b) or (c); or
- (e) for any reason based on discrimination that is inconsistent with the Articles of the Covenant;

but does not include an act or omission arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

5H Meaning of refugee

(1) For the purposes of the application of this Act and the regulations to a particular person in Australia, the person is a refugee if the person:

- (a) in a case where the person has a nationality—is outside the country of his or her nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself or herself of the protection of that country; or
- (b) in a case where the person does not have a nationality—is outside the country of his or her former habitual residence and owing to a well-founded fear of persecution, is unable or unwilling to return to it.

Note: For the meaning of *well-founded fear of persecution*, see section 5J.

...

5J Meaning of well-founded fear of persecution

- (1) For the purposes of the application of this Act and the regulations to a particular person, the person has a well-founded fear of persecution if:
 - (a) the person fears being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; and
 - (b) there is a real chance that, if the person returned to the receiving country, the person would be persecuted for one or more of the reasons mentioned in paragraph (a); and
 - (c) the real chance of persecution relates to all areas of a receiving country.
Note: For membership of a particular social group, see sections 5K and 5L.
- (2) A person does not have a well-founded fear of persecution if effective protection measures are available to the person in a receiving country.
Note: For effective protection measures, see section 5LA.
- (3) A person does not have a well-founded fear of persecution if the person could take reasonable steps to modify his or her behaviour so as to avoid a real chance of persecution in a receiving country, other than a modification that would:
 - (a) conflict with a characteristic that is fundamental to the person's identity or conscience; or
 - (b) conceal an innate or immutable characteristic of the person; or
 - (c) without limiting paragraph (a) or (b), require the person to do any of the following:
 - (i) alter his or her religious beliefs, including by renouncing a religious conversion, or conceal his or her true religious beliefs, or cease to be involved in the practice of his or her faith;
 - (ii) conceal his or her true race, ethnicity, nationality or country of origin;
 - (iii) alter his or her political beliefs or conceal his or her true political beliefs;
 - (iv) conceal a physical, psychological or intellectual disability;
 - (v) enter into or remain in a marriage to which that person is opposed, or accept the forced marriage of a child;
 - (vi) alter his or her sexual orientation or gender identity or conceal his or her true sexual orientation, gender identity or intersex status.
- (4) If a person fears persecution for one or more of the reasons mentioned in paragraph (1)(a):
 - (a) that reason must be the essential and significant reason, or those reasons must be the essential and significant reasons, for the persecution; and
 - (b) the persecution must involve serious harm to the person; and
 - (c) the persecution must involve systematic and discriminatory conduct.
- (5) Without limiting what is serious harm for the purposes of paragraph (4)(b), the following are instances of **serious harm** for the purposes of that paragraph:
 - (a) a threat to the person's life or liberty;
 - (b) significant physical harassment of the person;
 - (c) significant physical ill-treatment of the person;
 - (d) significant economic hardship that threatens the person's capacity to subsist;
 - (e) denial of access to basic services, where the denial threatens the person's capacity to subsist;
 - (f) denial of capacity to earn a livelihood of any kind, where the denial threatens the person's capacity to subsist.
- (6) In determining whether the person has a **well-founded fear of persecution** for one or more of the reasons mentioned in paragraph (1)(a), any conduct engaged in by the person in Australia is to be disregarded unless the person satisfies the Minister that the person engaged in the conduct otherwise than for the purpose of strengthening the person's claim to be a refugee.

5K Membership of a particular social group consisting of family

For the purposes of the application of this Act and the regulations to a particular person (the **first person**), in determining whether the first person has a well-founded fear of persecution for the reason of membership of a particular social group that consists of the first person's family:

- (a) disregard any fear of persecution, or any persecution, that any other member or former member (whether alive or dead) of the family has ever experienced, where the reason for the fear or persecution is not a reason mentioned in paragraph 5J(1)(a); and
- (b) disregard any fear of persecution, or any persecution, that:
 - (i) the first person has ever experienced; or

- (ii) any other member or former member (whether alive or dead) of the family has ever experienced;

where it is reasonable to conclude that the fear or persecution would not exist if it were assumed that the fear or persecution mentioned in paragraph (a) had never existed.

Note: Section 5G may be relevant for determining family relationships for the purposes of this section.

5L Membership of a particular social group other than family

For the purposes of the application of this Act and the regulations to a particular person, the person is to be treated as a member of a particular social group (other than the person's family) if:

- (a) a characteristic is shared by each member of the group; and
- (b) the person shares, or is perceived as sharing, the characteristic; and
- (c) any of the following apply:
 - (i) the characteristic is an innate or immutable characteristic;
 - (ii) the characteristic is so fundamental to a member's identity or conscience, the member should not be forced to renounce it;
 - (iii) the characteristic distinguishes the group from society; and
- (d) the characteristic is not a fear of persecution.

5LA Effective protection measures

- (1) For the purposes of the application of this Act and the regulations to a particular person, effective protection measures are available to the person in a receiving country if:
 - (a) protection against persecution could be provided to the person by:
 - (i) the relevant State; or
 - (ii) a party or organisation, including an international organisation, that controls the relevant State or a substantial part of the territory of the relevant State; and
 - (b) the relevant State, party or organisation mentioned in paragraph (a) is willing and able to offer such protection.
- (2) A relevant State, party or organisation mentioned in paragraph (1)(a) is taken to be able to offer protection against persecution to a person if:
 - (a) the person can access the protection; and
 - (b) the protection is durable; and
 - (c) in the case of protection provided by the relevant State—the protection consists of an appropriate criminal law, a reasonably effective police force and an impartial judicial system.

...

36 Protection visas – criteria provided for by this Act

...

- (2) A criterion for a protection visa is that the applicant for the visa is:
 - (a) a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the person is a refugee; or
 - (aa) a non-citizen in Australia (other than a non-citizen mentioned in paragraph (a)) in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen being removed from Australia to a receiving country, there is a real risk that the non-citizen will suffer significant harm; or
 - (b) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
 - (i) is mentioned in paragraph (a); and
 - (ii) holds a protection visa of the same class as that applied for by the applicant; or
 - (c) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
 - (i) is mentioned in paragraph (aa); and
 - (ii) holds a protection visa of the same class as that applied for by the applicant.
- (2A) A non-citizen will suffer **significant harm** if:
 - (a) the non-citizen will be arbitrarily deprived of his or her life; or
 - (b) the death penalty will be carried out on the non-citizen; or
 - (c) the non-citizen will be subjected to torture; or
 - (d) the non-citizen will be subjected to cruel or inhuman treatment or punishment; or
 - (e) the non-citizen will be subjected to degrading treatment or punishment.

- (2B) However, there is taken not to be a real risk that a non-citizen will suffer significant harm in a country if the Minister is satisfied that:
- (a) it would be reasonable for the non-citizen to relocate to an area of the country where there would not be a real risk that the non-citizen will suffer significant harm; or
 - (b) the non-citizen could obtain, from an authority of the country, protection such that there would not be a real risk that the non-citizen will suffer significant harm; or
 - (c) the real risk is one faced by the population of the country generally and is not faced by the non-citizen personally.

...

Protection obligations

- (3) Australia is taken not to have protection obligations in respect of a non-citizen who has not taken all possible steps to avail himself or herself of a right to enter and reside in, whether temporarily or permanently and however that right arose or is expressed, any country apart from Australia, including countries of which the non-citizen is a national.
- (4) However, subsection (3) does not apply in relation to a country in respect of which:
- (a) the non-citizen has a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; or
 - (b) the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen availing himself or herself of a right mentioned in subsection (3), there would be a real risk that the non-citizen will suffer significant harm in relation to the country.
- (5) Subsection (3) does not apply in relation to a country if the non-citizen has a well-founded fear that:
- (a) the country will return the non-citizen to another country; and
 - (b) the non-citizen will be persecuted in that other country for reasons of race, religion, nationality, membership of a particular social group or political opinion.
- (5A) Also, subsection (3) does not apply in relation to a country if:
- (a) the non-citizen has a well-founded fear that the country will return the non-citizen to another country; and
 - (b) the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen availing himself or herself of a right mentioned in subsection (3), there would be a real risk that the non-citizen will suffer significant harm in relation to the other country.

Determining nationality

- (6) For the purposes of subsection (3), the question of whether a non-citizen is a national of a particular country must be determined solely by reference to the law of that country.
- (7) Subsection (6) does not, by implication, affect the interpretation of any other provision of this Act.