IN THE UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)

R (on the application of AZ) v Secretary of State for the Home Department (statelessness "admissible") [2021] UKUT 00284 (IAC)

Field House,
Breams Buildings
London
EC4A 1WR

25 March 2021

THE QUEEN
(ON THE APPLICATION OF AZ)
(ANONYMITY ORDER MADE)

Applicant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

BEFORE

UPPER TRIBUNAL JUDGE OWENS

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Mr A Chakmakjian, instructed by Healys LLP appeared on behalf of the Applicant.

Mr Z Malik Q.C, instructed by the Government Legal Department appeared on behalf of the Respondent.

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ON AN APPLICATION FOR JUDICIAL REVIEW

APPROVED JUDGMENT

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1. *The word "admissible" must mean in the context of paragraph 403(c) the ability to enter lawfully and reside lawfully. "Admissible" does not incorporate the concept of "permanent residence".*

2. *The Statelessness Convention does not impose a requirement on contracting parties to grant either permanent residence or citizenship.*

JUDGE OWENS: This is an application for judicial review of the respondent's decision of 24 July 2019 refusing the applicant's application for leave to remain in the United Kingdom as a stateless person. The decision was upheld on administrative review by the respondent on 20 August 2019. The issue in this review concerns the proper interpretation of paragraph 403(c) of the Immigration Rules in respect of admissibility of a stateless person to their country of former habitual residence or any other country. The single ground of judicial review is that the respondent's definition of "admissible" in the context of paragraph 403(c) is unlawful, irrational and/or inconsistent with her own policy.

Immigration history

2. The applicant was born in Kuwait and is stateless.

3. The applicant entered the United Kingdom on a visit visa using a valid "Article 17" travel document issued by the Kuwaiti government. On 9 January 2018 she applied for leave to remain in the United Kingdom as a stateless person pursuant to paragraph 403 of the Immigration Rules.

4. The basis of her application was that she had provided evidence that her nationality had been withdrawn and she had unsuccessfully attempted to obtain Kuwaiti nationality. It had been problematic for her to continue to reside in Kuwait without nationality because of the denial of her civil rights such as education, healthcare and employment. She does not have any form of civil identity documentation in Kuwait. She claims to have used a false identity in order to attend school and drive and that this has now come to the attention of the Kuwaiti government. Every time she travels out of Kuwait her travel document is retained and she is provided with a letter which she must use to re-enter Kuwait.

5. The focus of the supporting representations was in relation to the applicant's status as a stateless person in Kuwait. The applicant has not claimed asylum or lodged a human rights claim.

6. After she lodged her application, the respondent requested more information in respect of the applicant's admissibility to Kuwait. In response on 17 April 2019, the appellant's representative AMZ Law stated that "the question of admissibility is not relevant to the issues in our client's case because our client is a refugee because her situation is analogous to an undocumented Bidoon".

The Secretary of State's Decision

7. In the decision dated 24 July 2019 it is not accepted by the respondent that the applicant is not admissible to Kuwait because the applicant provided a valid Kuwaiti "Article 17" travel document that expired on 20 March 2020. The applicant has previously used this document to travel to and from Kuwait. She has failed to provide sufficient evidence that she is no longer admissible to Kuwait.

8. Further the respondent does not accept that the applicant is not able to return to Kuwait because she does not have access to other basic rights because she provided to the respondent an educational certificate and a document confirming her lack of Kuwaiti citizenship provided by the Kuwaiti authorities. Both documents were in her own name.

9. The application also initially fell for refusal under paragraph 403(b) and (d), however on administrative review these reasons for refusal fell away because it is accepted that the applicant is stateless and her "Article 17" travel document was accepted as genuine.

10. On review, the respondent reiterated that the applicant holds an "Article 17" travel document which allows the applicant to re-enter Kuwait and referred to the Home Office Country Information and Guidance on Kuwait in this respect. It is said that the applicant's county of former habitual residence is Kuwait and that she is entitled to return there to take up permanent residence.

Permission to appeal

11. Permission to appeal for judicial review was granted by Upper Tribunal Judge Kopieczek on oral renewal on 16 December 2019. The grant of permission is in the following terms:

> "It is arguable that the respondent's decision unlawfully interprets 'admissible' in paragraph 403(c) of the Immigration Rules as meaning simply 'permitted to enter' (in this case Kuwait), whereas arguably that interpretation is inconsistent with international instruments dealing with statelessness and with the respondent's own guidance".

Issue

12. The issue in this appeal is the proper interpretation of the word "admissible" in paragraph 403(c) of the Immigration Rules and whether the respondent has lawfully applied that term to the applicant's application.

13. It is submitted by the applicant that the Secretary of State's failure to adopt the correct interpretation when considering the applicant's application renders the decision unlawful. It is said that the respondent's interpretation is contrary to the principles and the objectives of the Convention. Further, reliance is placed on R (on the application of Semeda) v SSHD (statelessness; Pham [2015] UKSC 10 applied) IJR [2015] UKUT 00658 (IAC). The respondent has straightforwardly failed to apply her policy which is a public law error.

14. I begin by setting out the relevant provisions of the current version of the Immigration Rules HC 395 Part 14 Stateless persons. The version in force at the date of the application and original decision has now been amended but this has no bearing on this application in relation to paragraph 403(c) which remains the same.

15. Definition of a stateless person;

> "401. For the purposes of this Part a stateless person is a person who;
>
> (a) satisfies the requirements of Article 1(1) of the 1954 United Nations Convention relating to the Status of Stateless Persons, as a person who is not considered as a national by any state under the operation of its law,
>
> (b) is in the United Kingdom, and

(c) is not excluded from recognition as a stateless person under paragraph 402".

Requirements for limited leave to remain as a stateless person;

"403. The requirements for leave to remain in the United Kingdom as a stateless person are that the applicant:

(a) has made a valid application to the Secretary of State for limited leave to remain as a stateless person,

(b) is recognised as a stateless person by the Secretary of State in accordance with paragraph 401,

(c) is not admissible to their country of former habitual residence or any other country, and

(d) has obtained and submitted all reasonably available evidence to enable the Secretary of State to determine whether they are stateless".

Refusal of limited leave to a stateless person;

"404. An applicant will be refused leave to remain in the United Kingdom as a stateless person if;

(a) they do not meet the requirements of paragraph 403;

(b) there are reasonable grounds for considering that they are:

(i) a danger to the security of the United Kingdom,

(ii) a danger to the public order of the United Kingdom, or

(c) their application would fall to be refused under any of the grounds set out in paragraph 322 of these Rules".

Intensity of review

16. Mr Chakmakjian for the applicant submitted that the level of scrutiny in a case involving the United Kingdom's international obligations should be exacting and intense. He referred me to paragraphs [10] and [30] of R (on the application of JM) v Secretary of State for the Home Department (Statelessness; Part 14 of HC 395) IJR [2015] UKUT 00676 (hereinafter known as "JM (statelessness)") in this respect. The Upper Tribunal endorses the approach that it is appropriate to impose an exacting and intense standard of review in a case which involved a question of whether the

United Kingdom was complying with its international obligations. Mr Malik agreed with this analysis of the level of scrutiny required and I see no need to depart from this principle.

Meaning of the word "admissible"

17. Mr Chakmakjian submitted that the proper interpretation of paragraph 403(c) of the Immigration Rules is that an applicant can only be regarded as admissible to her country of former habitual residence if she can be admitted for the purposes of lawful and permanent residence. His submission is that admissible does not mean "able to obtain entry" but in the context of the Statelessness Convention must denote more. In summary, he argued that the meaning of the word "admissible" must be informed by the objectives of the Convention and interpreted to give effect to the Convention. He referred me to UNHCR reports, the UNHCR Handbook on Statelessness and the applicant's own policy as set out in her Asylum Policy Instructions on statelessness.

18. The respondent contends that "admissible" means "lies within a claimant's power to obtain admission".

Is the meaning of the word "admissible" settled by the Court of Appeal?

19. Mr Malik submits that the meaning of admissible is settled and has been explained by the Court of Appeal in JM (Zimbabwe) v SSHD [2018] EWCA Civ 188 ("JM (Zimbabwe)". The Upper Tribunal is bound by this. The Court of Appeal has held that an applicant can be regarded as admissible to her country of former habitual residence if "it lies within a claimant's power to obtain admission". (See JM (Zimbabwe) and Teh v Secretary of State [2018] EWHC 1586)

20. Mr Chakmakjian submits that the relevance of the authorities in JM (statelessness) and JM (Zimbabwe) relate to a discrete point and ultimately the prevention of the abuse of the Immigration Rules for those who have an entitlement to nationality and refuse to exercise the right which is a separate issue to that in this review because it is in a completely different context.

21. JM (statelessness) and JM (Zimbabwe) related to the situation of a child of Zimbabwean origin, JM, born in the UK who did not have Zimbabwean nationality

because although he had a right or entitlement to apply to register for Zimbabwean nationality his parent had failed to apply for it and the Court of Appeal was considering paragraph 403 of the immigration rules in the context of abuse. The child claimed not to be admissible because he would not be admitted when presenting himself at the border because of a lack of documentation which is a practical question. The Court of Appeal rejected that interpretation because it would encourage fraud. The Court of Appeal went on to interpret the words "admissible" to include not only being immediately able to be physically admitted but to be "entitled to be admitted" because it was open to the child to apply for citizenship. In that context that the child would be in fact returning to Zimbabwe as a national of that country with all of the rights and status that that nationality would confer on him. The consideration of the Upper Tribunal and the Court of Appeal did not extend for this reason to whether the word "admissible" included the right to enter for the purpose of lawful and permanent residence because this was implicit in the fact that he was entitled to nationality.

22. In JM (statelessness) Mr Malik represented the respondent and his submission at [38] was that the proper interpretation of "admissible" is that a person is either the national of a country or entitled to be a national of the country.

23. Similarly, the case of Teh v Secretary of State [2018] EWHC 1586 does not assist Mr Malik's argument that this issue is settled. In Teh the High Court dealt with an individual who had voluntarily renounced his Malaysian citizenship and had declined to seek to re-establish it. There was no question that if he regained his Malaysian citizenship, he would have all the rights and obligations of Malaysian nationals. Further, it was accepted by the judge that the applicant would not only be able to enter Malaysia but once there, he would be able to reside there and would have various civil rights even whilst he was waiting for his application for nationality to be processed. Once again, the court did not consider the issue of whether the words "admissible" included entry for the purposes of lawful and permanent residence because the issue was whether it was "within the appellant's power to obtain admission" and it was accepted that once he had regained his citizenship, like JM, that he would have all the rights of a citizen.

24. Mr Malik drew my attention to JM (statelessness) at [12] where it is said;

> "The use of the term 'admissible' at paragraph 403(c) was not about the acquisition of nationality but whether the person was returnable, for example if they were not a national but had a visa or leave of some kind. An example might be a Kuwaiti Bidoon who if documented, albeit not a national, would potentially be returnable to Kuwait".

25. This was in fact a repetition of Mr Berry's submission in support of his argument that the child was not immediately admissible because he did not have the necessary documentation and did not form part of the reasoning in the decision. This paragraph is not analogous or relevant to the facts of this application.

26. Mr Malik's submission is that on the authorities referred to above there is no justification for reading paragraph 403(c) of the Immigration Rules "restrictively" (his words) as is suggested by the applicant.

27. I disagree with Mr Malik's submission. I am not satisfied that the issue of the interpretation of the rule as it applies to the facts of this case has been settled because the authorities refer to a different and distinct factual scenario.

The meaning of "admissible" at paragraph 403(c) of the immigration rules

28. Since I have found that the meaning of "admissible" as it relates to this application for review has not been settled, I turn to consider the meaning of "admissible" at paragraph 403(c) of the immigration rules.

29. It is settled law that the Immigration Rules are to be construed "sensibly according to the natural and ordinary meaning of the words used recognising that they are statements of the Secretary of State's policy." (Mahad v ECO [2009] UKSC 16 per Lord Brown at [10]) and that the construction of the immigration rules "depends upon the language of the rule, construed against the relevant background" which "involves a consideration of the rules as a whole and the function which they serve in the administration of immigration policy". The words used in the rule are what the Secretary of State must have intended because the rules are her rules.

30. The English language definition of "admissible" is allow to enter or permit to enter. In my view the natural and ordinary meaning of the word "admissible" connotes something more than just physically entering a territory in the sense of arriving at the airport and entering. It plainly means more than "gain entry" which could for instance

include “illegal entry”. It imports a concept of actively being allowed or permitted to enter by some authority because an individual meets some kind of criteria. My view is that in immigration terms admissibility will be determined by the authorities in question who will decide whether an individual is permitted to enter because the individual has some kind of right to enter and reside in a territory from which I infer that the entry and subsequent residence would be lawful. Logically, if an individual is not lawfully permitted to enter and reside in a territory, then the individual would not be admissible.

31. In my view the word “admissible” must mean in the context of paragraph 403(c) the ability to enter lawfully and reside lawfully.

32. Indeed, I do not understand the respondent’s decision to mean anything other than this. Were the applicant not able to enter Kuwait lawfully and reside in Kuwait with the permission and knowledge of the authorities, she would not be admissible. Her travel document gave her the right to enter Kuwait lawfully and by definition to reside lawfully.

Permanent residence

33. The question of the length of residence is more problematic. The word “admissible” plainly does not incorporate the concept of “permanent residence”. The wording of the rule makes no mention of this, and this is not the natural and sensible meaning of the words. Had the Secretary of State intended the rule to have meant this, the Secretary of State would have drafted the rule accordingly.

34. Mr Chakmakjian’s argument is that what the Secretary of State meant the rule to mean can be found in the Secretary of State’s policy documents including the explanatory memorandum to the rules. He drew my attention to the Secretary of State’s policy guidance which was in force at the date of the decision - “Asylum Policy Instructions: Statelessness and applications for leave to remain, version 2, 18 February 2016” (“API 2016”) as well as the explanatory memorandum to the immigration rules and the UNHCR policy on statelessness.

35. Mr Malik’s arguments focused around the lawful means of interpretation of the immigration rules. He submitted that this issue has been settled in Mahad which was

approved in Ahmed v SSHD [2019] EWCA Civ 1070; [2019] Imm AR 1316 which held that:

> "it is axiomatic that the intention of the rules is to be discerned objectively from the language used, not from eg. guidance documents".

36. His submission is that the immigration rules cannot be interpreted by the Secretary of State's policy. Mr Malik referred to me the case of Mahmood v SSHD [2020] UKUT 00376; [2021] Imm AR 475 at [60] which states as follows:

> "We observe the Court of Appeal's confirmation in ZH (Bangladesh) v. Secretary of State for the Home Department [2009] EWCA Civ 8, [2009] Imm. A.R. 450, at [32], that the respondent's instructions, and by analogy her guidance, are not an aid to the construction of the Rules notwithstanding that their author is in law the author of the Rules. They do not have, and cannot be treated as if possessing, the force of law. This is consistent with Lord Brown's observation in Mahad, at [11], that instructions issued by the respondent have on occasion been issued inconsistently with the Rules as interpreted by the courts".

37. His submission is that the content of the guidance and explanatory memorandum cannot be used to construe the Immigration Rules and the applicant's submission is inconsistent with these authorities. His position is that the applicant's primary contention that the interpretation of the rules when set against the context of the international obligations and the Secretary of State's public guidance runs against the authorities about the method of interpreting the Immigration Rules.

38. In general terms it is settled law that the Secretary of State's guidance cannot be used to interpret the meaning of the immigration rules, unless there is genuine ambiguity where it is legitimate to derive assistance from the executive's formally published guidance including IDI's. (Lord Justice Jackson at [42] of Pokhriyal v SSHD [2013] EWCA Civ 1568; [2014] Imm AR 711).

39. I note in this respect the postscript by Sir John Laws in JM (Zimbabwe) that "the true sense of paragraph 403(c) is not as apparent as it should be". Indeed, it was the ambiguity of the rule which gave rise to the arguments in JM (statelessness) and JM (Zimbabwe). In JM (Zimbabwe) the Court of Appeal read into the words more than just an ability to physically enter a jurisdiction but the concept of "lying within one's

power to obtain admission". I find that there is a degree of ambiguity in the word "admissible". I turn to the policy guidance itself.

40. The policy document in force at the date of decision is silent as to the definition of "admissible". It states at 6.2:

> "Where an applicant does not meet the requirements of paragraph 403(c) because they are admissible to their country of former habitual residence or any other country, the decision letter must clearly indicate whether they are nevertheless recognised as being stateless in accordance with paragraph 401(a) of the immigration rules"

41. It is also said that:

> "if an ETD has been secured or a passport used to arrange to remove the individual then this can be accepted as evidence that they are re-admissible for the purposes of permanent residence."

42. Elsewhere at the section "1.3 Policy intention" it states that the "underlying policy objective is to":

> "Provide a means for the consideration of those who are stateless and who have no other right to remain in the UK but who cannot be removed because they would not be admitted to another country for the purposes of residence to be allowed to stay." (my emphasis).

43. At a different part of the policy document dealing with children the policy document refers to "permanent residence".

44. In my view the policy document in force at the date of the decision is in itself ambiguous and refers alternatively to "residence" and to "permanent residence". I am not satisfied that the policy document provides clear, unambiguous guidance on the interpretation on of "admissible", nor that it provides a transparent and sufficiently settled policy that is more generous than the rule itself. In my view the policy guidance in this instance does not assist with the interpretation of the immigration rule.

45. Mr Chakmakjian additionally adduced an explanatory memorandum of the latest changes to the Immigration Rules dated 7 March 2019 as highlighting the purpose of the Rules at 7.5.5.

46. It said:

> "Changes to statelessness leave provisions – the Home Office operates a stateless leave policy, reflected in Part 14 of the Immigration Rules, to assist those who are stateless and do not have a right of residence in any other country. Those who qualify for leave on this route are currently granted 30 months' limited leave can apply to extend their leave and become eligible for settlement after five years' lawful residence".

47. And at 7.5.7:

> "In addition, further changes have been made to make clear that to qualify for stateless leave someone must show that they cannot acquire nationality or a right to permanent residence in another country to which they may be entitled. These changes are designed to reflect the policy intention better and to deter abusive applications from those who deliberately renounce their citizenship, or refuse to take reasonable steps to acquire a nationality or right to permanent residence to which they can reasonably expect to be entitled if they registered with the relevant national authorities".

48. He submitted that the explanatory memorandum to the Statement of Changes in the Immigration Rules is a permissible tool of interpretation which gives guidance on the contextual scene and casts light on the aims of the Rules and the construction. He referred me to [64] to [67] of Mahmood [2020] UKUT 00376. His submission is that if one steps back there is plainly a consistent line of evidence from the respondent in the statements of her policy intention as expressed in the Rules.

49. Mr Chakmakjian's submission is that the cases of Mahad and Ahmed quoted by Mr Malik in support of his submission that APIs cannot be used to throw light on policy intention or the meaning of the Rules can be differentiated. Mahad referred to the IDIs finding that they were inconsistent with the Rules and in Ahmed the Court of Appeal when giving guidance on long residence issue found that the guidance was contrary to the true construction. Neither of these scenarios apply in this case particularly given the context of the international obligations. His argument is that, in contrast, the respondent seeks an interpretation in the cold vacuum which is strictly literal. In the absence of any support to the contrary the rule must be understood in its proper context and clear reported statement as to intent which cannot be ignored.

50. His position is that the applicant's primary contention that the interpretation of the rules when set against the context of the international obligations and the Secretary

of State's public guidance runs against the authorities about the method of interpreting the Immigration Rules.

51. I am satisfied that the explanatory memorandum to the Statement of Changes in the Immigration Rules presented to parliament does reflect on the intentions of the Secretary of State in drafting the Rules and that this is relevant to an understanding of the contextual scene of the statelessness provisions of those Rules.

52. However, the earlier part of the memorandum refers to 'residence' only and the words relating to permanent residence refer to the ability of an applicant to obtain this status reflecting the reasoning in JM (statelessness) and JM (Zimbabwe) in the context of the prevention of fraud.

53. I am not satisfied that the wording of the explanatory memorandum supports the applicant's submission that the word "admissible" should be read as "admissible for the purposes of permanent residence".

54. I do not understand Mr Chakmakjian to be arguing that the wording of the UNHCR handbook can be used to determine what the Secretary of State meant by "admissible" in the Immigration Rules.

55. Having considered the policy and explanatory memorandum, I am not satisfied that the Secretary of State intended paragraph 403(c) of the immigration rules to mean admit for the purpose of "permanent residence".

Decision not in accordance with policy

56. I am also not satisfied that the decision is not in accordance with the respondent's policy guidance because the guidance does not unequivocally state that an applicant will not be admissible if they are not going to be admitted for the purposes of permanent residence. I note in this respect that the policy document in October 2019 was updated after the date of the decision and the wording has been changed.

Not in accordance with international law

57. Mr Chakmakjian devoted much of his grounds arguing that paragraph 403(c) was intended to give effect to the Statelessness Convention and that the purpose of the

Convention is to ensure that individuals without nationality are not deprived of "core rights".

58. In order to illustrate the purpose of the statelessness convention, Mr Chakmakjian pointed to the respondent's own policy in force at the date of the decision. "Asylum Policy Instructions: Statelessness and applications for leave to remain, version 2, 18 February 2016" ("API 2016"). This confirms at the very outset that an underlying policy objective is to:

> "ensure we fully comply with our international obligations under the UN Statelessness Conventions
>
> - provide a means for the consideration of those who are stateless and who have no other right to remain in the UK but who cannot be removed because they would not be admitted to another country for the **purpose of residence**".

59. At the date of this decision the policy in force referred only to residence rather than permanent residence.

60. Mr Chakmakjian submits that his argument is further supported by the latest API published in October 2019 ("API 2019"). Although it postdates the decision, the 2019 API comments on the respondent's intentions when the Rules were first introduced. It states:

> "in April 2013 the UK incorporated a new procedure under the Immigration Rules to allow stateless persons to be formally determined as stateless and granted leave to remain where they have no other right to remain under the Rules but cannot leave voluntarily or be removed from the UK <u>because they have no right of permanent residence in their country of former habitual residence or in any other country</u>".

61. The "stated intention" section has been similarly updated to state:

> "that the Secretary of State's intention is to fully comply with international obligations arising from the Statelessness Conventions and the need to grant leave to stateless persons who would not <u>be admitted to another country for the purposes of lawful permanent residence</u>".

62. He submits that the respondent's erroneous interpretation of admissibility under paragraph 403(c) is contrary to the principles of objectives of the Convention relating to the Status of Stateless Persons 1954 (ratified by the UK in April 1959). The

relevant Immigration Rules are intended to reflect the UK's obligations under that Convention and (unless otherwise stated) must be interpreted consistently with international law.

63. The UNHCR Handbook on Protection of Stateless Persons, Geneva 2014 states as follows at page 7, paragraph 11;

> "11. Stateless persons are generally denied enjoyment of a range of human rights and prevented from participating fully in society. The 1954 Convention addresses this marginalisation by granting stateless persons a core set of rights. Its provisions, along with applicable standards of international human rights law, establish the minimum rights and the obligations of stateless persons in states party to the 1954 Convention. The status granted to a stateless person in a state party, that is the rights and obligations of stateless persons under national law, must reflect these international standards".

64. It is Mr Chakmakjian's submission that the API makes clear that admissibility is to be regarded as purposive rather than literal. It is insufficient to establish only that an applicant can pass through a border. The decision maker is also obliged to consider the nature and conditions of the applicant's residence upon readmission. Further support for the argument that admission relates not just to passing through the border but being permitted to remain is at page 10 of the 2016 API where it refers to an interview not being arranged where the applicant is clearly admissible to another country "for the purposes of permanent residence".

65. He submits that the API places the issue of admissibility in the context of admission being for the purposes of lawful and permanent residence. It is reiterated in the guidance in the context of family members applying for leave for the stateless person.

66. Finally, in the UNHCR 2014 Handbook from which the API has drawn its guidance, the correct understanding is set out in the obligations arising under the Convention and therefore those requirements are binding upon the UK and observing those obligations through the Immigration Rules. At paragraph 154, page 54 of the Handbook the UNHCR states:

> "In the UNHCR's view protection can only be considered available in another country when a stateless person;

- is able to acquire or reacquire nationality through a simple, rapid, and non-discretionary procedure, which is a mere formality; or
- enjoys permanent residence status in a country of previous habitual residence to which immediate return is possible".

67. This is elaborated at paragraph 157, page 55;

> "As for an individual's ability to return to a country of previous habitual residence, this must be accompanied by the opportunity to live a life of security and dignity in conformity with the object and purpose of the 1954 Convention. Thus, this exception only applies to those individuals who already enjoy the status of permanent residence in another country, or would be granted it upon arrival, where this is accompanied by a full range of civil, economic, social and cultural rights, and where there is a reasonable prospect of obtaining nationality of that state. Permission to return to another country on a short-term basis would not suffice".

68. Mr Chakmakjian additionally adduced the explanatory memorandum which I have set out above as highlighting that the purpose of the Rules was to reflect the UK's international obligations.

69. He referred me to R (on the application of Semeda) v SSHD (statelessness; Pham [2015] UKSC 19 applied) IJR [2015] UKUT 00658 (IAC) in which it is said that paragraph 403 of the immigration rules co-exists and must be given effect in tandem with the United Nations Convention Relating to the Status of Stateless Persons and the Secretary of State's policy instruction. This is also recognised at [24] of JM (statelessness) and [10] of JM (Zimbabwe).

70. I am agreement with the reasoning in Semeda that paragraph 403 of the immigration rules must give effect to the UN Convention Relating to the Status of Stateless Persons. I do not find this contentious.

71. Mr Chakmakjian did not refer me to the wording or the contents of the Convention itself merely to the respondent's policy guidance, the UNHCR guidance and the memorandum.

72. It is trite law that the UNHCR handbook is advisory only and the respondent's policy guidance itself makes it clear that the UNHCR guidance is not being followed in full.

Further, some of the quotes above from the UNHCR handbook refer to a different situation to that in which the applicant finds herself. Most importantly the UNHCR handbook refers to a "core set" of rights.

73. It is important to note that the Statelessness Convention establishes minimum standards of treatment for stateless people in respect to a limited number of rights. These include, but are not limited to, the right to education, employment and housing. Importantly, the 1954 Convention also guarantees stateless people a right to identity, travel documents and administrative assistance. The Convention itself does not impose a requirement on contracting parties to grant either permanent residence or citizenship and the core rights protected fall short of the full rights of citizenship.

74. I am not satisfied that the decision is unlawful because paragraph 403(c) is contrary to international law.

403(b) argument

75. I reject the applicant's argument that the respondent has accepted that the applicant does not have the right to lawful and permanent residence because the reasoning for accepting the applicant to be stateless under paragraph 403(b) was because:

> "You are not considered to have the rights and obligations of the country of your former habitual residence as [you are not a Kuwaiti national].

76. In my view it is manifest that the respondent is referring to the rights and obligations as a citizen and the fact that the applicant does not have Kuwaiti citizenship which is acknowledged, and which is one of the freestanding requirements of rule 403.

77. There are many individuals who reside lawfully and permanently in a country without being a citizen, for instance those foreign nationals in the UK who have indefinite leave to remain. They cannot be said to have all of the rights and obligations as a British citizen. Similarly in Kuwait there are documented Bidoons who are entitled to reside in Kuwait but without the full rights of citizens.

Did the respondent give consideration as to whether the applicant would be admitted to Kuwait for the purpose of lawful and permanent residence?

78. I set out the development of the applicant's application in some detail.

79. In her original application dated 9 January 2018 the applicant asserted that she had been deprived of her civil rights such as education, health care and employment and that she was using a false identity to work and drive. It was asserted that the use of the false identity had come to light and if returned the applicant would be arrested and charged. Her original representations did not address 403(c) and the issue of whether she was admissible.

80. On 14 November 2018 a new representative AMZ law submitted that the applicant was a “stateless refugee” but she did not claim asylum.

81. It is plainly for the applicant to demonstrate that she satisfied the Immigration Rules.

82. On 28 March 2019 the respondent wrote to the applicant for more information. The Secretary of State requested inter alia the reasons why the applicant believed herself to be inadmissible to Kuwait given that she had a valid “Article 17” travel document. In response, AMZ Law stated “admissibility is not a prerequisite to determine statelessness”. It was said that every time the applicant travels, her travel document is held on arrival which is discriminatory. It was re-asserted by the representative that the question of admissibility was not relevant to the applicant’s case.

83. Thus far, prior to the decision the applicant had not addressed the issue of admissibility or made any submissions on what the word “admissible” meant.

84. The decision letter dated 24 July 2019 summarised the applicant’s claim. The respondent indicated that the decision would not address any protection claim and this is not challenged by the applicant. Nor does the challenge relate to the failure of the respondent to consider the ECHR in the decision letter.

85. The facts as found by the respondent are that the applicant was born in Kuwait and had lived there for many years as a stateless person. The applicant continued to live in Kuwait prior to coming to the UK and she had been able to travel abroad and return to Kuwait on several occasions including on her “Article 17” travel document. These facts are not disputed. The respondent also had evidence before her which the applicant submitted in support of the original application that the applicant had attained an educational certificate in her own name demonstrating that she had been able to study. Further on her travel document issued in her own name was described

as ‘employed’. On her own evidence in her visa application, she had worked. The applicant also provided documents from the Kuwaiti authorities in her own identity. The respondent rejected the applicant’s assertion that she was using false documents to attend school and access other basic rights. The grounds do not challenge the facts as decided in the refusal letter. It is not submitted by Mr Chakmakjian that this is not an accurate summary of the applicant’s claim. It is not submitted that the respondent has committed an error in failing to refer to material evidence, or that the Secretary of State has not considered the claim as put to her. Nor is there any dispute that a valid “Article 17” travel document would allow the applicant to gain entry to Kuwait for the purposes of residing there.

86. The first time the applicant raised the question of the interpretation of admissibility was in the application for administrative review dated 8 August 2019. Prior to this, the applicant had consistently asserted that the question of admissibility did not arise in her case because she was a refugee.

87. In the administrative review decision dated 20 August 2018, the respondent stated:

> “as you have been issued with a valid Article 17 travel document from Kuwait **you are entitled to return there and take up permanent residence**”.

88. I disagree with Mr Chakmakjian’s submission that the question of permanent residence has never been addressed by the respondent and that it is not for the respondent to make this assertion now. At the administrative review stage, the Secretary of State manifestly considered whether the applicant was admissible in the sense that she was both entitled to reside in Kuwait and lives there permanently.

89. I am satisfied that in the administrative review decision, the respondent expressly considered the interpretation of the rules asserted to be the correct interpretation by the applicant which is whether the applicant had the entitlement to return to take up lawful permanent residence. This constituted more that than a consideration of whether it lay within the applicant’s power to gain entry and plainly considered the quality and length of residence. Although this consideration was not in the original decision, I find that it was addressed in the administrative review decision in response to the grounds of review as raised by the applicant and that the respondent

was in these circumstances entitled to give new reasons in accordance with R v SSHD ex p Turgut [2000] EWCA Civ 22.

90. I am satisfied that the respondent was rationally entitled to conclude on the basis of the evidence before her that the applicant was legally permitted to enter Kuwait because she had a valid “Article 17” residence card on which she had previously travelled out of Kuwait and re-entered Kuwait like any other alien. I am also satisfied that the Secretary of State was rationally entitled to find that her residence in Kuwait was long-term because she had lived there for many years and she had produced insufficient evidence that she could not reside there as she had hitherto done. She had also provided evidence that she had obtained an education in her own identity and evidence in her own identity that she was employed.

91. The applicant also does not challenge the respondent’s conclusion that the applicant has not provided evidence of her attempts to obtain Kuwaiti nationality or of the refusal decisions relating to any such attempts.

92. I am satisfied that it was open to the respondent to form the view, particularly in the light of the applicant’s ability to travel in and out of Kuwait and her length of residence there, that she did in fact have the right to reside lawfully and permanently in Kuwait and I reiterate the lack of challenge to the Secretary of State’s findings.

93. If I am wrong, and the meaning of the word admissible includes the right to remain in the territory permanently, I am satisfied that the respondent would have rationally found the applicant to be admissible on the applicant’s own interpretation of the rule for the reasons set out above. Therefore, any error on the part of the respondent on the meaning of admissible is not material to the outcome of the application.