



APOSTASY AND ASYLUM IN THE UNITED KINGDOM

**Guidelines by the
Council of Ex-Muslims of Britain**

The Council of Ex-Muslims of Britain was formed in June 2007 to make renunciation from Islam a public matter. Whilst religion or the lack thereof is a private affair, when apostasy is punishable by death under Sharia law and apostates face threats and intimidations for leaving Islam here in Britain and elsewhere, a public renunciation becomes a necessity and form of resistance. The CEMB was also formed to break the taboo that comes with renouncing Islam and take a stand for reason, universal rights and values, and secularism.

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INTRODUCTION

Asylum is the process whereby the government of one country allows a citizen of another to live within its borders if that citizen were otherwise at risk of being subject to persecution. The individual citizen concerned must be at risk of persecution because of their race, religion, nationality, political opinion, or membership of a particular social group. This is in accordance with the requirements of the 1951 United Nations' Convention relating to the Status of Refugees¹. This report will look first at the numbers seeking asylum in the United Kingdom and the procedures for doing so. It will try to establish (as far as is possible) the number of these asylum claims which relate to persecution based on religion, and examine the success or otherwise of such claims. It will also examine the way in which courts have approached questions of apostasy in the past. Secondly, it will look at apostasy (leaving one's religion); how it is defined, in which countries it is prominent, and what punishments are imposed on those found to be guilty of it. Finally, it will examine apostasy as grounds for asylum in the United Kingdom and ask if the current system operates in accordance with the UK's national and international obligations.

ASYLUM CLAIMS

Between January and March 2010, a total of 5,405 applications for asylum in the United Kingdom were made². The United Kingdom Border Agency explains the process of an asylum claim as beginning with an initial "screening" interview, followed by allocation to a "case owner" (and an initial meeting with him/her), followed by an "asylum interview"; at which the claimant must provide reasons as to why he or she is claiming asylum in the United Kingdom. At this interview, the claimant will be asked to explain exactly why they fear returning to their country of birth. The claimant, if eligible, will be provided with housing and living costs while awaiting the outcome. If asylum is granted, the applicant will be given permission to

¹ <http://rds.homeoffice.gov.uk/rds/asylum.html>

² <http://rds.homeoffice.gov.uk/rds/asylum.html>

remain in the United Kingdom for a period of five years. If not granted, the applicant will be removed from the United Kingdom; applicants may be detained while they wait to be removed³.

It is difficult to ascertain how many asylum applications to the United Kingdom are based on fear of persecution on the grounds of religion. However, the House of Lords, in a 2006 judgment, described religion as being one of the four most common grounds on which asylum is sought in the United Kingdom⁴. It is known that in the final quarter of 2009, 77% of decisions on asylum applications were refusals to grant asylum⁵. Therefore, it may reasonably be estimated that asylum claims on religious grounds are regularly being refused in the United Kingdom.

In the case of *MM (Iran) v Secretary of State for Home Department* in 2009, the Court of Appeal addressed the question of apostasy and asylum: "Distinctions there made between the ordinary discreet convert, who would be able to practice Christianity without untoward risk, and the more active convert, pastor, church leader, proselytiser or evangelist, or other convert to whom an additional risk factor might attach (eg a woman), who would be at real risk, and found that MM fell into the former category"⁶. In other words, it was thought that if a person did not display their apostasy publicly, they were not in any danger in Iran. This thought is common and the issue has been raised in other cases involving claims for asylum on grounds of apostasy. In the case of *X (Iran) v Secretary of State for the Home Department*, the question of the claimant's conversion to Zoroastrianism was examined again in light of whether or not it would be discovered in Iran, and the claimant placed in danger of persecution⁷. In this case, the judge referred to the judgment of the Immigration Appeal Tribunal in *Secretary of State for the Home Department v FS* which stated (*inter alia*) the following:

"We regard it as appropriate to assess the risk to these Appellants on the basis that their conversion would become known to the authorities, to friends, family and colleagues...."⁸.

³ <http://www.ukba.homeoffice.gov.uk/asylum/process/>

⁴ <http://www.publications.parliament.uk/pa/ld200506/ldjudgmt/jd061018/sshd.pdf>

⁵ <http://rds.homeoffice.gov.uk/rds/pdfs10/immiq409.pdf>

⁶ <http://www.lexisnexis.com>

⁷ <http://www.lexisnexis.com>

⁸ <http://www.lexisnexis.com>

It was further thought that it should be a matter of fact in each case, whether or not a conversion was genuine or whether a person's conversion was likely to be discovered by the Iranian authorities. These cases provide examples of the considerations that are regularly being made when our judiciary ponders the question of apostasy and asylum. Thus, a pattern emerges which suggests that asylum will not be granted on the grounds of religion/apostasy unless it can be shown that the applicant's apostasy will be known to the Iranian authorities (or another authority as appropriate).

The grounds on which a person may claim asylum are, of course, not limited to religion. As outlined above, further grounds include race, nationality, political opinion, or membership of a particular social group. Therefore, it is arguable that there are three potential headings under which apostasy claims could be pursued, these claims may be better placed under the headings "political opinion" or "membership of a particular social group"; an apostate may merit protection on either of these grounds; particularly the latter. In *K v Secretary of State for the Home Department*, a particular social group was defined as "a group of persons who shared a common characteristic, other than their risk of persecution, which distinguished the group from the remainder of the society of which they were part, or who were perceived as a group by society"⁹. It is arguable that apostates, atheists, Christians, or any other sub-group in a society dominated by Islam could meet this definition.

A recent case (2010) decided in the UK Supreme Court may have an effect on the considerations made by the judiciary when assessing cases of asylum on grounds of religion/apostasy. Five Supreme Court justices said that gay and lesbian asylum seekers should not be expected to "exercise discretion" in their home countries to avoid persecution¹⁰. This had hitherto been the approach; that homosexuals could be discreet about their sexuality and therefore avoid being persecuted. Whether this transfers to religion, political belief, or membership of a specified group will remain to be seen, but it is almost certainly ripe for legal challenge. There may however be a distinction which the courts could make. There is a possibility that sexuality will be recognised as an inherent trait of which a person has no choice; this may be distinguishable from religion or political belief but it is difficult to assess this at such an early stage. It is arguable however that a person should not have to tolerate

⁹ <http://www.lexisnexis.com>

¹⁰ <http://www.guardian.co.uk/world/2010/jul/07/gay-refugees-asylum-seekers>

discretion and be expected to hide their religion (or lack of it), in the same way that they are not now expected to be discreet with regard to their sexuality.

APOSTASY

Apostasy is generally understood to mean “the formal religious disaffiliation, abandonment, or renunciation of one’s religion”¹¹. How each of the major religions react to apostasy varies, but it remains a criminal offence primarily in countries throughout the Middle East and Africa; in many, particularly under Sharia law, it carries the death penalty.

For example, in Afghanistan in 2006, Abdul Rahman was sentenced to death for converting to Christianity¹². A month after his arrest, and following considerable international outcry, Mr Rahman was released and granted asylum in Italy¹³. This case is an example of one that has attracted international media attention. The Council of Ex-Muslims of Britain (CEMB) and One Law for All have been in regular contact with people who fear returning to their countries of birth due to the fact that they are atheists (or have converted to another religion). The example above provides evidence of the reasonableness of those fears. Indeed, incidents of violence against apostates are easy to find. The CEMB and One Law for All have had much contact with those who have either been directly or indirectly threatened with violence either by the state or non-state actors for being apostates.

THE UNITED KINGDOM’S OBLIGATIONS

The United Nations Convention in Relation to the Status of Refugees came in to force on April 22nd 1954. The signatories to this Convention agree to various forms of cooperation but the most important, for these purposes, is the agreement to the principle of non-refoulement. This states: "No Contracting State shall expel or return

¹¹ <http://en.wikipedia.org/wiki/Apostasy>

¹² http://news.bbc.co.uk/1/hi/world/south_asia/4841334.stm

¹³ [http://en.wikipedia.org/wiki/Abdul_Rahman_\(convert\)](http://en.wikipedia.org/wiki/Abdul_Rahman_(convert))

('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social or political opinion" (Article 33(1)).¹⁴ The United Kingdom is a signatory to this Convention¹⁵. This Convention legally binds its signatories to this principle¹⁶.

On October 2nd 2000, the Human Rights Act 1998 came in to force in the United Kingdom. Section 6 of this Act 1998 provides that 'it is unlawful for a public authority to act in a way which is incompatible with a [European Convention on Human Rights] Convention right'. A public authority is defined as including courts and tribunals, and a party whose functions are functions of a public nature.

The European Convention on Human Rights provides (inter alia) that 'everyone's right to life shall be protected by law', 'no one shall be subjected to torture or to inhuman or degrading treatment or punishment', and 'everyone has the right to liberty and security of person'. Therefore, it is arguable that in returning apostates to a country in which their freedom, safety, security, or life may be in danger, the UK government acts in breach of section 6 of the Human Rights Act 1998.

Recent cases involving the United Kingdom have tested and demonstrated the use of these laws. In May 2010, the Special Immigration Appeals Commission (SIAC) in London ruled that Abid Naseer and Ahmed Faraz Khan could not be deported to Pakistan as the threat to their safety was too great.¹⁷ Both men had been arrested on suspicion of plotting to blow up Manchester's Trafford Centre. Around the same time, the European Court of Human Rights cancelled the deportation of Bitra Ghaedi and ordered her case be reviewed. Ghaedi fled Iran in 2005 to escape a forced marriage (the outcome of this case is awaited).¹⁸ These cases are demonstrable of the inconsistent results on deportation cases in the UK and Europe. It must be asked why one danger is deemed greater than another. Bitra Ghaedi pleaded that she faced danger from the Iranian government and from her family; from the government for her

¹⁴ http://en.wikipedia.org/wiki/Convention_Relating_to_the_Status_of_Refugees

¹⁵ <http://www.nhsggc.org.uk/content/default.asp?page=s1095>

¹⁶ <http://www.unhcr.org.au/basicoblig.shtml>

¹⁷ <http://www.independent.co.uk/news/uk/home-news/alqaida-operative-must-not-be-deported-to-pakistan-says-judge-1976436.html>

¹⁸ <http://www.pickledpolitics.com/archives/8553>

political and religious views - she has participated in the anti-government protests - and from her family for having a relationship with a man who was not her husband, causing her to fear that she would be the victim of an 'honour killing'. She was however listed for deportation from the UK. For Naseer and Khan, the judge said "there is a long and well-documented history of disappearances, illegal detention and of the torture and ill-treatment of those detained, usually to produce information, a confession or compliance."¹⁹ There is also a well documented history of honour killings, forced marriage, and female oppression in Iran – so why the difference? There is now a desperate need for the UK and European courts to provide clarity on these issues.

CONCLUSION

“It is clear quite clear that under Islamic Law an apostate must be put to death.”²⁰ Although there are varying schools of thought across the Islamic world with regard to this issue, one can reasonably conclude that to be judged an apostate under Sharia is a dangerous predicament to be in. Whether enforced by the state, Islamic groups, or family members, the evidence to suggest that the danger of persecution, or worse, of disbelievers under Sharia law is considerable.

The United Kingdom is obliged, by virtue of United Nations mandate and its own Human Rights Act, to protect refugees and asylum seekers who have reasonable grounds to fear that they will be subjected to persecution – up to and including violence and death. Therefore, one can only conclude that, in refusing to do so, the United Kingdom may well be in breach of its obligations and therefore open to legal challenge.

¹⁹ <http://www.independent.co.uk/news/uk/home-news/alqaida-operative-must-not-be-deported-to-pakistan-says-judge-1976436.html>

²⁰ http://wikiislam.net/wiki/Apostasy_and_Human_Rights

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