

APOSTASY AND ASYLUM IN THE UNITED KINGDOM

Guidelines by the
Council of Ex-Muslims of Britain



About

The Council of Ex-Muslims of Britain was formed in June 2007 in order to break the taboo that comes with renouncing Islam and to 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 persecution. The individual citizen concerned must be at risk of persecution as a result 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 features prominently, and what punishments can be 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.

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

Asylum claims

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

It is difficult to ascertain how many asylum applications in the UK 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 asylum applications in Britain were refused⁵. Therefore, it may reasonably be estimated that asylum claims on religious grounds are regularly being refused in the United Kingdom.

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

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>

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 the 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 the light of whether or not it would be discovered in Iran, and therefore whether the claimant was 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.

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 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,

6 <http://www.lexisnexis.com>

7 <http://www.lexisnexis.com>

8 <http://www.lexisnexis.com>

it is arguable that there are three potential headings under which apostasy claims could be pursued, and that these claims may be better placed under the headings of “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, or any other sub-group in a society dominated by Islam meets this definition.

A recent case (2010) decided in the UK Supreme Court may have an effect on the considerations of 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: homosexuals should be discreet about their sexuality and therefore avoid persecution. 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 over which a person has no choice. This may be distinguishable from religion or political belief but it is difficult to assess this at an early stage.

It is arguable however that a person should not have to tolerate discretion or be expected to hide their religion (or lack of it), as they are not now expected to be discreet about their sexuality.

6 <http://www.lexisnexis.com>

7 <http://www.lexisnexis.com>

8 <http://www.lexisnexis.com>

9 <http://www.lexisnexis.com>

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

Apostasy

Apostasy is generally understood to mean “the relinquishing of religious belief” or “abandonment of one’s religious faith”¹¹. How each of the major religions react to apostasy is varied, but it remains a criminal offence in many countries throughout the Middle East and Africa; in some, particularly those under Sharia law, it carries the death penalty.

Apostasy is forbidden in all Abrahamic religions and is punishable by death¹². However, this punishment is not carried out anywhere other than in some countries governed by Sharia law. For example, Saudi Arabia – which is governed by Sharia – imposes the death penalty for apostasy. Indonesia, a secular state, which is not wholly ruled by Sharia, does not. Malaysia also does not punish apostasy with death; however there are fears that the growing influence of Sharia in some countries may lead to a decrease in secularism and the imposition of the harsh penalties prescribed by Sharia¹³. These countries provide evidence that the strengthening of political Islam is a threat to secular law and human rights across the world.

As the examples contained in this report demonstrate, the expansion of Sharia and political Islam globally are a serious threat to religious freedom and freedom of expression and belief.

¹¹ <http://www.thefreedictionary.com/apostasy>

¹² Deuteronomy 13:1-10

¹³ <http://www.telegraph.co.uk/news/worldnews/1561896/Malaysia-considers-switch-to-Islamic-law.html>

Sharia and Apostasy

In Afghanistan in 2006, Abdul Rahman was sentenced to death for converting to Christianity¹⁴. On Rahman's case, Judge Alhaj Ansarullah Mawlawy Zada stated: "The Attorney General is emphasizing he should be hung. It is a crime to convert to Christianity from Islam. He is teasing and insulting his family by converting. We are not against any particular religion in the world. But in Afghanistan, this sort of thing is against the law. It is an attack on Islam"¹⁵. A month after his arrest, and following considerable international outcry, Mr Rahman was released and granted asylum in Italy¹⁶.

In 2010, Amnesty International reported on the case of Egyptian national Ali Hussain Sibat who had been sentenced to death for "sorcery" in Saudi Arabia. Another unidentified man was sentenced to death for apostasy at the same time. There is no definition of sorcery in Saudi law. However in 2007, Mustafa Ibrahim was executed for sorcery having initially been charged with apostasy for degrading the Quran¹⁷.

In May 2010, the Islamic Foundation of the Maldives issued a statement declaring that any case which was not covered by state law should instead be subject to the Sharia. Article 142 of the country's constitution states that the judiciary there should look at Sharia law for punishments which were not otherwise prescribed. The declaration came in response to the public proclamation of Mohamed Nazim that he was "Maldivian and not Muslim". The Islamic Foundation called for Nazim to be stripped of his citizenship and sentenced to death in accordance with Sharia law¹⁸.

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

15 http://www.religioustolerance.org/isl_apos1.htm

16 http://www.religioustolerance.org/isl_apos1.htm

17 <http://www.amnesty.org/en/news-and-updates/saudi-arabia-sorcery-death-sentence-upheld-2010-03-18>

18 <http://minivannews.com/politics/islamic-foundation-calls-for-death-sentence-if-apostate-fails-to-repent-7606>

It is not only under state law that apostates fear persecution around the world; there is also much cause for concern at violent reprisals against apostates by non-state groups and individuals. Bangladeshi writer and feminist Taslima Nasrin has spoken out against religion and has faced death threats, intimidation, and has been forced from her job. Street demonstrations were organised against her and she has been publicly assaulted many times. In 1993, an Islamist group, Soldiers of Islam, issued a fatwa against her¹⁹, setting a price on her head for her criticism of Islam.

In 1992 a critic of Islamism, Farag Foda, was murdered in his office in Egypt by Islamists. At the trial of his killers, a senior Egyptian theologian spoke in defence of the accused and declared that secularists such as Foda were apostates and should be put to death. He stated that if governments were not willing to carry this out, individuals were free to do so²⁰.

In one of the most famous cases of persecution for perceived apostasy, author Salman Rushdie was forced into hiding following the publication of his book *The Satanic Verses* in the late 1980s. The publication was met with protests across the world as it was deemed to be insulting to the Prophet Mohammed. Translators of the book were murdered and Ayatollah Khomeini issued a fatwa on Rushdie "mandating his death for blasphemy"²¹. What became known as "the Rushdie Affair" is widely viewed as the United Kingdom's first major domestic encounter with Islamism and its punishment for apostasy. Since then, European politicians, writers and other public figures have gone in to hiding, or been subject to police protection, following accusations of apostasy.

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 because they are atheists (or have converted to another religion). The examples above provide evidence of the reasonableness of those fears.

19 <http://taslimanasrin.com/index2.html>

20 <http://koenraadelst.bharatvani.org/articles/misc/rushdie.html>

21 <http://www.timesonline.co.uk/tol/news/uk/article1950780.ece>

Indeed, incidents of violence against apostates are easy to find. The CEMB and One Law for All have had much contact with people who have been directly or indirectly threatened with violence - either by the state or non-state actors.

The United Kingdom's Obligations

The United Nations Convention in Relation to the Status of Refugees came into 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 ('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)).²² The United Kingdom is a signatory to this Convention²³. This Convention legally binds its signatories to this principle²⁴.

On October 2nd 2000, the Human Rights Act 1998 came in to force in the United Kingdom. Section 6 of this Act 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, or a party whose functions are functions of a public nature.

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

23 http://www.religioustolerance.org/isl_apos1.htm

24 http://www.religioustolerance.org/isl_apos1.htm

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.²⁵ 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 to be reviewed. Ghaedi fled Iran in 2005 to escape a forced marriage (the outcome of this case is awaited).²⁶

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 political and religious views - she had participated in anti-government protests - and from her family for having a relationship with a man who was not her husband. This caused her to fear that she would be the victim of an ‘honour killing’. She was however listed for deportation from the UK. On Naseer and Khan, the judge stated “there is a long and well-documented

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

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

history of disappearances, illegal detention and of the torture and ill-treatment of those detained, usually to produce information, a confession or compliance.”²⁷ There is also a well documented history of honour killings, forced marriage, and female oppression in Iran – so why the distinction? There is now a desperate need for the UK and European courts to provide clarity on these issues.

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

Conclusion

“It is clear quite clear that under Islamic Law an apostate must be put to death.”²⁸ 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 others, the evidence suggests 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 a well-founded 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 is in breach of its obligations and therefore open to legal challenge.

Helpful Organisations

Immigration Advisory Service UK
Telephone 0844 974 4000
<http://www.iasuk.org/contact-us.aspx>

Joint Council for the Welfare of Immigrants
115 Old Street
London EC1V 9RT
Telephone 0207 251 8708
Email: info@jcwi.org.uk
<http://www.jcwi.org.uk/contactus>

Electronic Immigration Network
The Progress Centre
Charlton Place
Manchester M12 6HS
Telephone 0845 458 4151
Email: info@ein.org.uk
http://www.ein.org.uk/about_us/contacts.shtml

Immigration Law Practitioners Association
Lindsey House
40-42 Charterhouse St.
London EC1M 6JN
Telephone 0207 251 8383
Email: info@ilpa.org.uk
<http://www.ilpa.org.uk/>

Citizens Advice Bureaux
http://www.citizensadvice.org.uk/contact_us.htm

Refugee Council
Head Office
240-250 Ferndale Road
Brixton
London SW9 8BB
Telephone 0207 346 6700
<http://www.refugeecouncil.org.uk/contactus>

Shakti Women's Aid (Scotland)
Telephone 0131 475 2399
Email: info@shaktiedinburgh.co.uk
<http://www.shaktiedinburgh.co.uk/contact.html>

Scottish Refugee Council
5 Cadogan Square
170 Blythswood Court
Glasgow G2 7PH
Telephone 0141 248 9799
Email: info@scottishrefugeecouncil.org.uk
<http://www.scottishrefugeecouncil.org.uk/contact>

Strangers in to Citizens
Telephone 020 7043 9874
Email: austen.ivereigh@cof.org.uk
http://www.strangersintocitizens.org.uk/?page_id=107

UK Border Agency
<http://www.ukba.homeoffice.gov.uk/contact/contactspage/>

Asylum Support

<http://www.asylum-support-adjudicators.org.uk/>

Asylum Aid

Club Union House

253-254 Upper Street

London N1 1RY

Telephone 0207 354 9631

Email: info@asylumaid.org.uk

<http://www.asylumaid.org.uk/>

Iranian and Kurdish Women's Rights Organisation

PO Box 65840

London EC2P 2FS

Telephone 0207 920 6460

<http://www.ikwro.org.uk/>

The Law Society

<http://www.lawsociety.org.uk/home.law>

Women's Aid

PO Box Bristol 391

Bristol BS99 7WS

Telephone 0117 944 44 11

Email: info@womensaid.org.uk

<http://www.womensaid.org.uk>

Community Legal Advice

Telephone 0845 345 4345

<http://www.communitylegaladvice.org.uk>

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