



KNOWLEDGE-BASED HARMONISATION OF EUROPEAN ASYLUM PRACTICES

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Case Summary

Country of Decision/Jurisdiction	United Kingdom
Case Name/Title	NM (Christian Converts) Afghanistan CG
Court Name <i>(Both in English and in the original language)</i>	Asylum and Immigration Tribunal
Neutral Citation Number	[2009] UKAIT 00045
Other Citation Number	
Date Decision Delivered	13 November 2009
Country of Applicant/Claimant	Afghanistan
Keywords	Persecution
Head Note (Summary of Summary)	An Afghan claimant who can demonstrate that he has genuinely converted to Christianity from Islam is likely to be able to show that he is at real risk of serious ill-treatment amounting to persecution or a breach of his Article 3 of the ECHR right on return to Afghanistan. Persecution in such cases will result both from the threat of being detained and tried under Sharia law, and from having to keep one's faith secret to avoid such persecution.
Case Summary (150-500)	<p>The appellant is a national of Afghanistan, who was born on 1 January 1960. He first arrived in the United Kingdom on 7 February 2000 on board an aeroplane which had been hijacked the previous day. His claim for asylum was refused on 26 February 2000, and subsequently dismissed by the Tribunal on 13 February 2003. At that stage the appellant was claiming asylum on the basis that he feared reprisals from a group within Afghanistan connected with the Taliban.</p> <p>On 30 June 2005 those representing the appellant wrote to the Secretary of State seeking asylum, and claiming that to return the appellant to Afghanistan would breach his human rights for reason that the appellant had converted to the Christian faith. He had been threatened by two fellow Afghans in the U.K. who were living in the same house as him, because he had changed his religion. They were both deported back to Afghanistan. He said that he attempted to convert other people to Christianity. He also said that he told other Muslims that he was a Christian, and that this would put him in considerable danger in Afghanistan.</p> <p>His application was refused on 14 March 2007 on the basis that although it was accepted that he was a Christian, there was no objective evidence that he would be executed for apostasy, or that he would be of adverse interest to either the authorities or the wider Afghan public.</p>
<i>Facts</i>	<p>The appellant appealed against the decision of 13 April 2007, on the basis that if he was returned he would face persecution, and possibly the death penalty.</p> <p>The Immigration Judge accepted, as had the respondent, that the appellant had converted to Christianity and he also accepted that he would be "viewed</p>



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	<p>with disdain" by Muslims in his own country and that they may be hostile to him. However, he concluded that there was no evidence that he would be at real risk of serious harm or persecution. He found there was no evidence that the authorities persecuted Christians by prosecuting them, although strict Muslim law does proscribe apostasy. He found that there was no evidence apart from what he described as the 'unusual case of Abdul Rahman,' that Christians are in danger from the Afghan authorities. The appellant applied for reconsideration.</p>
<p><i>Decision & Reasoning</i></p>	<p>The Tribunal found an error of law in the immigration judges decision - a failure to properly consider the country evidence. On reconsideration the Tribunal considered expert country evidence relating to the risks faced by apostates in Afghanistan.</p> <p>The Tribunal found that the risk of being put on trial for his apostasy amounted to persecution, as was the risk he would face from fundamentalists. It would also be persecutory for a convert to have to keep his faith secret from fear of persecution.</p> <p><i>62. ...There is now evidence namely the case of Abdul Rahman. The government was clearly not able to prevent him from being charged and initially having to face the prospect of a trial according to Sharia Law simply because he had converted to Christianity. That it seems to us was itself an act of persecution: it was serious ill-treatment i.e. the deprivation of liberty and the threat of a trial before a Sharia court and ultimately the possibility of the death penalty, because of religious belief.</i></p> <p><i>66. We do not think this is an issue as to whether or not an individual in these circumstances is reasonably likely to be discovered on return. The plain fact on the evidence before us is that a genuine apostate, and here we are dealing specifically with conversion from Islam to Christianity, simply would not be able to openly express his change of faith without running a real risk of persecution. The individual would have to keep his faith completely secret; he would have to live a lie; he may be forced to forego contact with others of his faith because of the danger and, significantly, would be constantly looking over his shoulder to avoid discovery in fear of the consequences. In the event it would matter little whether such an individual had family support or not; if discovered the evidence does show that there would be inadequate level of protection available from the Afghan authorities against those who would seek to punish for that conversion. In our view an apostate could not reasonably be expected to tolerate living in this way in Afghanistan in order to reduce the risk of discovery, and it would be persecutory to expect such an individual to modify his behaviour to that end. It may well be that in some societies solitary and or private worship of another faith may be viable because for example although the background evidence reveals a general intolerance in society toward that belief it does not reach a level where there would be a real risk of ill-treatment on discovery. This is not the case for Afghan converts; there is no evidence that they would be able to conduct themselves in this way.</i></p> <p><i>72. In the light of the evidence of the appellant's commitment to the Christian faith, in our view he cannot be expected to modify his behaviour on</i></p>



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	<p><i>return to Afghanistan and it is not reasonable to expect him to tolerate living his life in a manner which would involve a significant suppression of his religious belief. This would be the position wherever the appellant went in Afghanistan.</i></p> <p>It should be noted here that the <i>reasonably tolerable</i> test has been overtaken by the Supreme Courts judgment in HJ (Iran).</p>
<i>Outcome</i>	The appeal was allowed.