



## Blue Mountains Refugee Support Group

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# Apostasy as a Basis for Protection Claims

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## Introduction

This essay extends and supplements some of the ideas addressed in a paper called *Apostasy as a Basis for Protection Claims for Iranians*, written in October 2013. It highlights apostasy issues common to many nations and addresses in more depth the question of *sur place* apostasy claims.

The flight of millions of people from their own countries in recent decades is well known and documented. Wars, escalating local violence and environmental disasters are major causes. However escape from persecution remains the single biggest motivating factor behind the escalating stampede of asylum seekers. Persecution falls into three main categories: political, ethnic and religious. Often these are combined. A particular category of religious persecution relates to “apostasy”, and this is increasing as radical and extremist religious elements play an expanding, often dominating, role in many countries.

## Definition of Apostasy

Apostasy is the abandonment or renunciation of a religious or political belief or principle. It is not primarily conversion to another religion, although that is the most common evidence of its occurrence. Note for example the statement of Frances Webber<sup>2</sup>, *retired UK barrister and world authority on this matter*, “*Apostasy is conversion to another religion or simply renouncing one’s own religion.*” It is universally recognised that “apostasy” does not depend on embracing an alternative major religion; it is sufficient that declaration is made of rejection of Islam (or occasionally another religion). Webber’s seminal paper on the issue (see footnote 2) is highly recommended.

Webber also makes the very significant point that protection claims based on “religion” may involve one or more of the following elements:

- a) religion as belief (including non-belief);
- b) religion as identity;
- c) religion as a way of life...

Especially relevant to the situation in Iran is Webber’s declaration that “*discrimination may ... take the form of restrictions or limitations on religious belief or practice.*”

**“Forced compliance with religious practices ... could rise to the level of persecution if it becomes an intolerable interference with the individual’s own religious belief, identity or way of life and/or if non-compliance would result in disproportionate punishment...”** [emphasis added]

Of course this point is relevant in many other situations too.

## Implications for Asylum Seekers

This understanding has profound implications for the assessment of asylum seeker claims. While most assessors tend to seek ways of questioning the claimant’s overall credibility, and therefore to throw doubt on claims for protection, in relation to apostasy credibility should rarely be an important issue, let alone the key issue. Almost always,

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<sup>2</sup> Webber, Frances, “*Apostasy or Conversion*” Fahamu Refugee Programme,  
<http://www.refugeelaidinformation.org/node/266>

the danger has already been established whatever the motives and whatever the level of sincerity.

Some citizens flee their country precisely because they have become known apostates, often but not always, converts to an alternative religion. Other are secret apostates, many of them simply agnostics or atheists who have not firmly embraced any alternative set of beliefs but who are not able or willing to maintain a safe level of pretence. Iran is an example of a country where hundreds of thousands of “secular Muslims” manage to survive by a mixture of hypocrisy and separation of their lives into private and public spheres. However they are increasingly at risk of persecution, especially if other factors trigger special attention from the authorities. If discovered they may be accused of being “infidels” and enemies of the regime, and worthy of extreme punishment and even death. *Many cannot accept in good conscience the form of Islam demanded by the regime; they find themselves unable to go on living with the unrelenting demands of compliance, so they look for a way to escape.*

In general the citizens of most Islamic nations know that reports of any declared rejection of Islam while outside the country will be certain to get back to that country, and perhaps more importantly to the local community of origin, and spread uncontrollably among family, acquaintances and authorities. The risk being taken is very great and is never embarked upon lightly. Questions of family honour, family solidarity and family inheritance are usually extremely significant.

**Use of the of the Migration Act regulation that orders decision makers to disregard actions deemed to have been contrived for the purpose of strengthening refugee claims.**

Section 91R(3) of the *Migration Act 1968* is often used by decision makers in relation to apostasy claims. It instructs that decision makers may “disregard any conduct engaged in by the person in Australia 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 within the meaning of the *Refugees Convention as amended by the Refugees Protocol.*”

This regulation allows decision makers to assess a claimant's sincerity as a Christian convert (or other kind of “apsostate”), to “find” that that the person is not telling the truth, and that therefore (by a breath-taking logical leap) he or she would not be in danger of harm if returned to a situation of danger. If the decision maker happens to be wrong, the consequences can be very serious.

From the time this section was inserted in the Act by the *Migration Legislation Amendment Act (No.6) 2001* the Australian Human Rights Commission has been very concerned about its interpretation. In a submission made as the legislation was being enacted the AHRC stated<sup>3</sup>:

- . . . the term “purpose of strengthening the person's claim” . . . should be interpreted narrowly and strictly confined to “fraudulent purposes”. Any broader interpretation . . . would disproportionately impinge upon the rights conferred by article 19(2) of the ICCPR.

<sup>3</sup> See <http://www.humanrights.gov.au/refugee-review>

- It is further submitted that conduct is only to be disregarded under section 91R(3) where any such fraudulent purpose is the **sole** purpose for which a person engaged in that conduct.

The AHRC submission then highlighted the importance of maintaining steadfastly the central principle of *non-refoulement* which requires that a person not be returned to a country in which they face persecution. The Commission submitted that section 91R(3) should be read as narrowly as possible so as to avoid undue inconsistency with the principle of *non-refoulement*.

The AHRC concerns are very important and should not be dismissed lightly.

Furthermore, there would seem to be several other grounds for demanding caution.

- (i) There is case precedence at the RRT that would support application of a deliberately restrained approach. In their report entitled “Case Justice” (<http://www.asrc.org.au/pdf/case-justice.pdf>) the Asylum Seekers Resource Centre quotes (page 24, case #18):

“His second RRT hearing was unsuccessful, in part, because of the Tribunal’s similar assessment that the religious activities undertaken in detention were solely for the purpose of strengthening his refugee claims.

He appealed to the Federal magistrates’ court and was successful.

At both the hearings before the RRT the asylum seeker had provided evidence from clergy in Australia regarding his faith. Yet this was disregarded and seen as conduct by him to strengthen his refugee claims.

At his third RRT hearing the asylum seeker provided further evidence of his faith. Although the RRT did not accept that the asylum seeker was a convert in his country of origin, it accepted his genuine conversion in Australia. **The RRT accepted how difficult it was to ascertain the genuineness of any individual’s faith** but referred to the consistency in the asylum seeker’s evidence regarding the practice of his faith in Australia.

The RRT found his religious activities in detention were not undertaken to strengthen his claim to refugee status.

After two and a half years in immigration detention he was found to be a refugee.”

- (ii) In an article<sup>4</sup> published in the journal of the International Association of Refugee Law Judges in March 2011, then Federal Magistrate Rolf Driver quoted a relevant High Court of Australia judgment:

“The High Court in September 2009 in *Minister for Immigration and Citizenship v SZJGV43*, clarified the meaning of s.91R(3). Confirming the decision in *Somaghi*, the High Court held that if the applicant’s **sole** motive in

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<sup>4</sup> **BAD FAITH IN ASYLUM CLAIMS UNDER THE REFUGEES CONVENTION – THE AUSTRALIAN EXPERIENCE** (<http://www.iarlj.org/general/news1/116-latest/312-bad-faith-in-asylum-claims>)

engaging in the conduct was to strengthen the refugee claim and the conduct has that effect, then the conduct is to be disregarded. . . . **Further, even if it is concluded by the decision-maker that the conduct in Australia was engaged in for the sole purpose of strengthening a claim, it is still possible to find that the applicant has a well-founded fear of persecution. Such a finding may be based on other evidence submitted by the applicant or otherwise obtained.**"

On this basis, even if the "sole purpose of strengthening a claim" position is maintained, there could still be a strong case for asylum claims to be investigated more thoroughly.

Judge Driver went on to argue that Section 91R(3) should be repealed because, among other reasons, "*it potentially offends international law in the form of the principle of non-refoulement and . . . it clashes with civil liberties set out in international law documents such as the Covenant on Civil and Political Rights*".

- (iii) The application of this regulation necessarily includes a subjective judgment. It is widely acknowledged that in professing to be able to assess the sincerity of recent expressions of Christian commitment, decision makers are all in very complex and uncertain territory. Note the admission of the RRT member quoted and highlighted in point (i) above.
- (iv) *Whatever a person's real motives in declaring himself to be a committed Christian, the fact remains that they usually cannot prevent this reputation being known in his country of origin and interpreted as evidence of apostasy.*
- (v) *In using this regulation the decision makers usually fail to address the fundamental issue: the key question is hardly ever about the genuineness of faith or the sincerity of motives, but rather it is about the consequences of an already established reputation of apostasy.*

It follows that a decision that is perfectly legal but which is not based on adequate objective evidence can easily place a person in line for *refoulement*, often exposing them to the prospect of torture or death or, if they survive for any length of time, a life full of anxiety and consequent mental suffering. **In the words of the Complementary Protection legislation such a person would face "a real risk of arbitrary deprivation of life, the death penalty, or cruel, inhuman or degrading treatment or punishment"**.

### **Anecdotal information**

I have cordial friendships with many "apostates" and can safely say that none of them come anywhere near contriving their apostasy in order to strengthen their refugee claims. The stories of their spiritual journeys are usually long and deep. Growing disillusionment with Islam as it is expressed in the countries of origin eventually precipitates open rejection, but usually only after arrival in a context of safety. Exploration of alternatives is usually a further extended process, and decisions to embrace alternative worldviews or religions are never taken quickly or lightly. Contrivance and fraud are almost unimaginable as possible aspects of the process. Too much is at stake, and most asylum seekers believe their grounds for protection are sufficiently strong without a *sur place* apostasy claim. Most have fled serious



persecution and are amazed and shocked when their primary claims for protection are denied.

### **Summary**

Apostasy as a basis for protection claims is likely to become increasingly prevalent. This is because of the escalating influence of radical religious elements in many countries, especially following the progress of the “Arab Spring”. Apostates who might previously have managed to hide from attention in a fragile form of relative safety are now leaving their countries in large numbers. Others leave for different reasons and then find the courage and freedom to pursue alternative religious commitments. Whenever they declare such new commitments, which they are entitled to do, they know that this almost always has serious implications in relation to family ties, so it is never done lightly. But such apostasy also adds to any previous risks of serious harm upon any return to the country of origin. It must therefore be given full weight in consideration of protection claims, especially against Complementary Protection criteria and in light of the central principle of *non-refoulement*.