

**ILPA evidence to the
All Party Parliamentary Group on International Freedom of Religion or Belief
and Asylum Advocacy Group Parliamentary enquiry:
'Claiming asylum in the UK if you are persecuted for your faith or belief'**

A Preliminary Points:

1. The Immigration Law Practitioners' Association (ILPA) is a registered charity and a professional membership association. The majority of members are barristers, solicitors and advocates practising in all areas of immigration, asylum and nationality law. Academics, non-governmental organisations and individuals with an interest in the law are also members. Founded in 1984, ILPA exists to promote and improve advice and representation in immigration, asylum and nationality law through an extensive programme training and disseminating information and by providing evidence-based research and opinion. ILPA is represented on advisory and consultative groups convened by Government departments, public bodies and non-governmental organisations including the Home Office National Asylum Stakeholder Forum and its subcommittees.
2. As set out in the UNHCR *Guidelines on International Protection: Religion Based Refugee Claims*,¹ claims to refugee status based on religion can be among the most complex given the inherently internal nature of religion and belief, and decision makers have not always taken a consistent approach.²
3. There is, however, a wealth of relevant material in the public domain relating to persecution on grounds of religion or belief. To the extent that there are problems in decision making at first instance or on appeal, these should not be related to a lack of generic country specific and legal material. In particular as regards generic guidance, UNHCR has issued *Guidelines on International Protection: Religion Based Refugee Claims*.³ On numerous occasions the Supreme Court and Court of Appeal have commended UNHCR's published material including its *Guidelines* as having considerable weight.⁴ As regards country specific material, the UK Country Information and Guidance reports, the US Commission on International Religious Freedom reports, and reports from numerous other governments and NGOs provide valuable sources of information.
4. The historical context should not be overlooked. For centuries, individuals have been granted asylum in the UK on the basis of religious persecution.⁵ Indeed the first substantial movement of refugees to the UK was the French Protestant Huguenots in the 17th Century.⁶ Following this, Russian Jewish refugees arrived in the late 19th Century, Armenian Christians from Turkey following the 1905 genocide, and in the 20th Century Jews fled Nazi atrocities in

¹ Guidelines on International Protection No. 6: Religion Based Refugee Claims under Art 1A(2) of the 1951 Convention and/or the 1967 Protocol Relating to the Status of Refugees, HCR/Gip/04/06, 28 April 2004.

² Guidelines, supra fn 1, para. 1.

³ Fn 1 supra.

⁴ See most recently Supreme Court in *Al-Sirri v SSHD* [2013] 1 AC 745 at [36].

⁵ See S Knights, *Freedom of Religion, Minorities, and the Law* (OUP 2007) para. 6.26.

⁶ And see the *Act for naturalising Foreign Protestants 1798* (7 Ann c. 5).

Europe, Baha'is fled Iran, and Muslim converts escaped from a variety of Muslim countries. The persecution and atrocities of World War Two, and in particular the persecution of Jews, formed the immediate backdrop to the 1951 Convention. Although by no means a uniform picture of acceptance and recognition, the UK should both be proud of the historical acceptance of refugees; and give due recognition to the profound contribution that those refugees have made to society.

B Areas of Concern

(1) Decision-making based upon false assumptions about religion/belief

5. We are concerned that, all too frequently, first-instance decision making appears to be premised upon staff who are using unpublished 'crib' sheets and/or who have adopted a fixed view of the precepts of particular religions. This problem has also infected tribunal decision-making in some instances. The problem can work both ways: persons seeking asylum have both been rejected on grounds that they do not adhere to a particular religion if answers are apparently inconsistent with the crib sheet, or in some cases disbelieved where they give answers that are entirely consistent on the basis that they have merely been told what to say. In this context it is worth recalling Lord Bingham in the context of a case on Article 9 of the European Convention on Human Rights case in *R (Williamson) v Secretary of State for Education and Employment*⁷ "an individual's beliefs [are not] fixed and static....[they] are prone to change over time." In a recent case of a member of a Catholic Chinese house church the priest who gave evidence at her appeal spoke of the lack of knowledge among his native flock of New Testament Bible stories, the gospels etc. He set into context the client's difficulty in answering such questions in interview following which her claim had been refused. At hearing, however, she displayed excellent knowledge of the Catholic catechism which had been part of her faith for many years.
6. Another manifestation of this problem has been where particular beliefs appear to be at odds with the subjective view of that religion by the decision-maker. For example, in one case involving a Sudanese political activist who had become a member of the Sudanese Communist Party, a tribunal rejected his claim on the basis that his views did not accord with Marxist doctrine which was generally hostile to religion, whereas the appellant still regarded himself as a Muslim. The tribunal based its judgment on the view of one of the panel rather than any objective evidence.⁸
7. We consider that the new asylum interview policy guidance⁹ as it relates to religious conversion cases represents progress, although it is rather narrow in scope. It is too early to comment upon its impact. We recommend that in all cases: (1) that unpublished 'crib' sheets should not be used, and instead decision-makers should inform themselves generally by reference to publicly available information as referred to at paragraph 1 above; (2) questioning should be open-ended and not designed as a test of a particular religion against a

⁷ [2005] UKHL 15 at [23].

⁸ This case was heard three times by a tribunal (and once by the Court of Appeal) before the appellant was successful in his appeal and recognized as a refugee. It was particularly traumatic for the appellant to be subjected to such lengthy proceedings given his history of torture which had resulted in him being partially paralysed and confined to a wheelchair. There was in fact objective country evidence which showed that the communist party in Sudan was not per se against religion which was subsequently adduced at the third substantive tribunal hearing.

⁹ Asylum Policy Instruction, Asylum Interviews, version 5, 31 March 2014 para. 5.5.

prescriptive list of specific beliefs; and (3) decision-makers should not reject claims solely on the basis that the claimant does not ascribe to orthodoxy in his or her religious beliefs.

(2) Focus should be upon persecution

8. In a number of cases, individuals have been questioned at length upon their particular religious beliefs (including in one case about a religion which the individual did not ascribe to). This may be considered extremely intrusive given the private nature of belief especially where it is inextricably linked to persecution and in many cases is not likely to be necessary. For example in one case involving an Pentecostal Christian from Eritrea, the claimant was subjected to a large number of highly detailed questions about her Christian faith and the particular beliefs that she held. It was entirely unclear whether the questioner herself in that case had a view as to what beliefs such a person from that country might hold. But most importantly it was not necessary to a decision in that case where the focus should have been on the abduction of her family during private worship at the family home.
9. The focus in most cases should be upon the evidence relating to persecution as opposed to the individual's particular beliefs. There are two key reasons for this. First, given the inherently internal nature of the religion and danger of subjective decision-making (see (1) above), decision-makers should be slow to reject claims on the basis of a failure to establish a particular belief. Secondly, many claims are premised not on actually held beliefs, but rather perceived beliefs e.g. that a woman is not a good Muslim because she wishes to choose her husband.
10. In this context the proper approach to Article 9 European Convention on Human Rights is instructive where individuals should be given the benefit of the doubt as regards their beliefs on adducing some evidence, with the focus being upon interference and justification: see Lord Walker in *Williamson* (supra) at [57]-[60].

(3) Difficulty of filtering genuine and false claims

11. There are instances where certain categories of religious persecution become well documented e.g. Baha'is in Iran, Sikhs in Afghanistan, Coptic Christians in Egypt, and Ahmadis in Pakistan. Where an individual falls into such a category decision-makers can become overly wary and suspicious of such claims and may improperly impose a higher threshold to decision-making. This may cause individuals to be subjected to the type of questioning referred to above under (1) and (2). This gives rise to generic concerns about the system as a whole and the safeguards that are necessary to ensure that decision-making is good, consistent and not leading to an unacceptable rate of refusals which subsequently lead to successful appeals.
12. We recommend: (1) that decision-makers adopt the recommendations made above in their approach to such cases; (2) decision-makers are provided with adequate training and education; (3) decision-makers are afforded sufficient time to make their decisions and access to senior colleagues where they need assistance or advice; (4) claimants are offered representation throughout the early stages of their claim including the asylum interview; and (5) claims are not made in the context of the detained fast-track process.

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