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UNHCR

United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés

UNHCR / ROBNC

Ynglingagatan 14 6th floor
SE-113 47 Stockholm
Sweden

Tel.: 4684574880
Fax: 4684574897
Email: guerrerc@unhcr.org

Notre/our code: 116/ROBNC/2012

01 May 2012

Re: Response to your inquiry concerning the interpretation of Art. 1 (A) of the 1951 Convention regarding well-founded fear of persecution on account of religious belief.

Dear Ms [REDACTED],

With reference to your request for UNHCR's opinion dated 12 April 2012, we are pleased to provide you with the following comments regarding your client Mr. [REDACTED] of Afghan nationality. Consistent with its supervisory role as set forth in Article 35 of the 1951 Convention on the Status of Refugees (1951 Convention), to which Denmark became a party 4 December 1952, the United Nations High Commissioner for Refugees (UNHCR) takes by this letter the opportunity to present its views on religion-based refugee claims, particularly as it relates to Afghan asylum-seekers who have converted to Christianity. UNHCR notes that these observations are provided without prejudice to UNHCR's position under the Convention on the Privileges and Immunities of the United Nations.

Initially we would like to draw your attention to the *UNHCR Guidelines on International Protection: Religion-Based Refugee Claims under Article 1A(2) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees*¹ (hereinafter "UNHCR Guidelines on Religion-Based Refugee Claims"). Further, we would like to refer to the *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan*, 17 December 2010.²

We would like to inform you that UNHCR does not make submissions on the facts of individual cases, nor do we make any assessment of the credibility of the specific applicant. We are, however, concerned with the interpretation and application of the 1951 Convention and the UNHCR Guidelines on Religion-Based Refugee Claims. In the present case, UNHCR notes that the Danish Refugee Appeal Board acknowledges [REDACTED]'s conversion from Islam to Christianity. However, the Appeal Board does not consider it likely that his conversion has come to the attention of the Afghan authorities. Furthermore, the

¹ UNHCR, Guidelines on International Protection: Religion-Based Refugee Claims under article 1A(2) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees, 28 April 2004, available at: <http://www.unhcr.org/refworld/docid/409019794.html>

² UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan, updated 17 December 2010 p. 18-19.

[REDACTED]
[REDACTED]
[REDACTED]

Denmark

Appeal Board finds that being able to live publicly as a Christian would not constitute a necessary and integrated part of his future life. Moreover, the Appeal Board considers that the applicant can live peacefully as a Christian in Afghanistan by avoiding to publicly demonstrate his religious belief.

The right to freedom of religion

UNHCR takes this opportunity to emphasize that the right to freedom of thought, conscience and religion is one of the fundamental rights and freedoms in international human rights law.³ Under international and European human rights law it includes the right to have or not to have a religion or belief of one's choice – or to change religion or belief – (forum internum), to practice one's religion or belief either individually or in community with others and in public or private, to manifest one's religion or belief in worship, observance, practice and teachings (forum externum).⁴

Refugee claims based on religion may involve elements relating to religion as belief, religion as identity or religion as a way of life. "Belief", in this context, should be interpreted so as to include theistic, non-theistic and atheistic beliefs. "Identity" is less a matter of theological beliefs than membership of a community that observes or is bound together by common beliefs, rituals, traditions, ethnicity, nationality, or ancestry. For some individuals, religion is a vital aspect of their "way of life". Their religion may manifest itself in such activities as the wearing of distinctive clothing or observance of particular religious practices, including observing religious holidays or dietary requirements.⁵

While the right to have (or not to have) and to change a religion or belief allows no limitations, international human rights law permits certain restrictions on the right to manifest one's religion. This is the case for example in respect of article 9(2) of the European Convention on Human Rights. Any restrictions must be prescribed by law, be necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others and constitute a proportionate interference. The distinction between the forum internum and the forum externum of the right to freedom of religion does not mean that a violation of the latter is somehow less serious than a violation of the former.⁶ As long ago as 1981, the European Commission on Human rights affirmed that the right to manifest one's religion is an essential part of freedom of religion.⁷ More recently, the European Court of Human Rights has added that "while religious freedom is primarily a matter of individual conscience, it also implies, inter alia, freedom to manifest one's religion alone and in private or in community with others, in public and within the circle of those whose faith one shares."⁸

³ UNHCR Guidelines on Religion-Based Refugee Claims, para. 2, available at: <http://www.unhcr.org/refworld/docid/4090f9794.html>

⁴ UNHCR statement on religious persecution and the interpretation of article 9(1) of the EU Qualification Directive, para. 4.2.1. June 2011, available at: <http://www.unhcr.org/refworld/docid/4d1b7a082.html>

⁵ UNHCR Guidelines Religion-Based Refugee Claims, paras. 5 – 8. available at: <http://www.unhcr.org/refworld/docid/4090f9794.html>

⁶ UNHCR statement on religious persecution and the interpretation of article 9(1) of the EU Qualification Directive, para. 4.2.3. June 2011, available at: <http://www.unhcr.org/refworld/docid/4d1b7a082.html>

⁷ *X v. the United Kingdom*, Appl. No. 8160/78, Decision of 12 March 1981, para. 5.

⁸ *Metropolitan Church of Bessarabia and Others v. Moldova*, Appl. No. 45701/99, Judgement, 13 December 2001, para 114.

Religious persecution

Not every violation of the right to manifest one's religion or belief will be sufficient to warrant recognition as a refugee. Where restrictions against the practices of a particular religious group or member thereof are justified, judged by international law standards, there would be no human rights violation and hence no persecution.⁹ For persecution to be established, the violation must be sufficiently serious.¹⁰ Depending on the particular circumstances of the case, including the effect on the individual concerned, examples could include prohibition of membership of a religious community, of worship in community with others in public or in private, of giving or receiving religious instruction or serious measures of discrimination imposed on individuals because they practice their religion, belong to or are identified with a particular religious community or have changed their faith.¹¹ Serious violations of the right to manifest one's religion freely may entail associated violations, which may be separate forms of persecution, for example associated inhuman and degrading treatment.¹²

Each refugee claim requires examination on its merits on the basis of the individual's situation. Mere membership of a particular religious community will normally not be enough to substantiate a claim to refugee status. As the UNHCR Handbook notes, there may, however, be special circumstances where mere membership suffices, particularly when taking account of the overall political and religious situation in the country of origin, which may indicate a climate of genuine insecurity for the members of the religious community concerned.¹³

During the assessment of refugee claims, particular attention should be paid to the impact of gender on religion-based claims. This is important since women and men may fear or suffer persecution for reasons of religion in different ways to each other.¹⁴

Credibility

Credibility is a central issue in religion-based refugee claims. Extensive examination or testing of the tenets or knowledge of the claimant's religion may not always be necessary or useful. Knowledge tests need to take account of individual circumstances, particularly since knowledge of a religion may vary considerably depending on the individual's social, economic or educational background and/or his or her age or sex. It should also be noted that a claimant's detailed knowledge of his or her religion does not necessarily correlate with sincerity of belief. Less formal knowledge may also be required of someone who obtained a particular religion by birth and who has not widely practiced it. No knowledge is required where a particular religious belief or adherence is imputed or attributed to a claimant.¹⁵

⁹ UNHCR statement on religious persecution and the interpretation of article 9(1) of the EU Qualification Directive, paras. 4.2.2 and 4.2.4. June 2011, available at: <http://www.unhcr.org/refworld/docid/4dfb7a082.html>

¹⁰ UNHCR, Handbook on Procedures and Criteria for Determining Refugee status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, 1 January 1992, at: <http://www.unhcr.org/refworld/docid/3ae6b3314.html> (UNHCR Handbook), para 51.

¹¹ UNHCR Guidelines on Religion Based Refugee Claims, para. 12. available at: <http://www.unhcr.org/refworld/docid/4090f9794.html>

¹² UNHCR statement on religious persecution and the interpretation of article 9(1) of the EU Qualification Directive, para. 4.2.6. June 2011, available at: <http://www.unhcr.org/refworld/docid/4dfb7a082.html>

¹³ UNHCR Handbook, para. 73.

¹⁴ UNHCR Guidelines on Religion Based Refugee Claims, para. 24. available at: <http://www.unhcr.org/refworld/docid/4090f9794.html>

¹⁵ *Ibid*, paras. 28, 29 and 31.

If the genuine nature of the conversion is put into question, an assessment still will have to be made on the potential consequences if the authorities or non-state actors are aware or likely to find out about the conversion which may trigger the application of the inclusion clause. If aspects of the refugee definition (subjective, objective fear, credibility assessment) are put into question, the real risk of harm because of inhuman or degrading treatment upon return should be considered.

Conversion post departure

Where individuals convert after their departure from the country of origin, this may have the effect of creating a *sur place* claim. In such situations, particular credibility concerns tend to arise and a rigorous and in depth examination of the circumstances and genuineness of the conversion will be necessary.¹⁶

So-called “self-serving” activities do not create a well-founded fear of persecution on a Convention ground in the claimant’s country of origin, if the opportunistic nature of such activities will be apparent to all, including the authorities there, and serious adverse consequences would not result if the person were returned. Under all circumstances, however, consideration must be given as to the consequences of return to the country of origin and any potential harm that might justify refugee status or a complementary form of protection. In the event that the claim is found to be self-serving but the claimant nonetheless has a well-founded fear of persecution on return, international protection is required.¹⁷

The situation for persons having converted to Christianity in Afghanistan

Concerning the issue of conversion raised in your letter, we would like to inform you that the Constitution of Afghanistan declares Islam to be the religion of the State and affirms that “*no law can be contrary to the beliefs and provisions of the sacred religion of Islam*”¹⁸, it further states that “*followers of other religions are free to exercise their faith and perform their religion rites within the limits of the provisions of the law*”¹⁹. The Afghan Constitution is silent on issues of conversion from Islam to Christianity or other faiths, and while calling for respect of human rights and fundamental freedoms, defers to Sharia law for matters not explicitly stipulated in the Constitution.

Furthermore, according to the UK Home Office conversion from Islam is considered apostasy in Afghanistan and is punishable by death according to most interpretations of Sharia law. An Afghan citizen who has converted from Islam has three days to recall his or her conversion or otherwise face death by stoning, be deprived of all property and possessions, and have their marriage declared invalid. Although, the death penalty for conversion from Islam has reportedly not been carried out in recent years, arrests for conversion to Christianity have been reported. Generally seen by family members and traditional social structures as a source of shame, converts from Islam may face isolation, pressure to recant and, sometimes, physical harm. As a result, converts usually avoid worshipping in public and chose to conceal their

¹⁶ *Ibid*, para. 34.

¹⁷ UNHCR Guidelines on Religion Based Refugee Claims, para. 36, available at: <http://www.unhcr.org/refworld/docid/4090f9794.html>

¹⁸ *Constitution of Afghanistan* [Afghanistan], 3 January 2004, available at: <http://www.unhcr.org/refworld/docid/404d8a594.html>, article 3

¹⁹ *Ibid*, article 2

religious belief. In addition, the situation for Christians has deteriorated further in the past year.²⁰

Future behaviour and “avoiding” persecution

Applying the same standard as for other Convention grounds, religious belief, identity, or way of life can be seen as so fundamental to human identity that one should not be compelled to hide, change or renounce this in order to avoid persecution.²¹ In fact, being compelled to forsake or conceal one’s religious belief, identity or way of life where this is instigated or condoned by the state may itself constitute persecution, or be part of a pattern of measures that cumulatively amount to persecution in an individual case.²² “Persecution does not cease to be persecution because those persecuted eliminate the harm by taking avoiding action.”²³ Adopting such an approach would undermine the protection foundations of the 1951 Convention. Manifestations of religious belief cannot be expected to be suppressed in order to avoid a danger of persecution as long as the manifestations constitute an exercise of human rights. In the same vein, a statement by an applicant expressing the intention to abstain from certain religious manifestations in order to avoid persecution does not render refugee protection unnecessary; to the contrary, this avoidance could constitute evidence of the individual’s fear of persecution.²⁴

Denying refugee status by requiring the individual to refrain from protected practices or behaviour would not be compatible with protection principles underlying the 1951 Convention.²⁵ Indeed, the Convention would give no protection from persecution for reasons of religion if it was a condition that the person affected must take steps – reasonable or otherwise – to avoid offending the wishes of the persecutors. Bearing witness in words and deeds is often bound up with the existence of religious convictions.²⁶

Conclusions

In view of the above stated UNHCR would like to emphasize that the right to freedom of religion is a fundamental human right and one’s religious belief, identity, or way of life can be seen as so fundamental to human identity that one should not be compelled to hide, change or renounce this in order to avoid persecution. Furthermore, the country of origin information presented supports the well-foundedness of the above mentioned asylum claim. The severity of the harm feared would reach the threshold for persecution in the sense of the Convention and there is a clear nexus to a Convention ground.

²⁰ United Kingdom: Home Office, *Operational Guidance Note: Afghanistan*, 20 February 2012, Afghanistan OGN v9, available at: <http://www.unhcr.org/refworld/docid/4f43788a2.html>, page 14-15

²¹ UNHCR Guidelines on Religion Based Refugee Claims, para. 13, available at: <http://www.unhcr.org/refworld/docid/4090f9794.html>

²² UNHCR statement on religious persecution and the interpretation of article 9(1) of the EU Qualification Directive, para. 4.3. June 2011, available at: <http://www.unhcr.org/refworld/docid/4dfb7a082.html>

²³ *HJ (Iran) v. secretary of State for the Home department; HT (Cameroon) v. Secretary of State of the Home Department* (2010) UKSC 31, per Lord Hope, at para.26 (United Kingdom Supreme Court)

²⁴ *Golesorkhi v. Canada* (Citizenship and Immigration), 2008 FC 511 (Can LII), paras. 3, 17 and 18.

²⁵ UNHCR statement on religious persecution and the interpretation of article 9(1) of the EU Qualification Directive, para. 4.3.2. June 2011, available at: <http://www.unhcr.org/refworld/docid/4dfb7a082.html>

²⁶ UNHCR Guidelines on Religion Based Refugee Claims, para. 13, available at: <http://www.unhcr.org/refworld/docid/4090f9794.html>

UNHCR appreciates this opportunity to share its views with you and stands ready to provide further clarifications to you or the Refugee Appeal Board, if necessary.



Cecilie Becker-Chr. Saenz Guerrero
Acting Senior Regional Legal Officer
UNHCR, Regional Office for the Baltic and Nordic Countries