



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA18/04903

Date and time of decision: 20 December 2018 18:59:00

T Hennessy, Reviewer

Decision

The IAA affirms the decision not to grant the referred applicant a protection visa.

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 473EC(2) of the Migration Act 1958 and replaced with generic information which does not allow the identification of a referred applicant, or their relative or other dependant.

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be from Iran. He arrived in Australia on [date] March 2013 and he lodged an application for a Safe Haven Enterprise Visa (SHEV) on 17 February 2017.
2. On 2 May 2018 a delegate of the Minister for Immigration (the delegate) refused to grant the visa on the grounds that Australia did not owe protection obligations to the applicant. The delegate was not satisfied that there is a real chance the applicant would suffer serious harm if returned to Iran due to apostasy, being a non-practising Muslim or being a failed asylum seeker returning from a western country.

Information before the IAA

3. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act). The review material included a copy of the protection visa application lodged by the applicant's half-brother, H.
4. The IAA received a submission on behalf of the applicant from [the applicant's representative of a law firm] on 28 May 2018. This submission included a written statement, translations of Iranian court documents dated [January] 2013 and [February] 2013, and country information from the Immigration and Refugee Board of Canada dated 10 March 2015¹.
5. In his written statement [the applicant's representative] advised that the applicant had confirmed as part of his SHEV application that a court summons for his arrest had been issued shortly before he departed Iran. He noted that the applicant had been asked by the interviewing officer (during the SHEV interview) to provide a copy of the court document. [The applicant's representative] stated that since that time the applicant continued to make efforts to obtain a copy of the document through his aunt in Iran. He explained that the documents could not be provided by the applicant prior to the Department's decision as copies of the summons and subsequent arrest warrant had only recently come into his possession and, once received, he arranged for them to be translated into English. [The applicant's representative] advised that the translation was obtained in the days following notification by the Department of the refusal of his visa application. He stated that the applicant had no control around the timing of when the documents would be sent to him as he had been reliant on his elderly aunt locating the documents and agreeing to send them to him. [The applicant's representative] argued that the documents provide further corroborative evidence of claims around the events that led to the applicant's departure from Iran and that there are exceptional circumstances to justify them being considered in the assessment of his protection claims.
6. The court document dated [January] 2013 is a "Notification letter" issued to the applicant. It states that he must attend the Tehran Revolutionary Court, [on] [date] February 2013 and that the reason for attendance is "In relation to the complaint by A about beguiling his offspring and disseminating deviant thoughts". The document states "You will be arrested if you do not attend without an acceptable reason". The other court document is an "Arrest Warrant" issued to the applicant on [date] February 2013 by the Tehran [Court]. The

¹ Immigration and Refugee Board of Canada, "Iran: Treatment by Iranian authorities of failed claimants and family members of persons who have left Iran and claimed refugee status (2011 – February 2015)", 10 March 2015

document states that it is valid until [date] March 2013 and directs that the applicant “be arrested and brought to this place of Investigation under officers’ guard on the charge of beguilement and disseminating anti-religious deviant thoughts and insulting the sanctities of Islam”.

7. The court documents are new information and I have considered whether there are exceptional circumstances to justify considering them. Due to inconsistency in the information the applicant has provided I have concerns about the credibility of the applicant’s claims regarding the court action taken against him as a result of a complaint made by his stepfather. During his entry interview the applicant advised that he received a court notice after his stepfather complained about him, although he did not see the notice and his aunt had told him about it. He said that the notice asked him to attend court at a certain time. Although he indicated in the SHEV application that he had been charged with an offence that was awaiting legal action the applicant noted that the “charge” was the police complaint referred to in the statement included in his application. In the statutory declaration included in his application the applicant advised that his aunt told him that police officers had given her a complaint or warning letter about him but she could not tell him what the warning was for. He did not mention the summons in the statement or elsewhere in his application. During the SHEV interview held in early September 2017 the applicant stated that he received a summons about twenty days to one month before he left the country but he never saw the document and his aunt had signed for it. Near the end of the interview the interviewing officer asked the applicant if he would be able to obtain a copy of the summons. The applicant expressed some hesitation about obtaining a copy of the summons from his aunt and indicated that he had previously tried to do so but had been unsuccessful. At the request of the interviewing officer he agreed to try to obtain a copy of the document within seven days. The applicant did not provide a copy (or translation) of the summons and other court documents to the Department in the eight month period between the SHEV interview and the delegate’s decision. Even allowing for some delay in obtaining a copy of the court documents from his aunt in Iran and arranging their translation, I consider it reasonable to expect that the requested documents could have been provided to the Department in that time. I also note that translations of the documents were obtained six days after the delegate’s decision. The timing of this action leads me to believe that the documents were obtained specifically to strengthen the applicant’s review before the IAA and therefore may not be genuine. I do not accept the reasons provided for the delay in obtaining the documents and consider that they could have been obtained at an earlier stage. If the documents did genuinely exist I consider that the applicant could have asked his aunt or another family member in Iran to locate and send them to him shortly after his SHEV interview. If he was having difficulty obtaining the documents he should have advised the Department that this was the case, however he does not appear to have done so.
8. I also have other concerns about the genuineness of the court documents. According to the first document issued on [date] January 2013, the applicant was on notice to attend court on [date] February 2013. He departed Iran legally via [Airport 1] on his own passport on [date] February 2013. It is unlikely that the applicant would have been able to leave the country if court action against him was pending and he was due to attend court in two days’ time. I am therefore not satisfied that the documents dated [January] 2013 and [February] 2013 are genuine. As I do not believe that the documents are genuine I do not accept [the applicant’s representative]’s assertion that they corroborate the applicant’s claims regarding the events that led to his departure from Iran. Taking these factors into account I do not consider that there are exceptional circumstances to justify considering the court documents as new information.

9. The remainder of [the applicant's representative]'s written statement mainly concerns disagreement with the delegate's findings about the credibility of the applicant regarding events that led to his departure from Iran, inconsistencies in information provided by the applicant and his half-brother H regarding some events, and how he would be treated on return to Iran due to his religious views. Although I consider this to be argument about issues addressed in the delegate's decision and not new information, I have had regard to [the applicant's representative]'s comments.
10. In his statement [the applicant's representative] also argued that the Department had overlooked protection claims regarding the applicant's mental health issues and prior criminal record. In relation to the applicant's mental health issues, [the applicant's representative] asserted that the delegate had not taken into consideration the impact that the applicant's mental state and continuing issues with depression, anxiety and/or Post Traumatic Stress Disorder would have on the risk of harm he faces if returned to Iran. He argued that consideration must be given to the effect the applicant's history of mental illness would have in exacerbating the nature of harm he would experience if he was subjected to interrogation, arrest and monitoring by the authorities on return to Iran, and the impact that his mental illness would have on the way he may present himself to the Iranian authorities as part of any routine questioning on return. I consider reference to the applicant's mental health issues and their relevance to his protection claims to be new information that was not before the delegate, however no further details about those issues have been provided. Although the applicant made several brief references to past mental health issues in his SHEV application he did not express a fear of harm on the basis of any medical conditions in the application or during the SHEV interview. He has not provided any medical evidence regarding his mental health, the nature of his condition(s) or information about how it relates to his claims for protection. Based on the limited information before me I am not satisfied that there are exceptional circumstances to justify considering the new information.
11. In relation to his claim that the Department had overlooked protection claims regarding the applicant's prior criminal record, [the applicant's representative] argued that the Department had dismissed the relevance of the applicant's criminal record in the context of his claimed fear of harm on return to Iran due to being a failed asylum seeker. I consider that the delegate did have regard to the applicant's claimed previous involvement with authorities and I therefore regard [the applicant's representative]'s comments about this issue to be argument and not new information.
12. The country information provided by [the applicant's representative] is dated 10 March 2015 and concerns the treatment of failed refugee claimants by Iranian authorities, the return and resettlement resources available for returning Iranians and treatment of refugee claimants by authorities. It was not taken into account by the delegate and is not included in the review material; however I note that the delegate did have regard to more recent country information regarding Iran, including information about the treatment of failed asylum seekers. As there is more recent country information before me than that provided by [the applicant's representative] I am not satisfied that there are exceptional circumstances to justify considering the new information. Furthermore, I consider that this country information could have been provided to the Minister given that it predates the delegate's decision by three years. I also do not consider it to be personal information that, if known, may have affected consideration of the applicant's claims. I have had regard to [the applicant's representative]'s comments in my review.

13. I have obtained the Australian Department of Foreign Affairs and Trade (DFAT) report issued on 7 June 2018 that provides updated country information on Iran². This report post-dated the delegate's decision and was therefore not available to her. The delegate had regard to DFAT's previous country information report regarding Iran³. As the June 2018 DFAT report provides more up-to-date information about Iran I am satisfied that there are exceptional circumstances to justify considering it.

Applicant's claims for protection

14. The applicant's claims can be summarised as follows:

- He was born in [Qazvin] province, Iran.
- He considers himself to be of Persian ethnicity.
- He does not follow any religion and has been agnostic for over ten years.
- He is the only child of his mother's first marriage. His father is deceased and his mother had several more children from her second marriage. He lived mostly with his aunt while growing up and did not have a good relationship with his stepfather.
- His stepfather, A, is connected to the Sepah and a person of influence in that organisation.
- He developed [a drug] addiction as teenager. This addiction lasted many years. After becoming involved with Narcotics Anonymous he finally overcame his addiction. He later established a charity to provide services to people seeking to deal with their addiction.
- His half-brother, H, also developed [a drug] addiction during his youth. The applicant organised for H to stay with his charity to help him deal with his addiction. During this time H developed an interest in ideas that were critical of Islam.
- About four years after H joined him at the charity A learned of his son H's new religious views after finding some e-books on his computer. A blamed the applicant for H's agnostic beliefs and rejection of Islam. The applicant believes this incident was the start of his problems.
- After H fought with his father (the applicant's stepfather, A) about his new beliefs he fled Iran without telling his parents.
- On learning that H had fled the country A lodged a complaint with the Iranian authorities regarding the applicant's anti-Islamic views and for influencing H to commit apostasy and denounce Islam.
- A summons was issued for his arrest as a result of the complaint lodged by his stepfather.
- He left Iran using his own passport on [date] February 2013 due to fear of persecution by the government and religious authorities as a result of the complaint made about him by his stepfather.
- When making his way through [Airport 1] to depart Iran he was taken aside by the Sepah and subjected to a cavity search. He feared that this search occurred because of

² DFAT, "DFAT Country Information Report - Iran", 7 June 2018, CIS7B839411226

³ DFAT, "DFAT Country Information Report - Iran", 21 April 2016, CIS38A8012677

the complaint his stepfather had made about him, however it was related to his previous drug problem.

- He arrived in Australia on [date] March 2013.
- He fears that if he is forced to return to Iran he will be executed for perceived crimes against Islam.
- He is certain his name is now on a travel “black-list”.
- His mother has told him that A will never remove the complaint and is still “out to get him”.
- The authorities in Iran cannot protect him as they are the reason he fled Iran. He is fearful of the retributions of the Sepah/Revolutionary Guard and of his step-father, who has considerable influence. He does not know exactly which base or section his stepfather works in and therefore would not feel safe anywhere in Iran.
- He cannot move to any part of Iran because his name has been blacklisted in the system. As soon as he enters the country and his name is entered in the system the complaint against him will come up and he will be arrested immediately.

Factual findings

15. On the basis of the identity documents and other evidence provided in connection with his visa application, I accept that the applicant was born in Qazvin, Iran, and that Iran is his receiving country.
16. During his entry interview the applicant advised that his ethnic group was Turkoman and that he speaks Farsi and Turkish. In his SHEV application he stated that he belongs to the Shahsavand ethnic group and speaks Farsi, Turkish and English, however in a statutory declaration included in the application he stated that his father was of Azeri background and his mother is Persian and he considers himself to be of Persian ethnicity. In the application he indicated that he would need a Farsi interpreter if called in for an interview, and a Persian interpreter assisted with the entry and SHEV interviews. The applicant has not made any claims for protection on the basis of ethnicity. None of the identity documents on the Department’s file specify the applicant’s ethnicity. I accept that the applicant is of Persian ethnicity as claimed, however nothing turns on his ethnicity as he has no made no claims on this basis.
17. The applicant made numerous references to his past drug addiction in his entry interview, SHEV application and SHEV interview. He advised that in approximately 2006 he was arrested on the suspicion that he was addicted to drugs and ordered by a court to attend rehabilitation. He acknowledged that even though he had been “clean” for several months at that time this was not evident from his appearance. The applicant explained that he overcame his addiction with the assistance of Narcotics Anonymous and that he continues to attend Narcotics Anonymous meetings in Australia to stay clean. He claimed that after he overcame his addiction in Iran he established a charity to help other addicts, including his half-brother, H. Based on the consistency and plausibility of information that he has provided about his past I accept that the applicant is a former drug addict.
18. Since he arrived in Australia the applicant has consistently maintained that he has no religion. During the entry interview he advised that he was of “no religion” and in the SHEV

application he stated that he was “agnostic”. In a statutory declaration included with his application the applicant stated that he moved away from Islam and became agnostic largely as a result of joining Narcotics Anonymous to deal with his drug addiction. He explained that he had read lots of books about Islam and felt strongly about it. He stated that although he considered himself to be agnostic and rejected Islam as a religion and an ideology he understood there were certain “red lines” or issues that could not be discussed openly in public in Iran, for example Islam is sacrosanct and beyond criticism in Iranian society and so “one does not go around pronouncing themselves as agnostic”.

19. In the statutory declaration the applicant advised that until his stepfather made a complaint about him he had been able to live in Iran quite easily and nobody knew about his lack of religious belief. Although he had issues with Islam he stated that “it was not a great deal” and he could manage his life. During the SHEV interview the applicant stated that it had been twelve to thirteen years since he believed in any religion and he has not practised as a Muslim during that time. Although he had dressed like a Muslim at times in public it was “just for appearances” so he did not draw attention to himself.
20. I find the applicant’s consistent evidence about his lack of religious faith to be plausible and accept that he is agnostic.
21. The applicant claims that his stepfather made a complaint about him to the Iranian authorities for being agnostic and denouncing Islam, and for promoting agnostic beliefs and the denunciation of Islam. The applicant believes that his stepfather made this complaint because he considers that the applicant influenced his son (the applicant’s half-brother, H) to commit apostasy and denounce Islam.
22. In his entry interview the applicant advised that he left Iran because he gave shelter to H and his stepfather made a complaint about him because he thought he had caused H to “be without any religion”. He explained that his stepfather has a connection to Sepah and is a very strict, religious person. He claimed that his stepfather found one or two books on H’s laptop about infidelity and godlessness, which led him to make a complaint about the applicant as he believed he had influenced H. The applicant stated that he then received a notice from the police about the need to attend court at a certain time. He contacted his mother, who warned that his stepfather was plotting against him and planning trouble so he should not show himself. During the entry interview the applicant indicated that he would be imprisoned if he returned to Iran and his stepfather would do something bad to him. He stated that he was scared because he has been arrested, detained and lashed before and people who do not have any religion are treated badly in Iran.
23. In his SHEV application the applicant stated that, like him, H had developed [a drug] addiction in his youth. He organised for H to stay with the charity that he had established to help people overcome drug addiction. The applicant stated that H stayed in the camp run by the charity for almost two years and throughout this time the brothers developed a closer relationship. H began taking a greater interest in the books that the applicant was reading and the issues that he was discussing with his friends, particularly around criticism of Islam, although the applicant did not try to actively engage him in these issues. The applicant stated that about four years after joining the charity his stepfather learned about H’s beliefs after finding some eBooks on H’s computer. His stepfather blamed the applicant for H’s new agnostic beliefs and rejection of Islam. H fled the country because of the problems he had with his father. On learning that H had fled the country the applicant’s stepfather put in a complaint against him (the applicant).

24. In his visa application the applicant stated that in early 2013 his aunt called him to let him know that two police officers had come to her house looking for him. His aunt said that the police gave her a letter, which was a complaint or warning from the authorities. She did not tell the applicant what the warning was for. The applicant stated that his stepfather had made the complaint, which led him to believe that it was related to his brother and his beliefs. His mother told him that his stepfather has beaten her a few times because of him and blamed the applicant for H becoming agnostic. She told him it would be better if he moved to another city for a while because his stepfather can “do whatever he wants”. After this conversation he became extremely scared. He had experienced jail twice before and been subject to lashes for very minor issues. By comparison, the new charges were for more serious “red line” issues, which were much more serious. He knew that he would have to flee the country to be safe from more extreme punishment. His mother has told him that his stepfather will never remove the complaint and he is “still out to get me”.
25. During the SHEV interview the applicant was asked why he cannot return to Iran. He stated that his stepfather made a complaint about him for preaching atheism or having no religion. He said that he was not sure what would happen to him if he returns to Iran; nothing may happen or something really bad could happen to him. The applicant explained that his stepfather hates him and never accepted him as his wife’s child (from her first marriage). The applicant said that his stepfather complained about him to the court; he knows this because he received a summons and a warning. The applicant stated that he received a summons about twenty days to one month before he left the country, however he never saw the document. He said that his aunt saw the document as it was delivered to her and she signed for it. When asked by the interviewing officer whether she still had a copy of the summons the applicant said that when he asked his aunt if she had the document she said she did not. The interviewing officer asked the applicant if he was able to get a copy of the document and he said he did not know and that he had tried but had not been successful. Later the interviewing officer asked the applicant to try to obtain a copy of the document and provide it within seven days. The applicant undertook to try to do so but as discussed above he did not provide a copy of the summons by the time the delegate made her decision, approximately eight months after the SHEV interview.
26. During the SHEV interview the interviewing officer advised the applicant that he had read the visa application lodged by H with the Australian Government and noted that H had given a different version of some events compared to what the applicant had told him. The interviewing officer pointed out that H had been in [Country 1] for a long period of time before the eBooks were found on his laptop and therefore it was unclear to him why the applicant would be blamed for H having the eBooks. The applicant explained that the eBook incident occurred a short time after H returned to Iran from [Country 1] and H stayed with him for a few days during that period.
27. I did not find the applicant’s account of the eBook incident or claims in relation to fear of harm by his stepfather and fear of harm by authorities as a result of a complaint lodged by his stepfather to be convincing. The applicant did not provide clear details of the eBook incident and was confident that the summons resulted from his stepfather’s complaint, despite not having sighted the document and giving varying accounts about his aunt’s knowledge of the content of the summons and what she conveyed to him about the summons. Although he indicated during the SHEV interview that he was aware that his step-brother had travelled to [Country 1] the applicant did not acknowledge that the eBook incident had occurred shortly after H’s return to Iran until the interviewing officer pointed it out. I accept that the applicant may have had contact with H shortly after his return from [Country 1] but it may not have been as extensive in the lead-up to the e-Book incident as he had previously indicated. When

the interviewing officer told the applicant that H had claimed that [the intelligence authorities] had found the eBook, the applicant said he did not know that as all he knew was what his mother had told him, i.e. that H's father found the eBooks on his computer. I accept that the applicant had no control over the information that H provided about who found the eBooks on his laptop, and acknowledge the fact that H and the applicant have provided different information about this incident does not necessarily mean that that applicant's information is false. However, the presence of varying information raises doubts about whether the incident actually occurred.

28. In addition, although the applicant claimed that his stepfather had a connection to the Sepah and influence in it, he did not provide any details of the nature of his stepfather's role in the Sepah or why he would have been able to make a complaint about the applicant that resulted in court action being taken against him. Similarly, the information provided by the applicant about the summons issued against him lacked detail and conviction. During the entry interview the applicant stated that he had received a notice from the police about the need to attend court "at a certain time", however during the SHEV interview he advised that a summons was issued before he left Iran but he had not seen the document as it had been delivered to his aunt. As discussed earlier in this decision, the applicant did not provide a copy of the summons to the delegate before she made a decision, despite being asked to do so by the interviewing officer and eight months elapsing between the SHEV interview and the date of decision. Furthermore, it is very unlikely that the applicant would have been able to leave Iran legally in February 2013 if a summons had been issued in his name or other court action was outstanding.
29. I accept that the applicant and his step father did not have a good relationship when the applicant lived in Iran. However, other than claiming that his stepfather made a complaint to the Iranian authorities about his views of religion, the applicant has not provided any details or made any other claims about his stepfather's actions or behaviour towards him, nor expressed any other fears that he holds in relation to his stepfather.
30. Based on the information before me, I do not accept that the applicant's stepfather made a complaint to the Iranian authorities about him being agnostic, denouncing Islam, for promoting agnostic beliefs and the denunciation of Islam, or for causing H to become agnostic. I therefore do not accept that any court action was taken against the applicant as a result of a complaint made by his stepfather. It follows that I do not accept that he is on a travel "black list".

Refugee assessment

31. Section 5H(1) of the Act provides that a person is a refugee if, in a case where the person has a nationality, he or she is outside the country of his or her nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself or herself of the protection of that country; or in a case where the person does not have a nationality—is outside the country of his or her former habitual residence and owing to a well-founded fear of persecution, is unable or unwilling to return to it.

Well-founded fear of persecution

32. Under s.5J of the Act 'well-founded fear of persecution' involves a number of components which include that:

- the person fears persecution and there is a real chance that the person would be persecuted
- the real chance of persecution relates to all areas of the receiving country
- the persecution involves serious harm and systematic and discriminatory conduct
- the essential and significant reason (or reasons) for the persecution is race, religion, nationality, membership of a particular social group or political opinion
- the person does not have a well-founded fear of persecution if effective protection measures are available to the person, and
- the person does not have a well-founded fear of persecution if they could take reasonable steps to modify their behaviour, other than certain types of modification.

Complaint by stepfather

33. I have not accepted that the applicant's stepfather made a complaint about him to the Iranian authorities in relation to his agnosticism, renunciation of Islam or for causing his half-brother H to become agnostic. As such I am not satisfied that he would face a real chance of harm from the Iranian authorities or his stepfather if he was to return to Iran.

Apostasy and agnosticism

34. The applicant fears that if he is forced to return to Iran he will be harmed by the authorities because it is now known that he has no religion due to the complaint lodged by his stepfather.
35. I have accepted that the applicant is agnostic. I accept that he has not followed a religious faith for over ten years and, based on the evidence he and his representatives have provided, I accept that he continues to oppose Islam and identify as agnostic. He has held his views about religion for many years now and is unlikely to change those views in the reasonably foreseeable future. I therefore consider that the applicant will continue to be agnostic if returned to Iran.
36. Country information provided by DFAT states that under Iranian law a Muslim who leaves his or her faith or converts to another religion can be charged with apostasy.⁴ DFAT notes that the Penal Code does not specifically criminalise apostasy but provisions in the Penal Code and Constitution state that sharia applies to situations in which the law is silent, and judges are compelled to deliver sharia-based judgements in such cases. DFAT's country report further states that death sentences in apostasy and blasphemy cases are now rare, however in March 2017 the Supreme Court upheld the decision of a criminal court to sentence a young man to death for apostasy⁵. The man had been arrested after making social media posts considered to be critical of Islam and the Koran while he was undertaking military service in 2015. As at March 2018 the death sentence had not been carried out.⁶
37. In his SHEV application the applicant advised that he was able to live as an agnostic in Iran quite easily for a number of years without coming to the attention of authorities, up to the time that his stepfather made a complaint about him. Although he indicated in his application that he had discussed issues critical of Islam with friends, he did not discuss his agnosticism

⁴ DFAT, "DFAT Country Information Report – Iran", p. 24, 7 June 2018, CIS7B839411226

⁵ DFAT, "DFAT Country Information Report – Iran", p. 25, 7 June 2018, CIS7B839411226

⁶ DFAT, "DFAT Country Information Report – Iran", p. 24, 7 June 2018, CIS7B839411226

or rejection of Islam in public as he was aware such issues could not be openly discussed. He expressed concern that now it is known that he has no religion he will be sentenced to death if he returns to Iran.

38. The applicant's actions indicate that he has long regarded his agnosticism and lack of support for Islam as a private matter and he has not acted in a way to deliberately bring attention to his views in a public setting. He understands that some issues, such as criticism of Islam, cross certain "red lines" and as a result people do not publically announce themselves to be agnostic. His evidence indicates that it was not problematic for him to be agnostic in Iran until his stepfather made a complaint about him; he was able to incorporate agnosticism into his everyday life without difficulty.
39. The applicant has not been part of any anti-Muslim groups in Iran or Australia and has not provided any evidence that suggests he intends or wishes to publically express his views regarding religion in either Australia or Iran more than he has in the past.
40. As I have not accepted that the applicant's stepfather made a complaint about him to the Iranian authorities in relation to his agnosticism, renunciation of Islam or for causing his half-brother to become agnostic, I do not consider that the Islamic authorities would be aware that he is agnostic on his return to Iran. I do not consider that there is any reason he would be targeted for questioning about his religious views on his return, including whether he identifies as Muslim.
41. The applicant's concerns about fearing harm by authorities in Iran due to his agnosticism are not supported by the DFAT report, especially given his lack of activism and public comment in relation to religious opinion. I find the applicant would be able to continue to privately adhere to his agnosticism and non-support of Islam if he were to return to Iran, as he has in the past, and that he does not face a real chance of harm for being agnostic.
42. Although subject to a search at the airport that he has advised was due to his past drug use, the applicant was able to depart Iran legally in 2013 without being questioned by authorities or religious groups. The applicant has not provided any other evidence that he is of ongoing interest to any religious groups or authorities in Iran as a result of his agnosticism or anti-Islamic views.
43. I am not satisfied that the applicant is a person of interest to Iranian authorities or religious groups due to his agnosticism.
44. I find that the applicant does not face a real chance of harm on return to Iran on the basis of apostasy or agnosticism.

Failed asylum seeker returning from a western country

45. The applicant did not make a specific claim of fear of harm on the basis of being a failed asylum seeker returning from a western country if returned to Iran in his SHEV application or interview but the delegate addressed this issue in her decision. The delegate was not satisfied that there is a real chance that the applicant would suffer serious harm for the reason of being a failed asylum seeker returning from a western country, either now or in the reasonably foreseeable future.
46. In his submission to the IAA the applicant's representative asserted that he would face an increased risk of harm as a failed asylum seeker due to his profile as a person with a criminal record.

47. The most recent country information report published by DFAT states that Iran has historically refused to issue travel documents to allow the involuntary return of its citizens from abroad, however on 19 March 2018 Iran and Australia signed a Memorandum of Understanding (MOU) that includes an agreement by Iran to facilitate the return of Iranians who arrived after this date and who have no legal right to stay in Australia⁷. As the applicant arrived prior to this date the MOU agreement does not apply to him and it is extremely unlikely that he would be accepted as an involuntary returnee. On the basis of the information before me I find that the applicant will only be returned to Iran as a voluntary returnee.
48. DFAT notes that Iranian authorities will usually question a voluntary returnee on return only if they have already come to official attention, such as if they committed a crime in Iran before they departed.⁸ DFAT is not aware of any legislative or social barriers to prevent voluntary returnees from returning to their home region. DFAT points to observations from international bodies that Iranian authorities pay little attention to failed asylum seekers on their return to Iran, however those with an existing high profile, such as political activists, may face a higher risk of coming to official attention⁹.
49. During his entry interview the applicant advised that was arrested in 2003/2004 because he was with his girlfriend in Isfahar. He was imprisoned for twelve days, received lashes and had to pay a [fine]. He also stated that eighteen months to two years later he was arrested on the suspicion that he was addicted to drugs. The court sent him to rehabilitation for one week. In his SHEV application advised of two previous encounters with police; he stated that in around 2004 he was sent to jail for twelve days and given seventy lashes for travelling with his girlfriend outside of marriage, and around eighteen months after this incident he was accused by police of being a drug addict even though he was not using drugs at that time. He was sentenced to rehabilitation for an unspecified period of time and imprisoned for a few days before paying a fine [to] be released. During the SHEV interview the applicant advised that he was imprisoned for seven days in relation to the second incident and released after he paid a fine. He said that he was also required to attend twenty one days of rehabilitation. Although the applicant has not provided any documents in support of his claims of previous convictions and his accounts of the convictions in his entry interview, protection application and SHEV interview vary slightly I consider the information he has provided about his convictions to be plausible and I accept that they occurred.
50. On return to Iran the applicant may be questioned by authorities due to his profile as a former drug addict and a person with a criminal record, as these factors may set him apart from other returnees. However, I do not consider that the Iranian authorities would have an interest in taking any further action against the applicant in relation to convictions that appear to have been finalised in approximately 2006. I also note that the applicant was not a person of interest to Iranian authorities when he travelled to [other countries] in approximately 2005-2006, i.e. shortly after the convictions, and therefore he would not be of interest to authorities more than ten years after the last conviction. I also do not consider that the authorities would have an ongoing interest in the applicant's previous drug addiction unless there were concerns that he had resumed drug use. There is no indication that the applicant is a current drug user.

⁷ DFAT, "DFAT Country Information Report - Iran", 7 June 2018, CIS7B839411226, p. 49

⁸ DFAT, "DFAT Country Information Report - Iran", 7 June 2018, CIS7B839411226, p. 49

⁹ DFAT, "DFAT Country Information Report - Iran", 7 June 2018, CIS7B839411226, p.49

51. The applicant has not claimed to have been involved in any political activities in Iran or Australia nor has he expressed a desire to do so. He has not been a member of any political or social groups in Iran or Australia and he was able to depart Iran legally in 2013 using his own passport. Although he was subject to a search at the airport on departure from Iran the applicant has explained that this was due to his past drug use and he was not of interest to authorities on that occasion for any other reason. I am not satisfied that the applicant has a current profile that would be of interest to Iranian authorities if he was to return to Iran voluntarily for the reason of having sought asylum and spent time living in Australia.
52. Taking into account the country information outlined above and the applicant's profile, I am not satisfied he would face a real chance of harm if returned to Iran due to being identified as a failed asylum seeker who has spent time in a western country.
53. In considering the applicant's circumstances as a whole, I am not satisfied that he faces a real chance of persecution from the authorities or any other person in Iran in the reasonably foreseeable future.

Refugee: conclusion

54. The applicant does not meet the requirements of the definition of refugee in s.5H(1). The applicant does not meet s.36(2)(a).

Complementary protection assessment

55. A criterion for a protection visa is that the applicant is a non-citizen in Australia (other than a person who is a refugee) in respect of whom the Minister (or Reviewer) is satisfied Australia has protection obligations because there are substantial grounds for believing that, as a necessary and foreseeable consequence of the person being removed from Australia to a receiving country, there is a real risk that the person will suffer significant harm.

Real risk of significant harm

56. Under s.36(2A), a person will suffer 'significant harm' if:
 - the person will be arbitrarily deprived of his or her life
 - the death penalty will be carried out on the person
 - the person will be subjected to torture
 - the person will be subjected to cruel or inhuman treatment or punishment, or
 - the person will be subjected to degrading treatment or punishment.
57. I have otherwise concluded that the applicant does not face a real chance of harm for any of the reasons claimed, including on the basis of fear of harm by his stepfather, court action resulting from a complaint lodged with Iranian authorities by his stepfather, apostasy and agnosticism, or being a failed asylum seeker returning from a western country. 'Real chance' and 'real risk' have been found to equate to the same threshold. As a result I find that the applicant will not face a real risk of significant harm for these reasons.

58. I am not satisfied that there is a real risk that the applicant will suffer significant harm on his return to Iran.

Complementary protection: conclusion

59. There are not substantial grounds for believing that, as a necessary and foreseeable consequence of being returned from Australia to a receiving country, there is a real risk that the applicant will suffer significant harm. The applicant does not meet s.36(2)(aa).

Decision

The IAA affirms the decision not to grant the referred applicant a protection visa.

Applicable law

Migration Act 1958

5 (1) Interpretation

In this Act, unless the contrary intention appears:

...

bogus document, in relation to a person, means a document that the Minister reasonably suspects is a document that:

- (a) purports to have been, but was not, issued in respect of the person; or
- (b) is counterfeit or has been altered by a person who does not have authority to do so; or
- (c) was obtained because of a false or misleading statement, whether or not made knowingly

...

cruel or inhuman treatment or punishment means an act or omission by which:

- (a) severe pain or suffering, whether physical or mental, is intentionally inflicted on a person; or
- (b) pain or suffering, whether physical or mental, is intentionally inflicted on a person so long as, in all the circumstances, the act or omission could reasonably be regarded as cruel or inhuman in nature; but does not include an act or omission:
 - (c) that is not inconsistent with Article 7 of the Covenant; or
 - (d) arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

degrading treatment or punishment means an act or omission that causes, and is intended to cause, extreme humiliation which is unreasonable, but does not include an act or omission:

- (a) that is not inconsistent with Article 7 of the Covenant; or
- (b) that causes, and is intended to cause, extreme humiliation arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

receiving country, in relation to a non-citizen, means:

- (a) a country of which the non-citizen is a national, to be determined solely by reference to the law of the relevant country; or
- (b) if the non-citizen has no country of nationality—a country of his or her former habitual residence, regardless of whether it would be possible to return the non-citizen to the country.

...

torture means an act or omission by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person:

- (a) for the purpose of obtaining from the person or from a third person information or a confession; or
- (b) for the purpose of punishing the person for an act which that person or a third person has committed or is suspected of having committed; or
- (c) for the purpose of intimidating or coercing the person or a third person; or
- (d) for a purpose related to a purpose mentioned in paragraph (a), (b) or (c); or
- (e) for any reason based on discrimination that is inconsistent with the Articles of the Covenant; but does not include an act or omission arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

5H Meaning of refugee

- (1) For the purposes of the application of this Act and the regulations to a particular person in Australia, the person is a refugee if the person:
 - (a) in a case where the person has a nationality—is outside the country of his or her nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself or herself of the protection of that country; or

- (b) in a case where the person does not have a nationality—is outside the country of his or her former habitual residence and owing to a well-founded fear of persecution, is unable or unwilling to return to it.

Note: For the meaning of *well-founded fear of persecution*, see section 5J.

...

5J Meaning of well-founded fear of persecution

- (1) For the purposes of the application of this Act and the regulations to a particular person, the person has a well-founded fear of persecution if:
 - (a) the person fears being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; and
 - (b) there is a real chance that, if the person returned to the receiving country, the person would be persecuted for one or more of the reasons mentioned in paragraph (a); and
 - (c) the real chance of persecution relates to all areas of a receiving country.

Note: For membership of a particular social group, see sections 5K and 5L.

- (2) A person does not have a well-founded fear of persecution if effective protection measures are available to the person in a receiving country.

Note: For effective protection measures, see section 5LA.

- (3) A person does not have a well-founded fear of persecution if the person could take reasonable steps to modify his or her behaviour so as to avoid a real chance of persecution in a receiving country, other than a modification that would:

- (a) conflict with a characteristic that is fundamental to the person's identity or conscience; or
- (b) conceal an innate or immutable characteristic of the person; or
- (c) without limiting paragraph (a) or (b), require the person to do any of the following:
 - (i) alter his or her religious beliefs, including by renouncing a religious conversion, or conceal his or her true religious beliefs, or cease to be involved in the practice of his or her faith;
 - (ii) conceal his or her true race, ethnicity, nationality or country of origin;
 - (iii) alter his or her political beliefs or conceal his or her true political beliefs;
 - (iv) conceal a physical, psychological or intellectual disability;
 - (v) enter into or remain in a marriage to which that person is opposed, or accept the forced marriage of a child;
 - (vi) alter his or her sexual orientation or gender identity or conceal his or her true sexual orientation, gender identity or intersex status.

- (4) If a person fears persecution for one or more of the reasons mentioned in paragraph (1)(a):
 - (a) that reason must be the essential and significant reason, or those reasons must be the essential and significant reasons, for the persecution; and
 - (b) the persecution must involve serious harm to the person; and
 - (c) the persecution must involve systematic and discriminatory conduct.

- (5) Without limiting what is serious harm for the purposes of paragraph (4)(b), the following are instances of **serious harm** for the purposes of that paragraph:

- (a) a threat to the person's life or liberty;
- (b) significant physical harassment of the person;
- (c) significant physical ill-treatment of the person;
- (d) significant economic hardship that threatens the person's capacity to subsist;
- (e) denial of access to basic services, where the denial threatens the person's capacity to subsist;
- (f) denial of capacity to earn a livelihood of any kind, where the denial threatens the person's capacity to subsist.

- (6) In determining whether the person has a **well-founded fear of persecution** for one or more of the reasons mentioned in paragraph (1)(a), any conduct engaged in by the person in Australia is to be disregarded 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.

5K Membership of a particular social group consisting of family

For the purposes of the application of this Act and the regulations to a particular person (the **first person**), in determining whether the first person has a well-founded fear of persecution for the reason of membership of a particular social group that consists of the first person's family:

- (a) disregard any fear of persecution, or any persecution, that any other member or former member (whether alive or dead) of the family has ever experienced, where the reason for the fear or persecution is not a reason mentioned in paragraph 5J(1)(a); and
- (b) disregard any fear of persecution, or any persecution, that:
 - (i) the first person has ever experienced; or
 - (ii) any other member or former member (whether alive or dead) of the family has ever experienced;

where it is reasonable to conclude that the fear or persecution would not exist if it were assumed that the fear or persecution mentioned in paragraph (a) had never existed.

Note: Section 5G may be relevant for determining family relationships for the purposes of this section.

5L Membership of a particular social group other than family

For the purposes of the application of this Act and the regulations to a particular person, the person is to be treated as a member of a particular social group (other than the person's family) if:

- (a) a characteristic is shared by each member of the group; and
- (b) the person shares, or is perceived as sharing, the characteristic; and
- (c) any of the following apply:
 - (i) the characteristic is an innate or immutable characteristic;
 - (ii) the characteristic is so fundamental to a member's identity or conscience, the member should not be forced to renounce it;
 - (iii) the characteristic distinguishes the group from society; and
- (d) the characteristic is not a fear of persecution.

5LA Effective protection measures

- (1) For the purposes of the application of this Act and the regulations to a particular person, effective protection measures are available to the person in a receiving country if:
 - (a) protection against persecution could be provided to the person by:
 - (i) the relevant State; or
 - (ii) a party or organisation, including an international organisation, that controls the relevant State or a substantial part of the territory of the relevant State; and
 - (b) the relevant State, party or organisation mentioned in paragraph (a) is willing and able to offer such protection.
- (2) A relevant State, party or organisation mentioned in paragraph (1)(a) is taken to be able to offer protection against persecution to a person if:
 - (a) the person can access the protection; and
 - (b) the protection is durable; and
 - (c) in the case of protection provided by the relevant State—the protection consists of an appropriate criminal law, a reasonably effective police force and an impartial judicial system.

...

36 Protection visas – criteria provided for by this Act

...

- (2) A criterion for a protection visa is that the applicant for the visa is:
 - (a) a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the person is a refugee; or
 - (aa) a non-citizen in Australia (other than a non-citizen mentioned in paragraph (a)) in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen being removed from Australia to a receiving country, there is a real risk that the non-citizen will suffer significant harm; or
 - (b) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
 - (i) is mentioned in paragraph (a); and
 - (ii) holds a protection visa of the same class as that applied for by the applicant; or
 - (c) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
 - (i) is mentioned in paragraph (aa); and
 - (ii) holds a protection visa of the same class as that applied for by the applicant.
- (2A) A non-citizen will suffer **significant harm** if:
 - (a) the non-citizen will be arbitrarily deprived of his or her life; or

- (b) the death penalty will be carried out on the non-citizen; or
 - (c) the non-citizen will be subjected to torture; or
 - (d) the non-citizen will be subjected to cruel or inhuman treatment or punishment; or
 - (e) the non-citizen will be subjected to degrading treatment or punishment.
- (2B) However, there is taken not to be a real risk that a non-citizen will suffer significant harm in a country if the Minister is satisfied that:
- (a) it would be reasonable for the non-citizen to relocate to an area of the country where there would not be a real risk that the non-citizen will suffer significant harm; or
 - (b) the non-citizen could obtain, from an authority of the country, protection such that there would not be a real risk that the non-citizen will suffer significant harm; or
 - (c) the real risk is one faced by the population of the country generally and is not faced by the non-citizen personally.

...

Protection obligations

- (3) Australia is taken not to have protection obligations in respect of a non-citizen who has not taken all possible steps to avail himself or herself of a right to enter and reside in, whether temporarily or permanently and however that right arose or is expressed, any country apart from Australia, including countries of which the non-citizen is a national.
- (4) However, subsection (3) does not apply in relation to a country in respect of which:
- (a) the non-citizen has a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; or
 - (b) the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen availing himself or herself of a right mentioned in subsection (3), there would be a real risk that the non-citizen will suffer significant harm in relation to the country.
- (5) Subsection (3) does not apply in relation to a country if the non-citizen has a well-founded fear that:
- (a) the country will return the non-citizen to another country; and
 - (b) the non-citizen will be persecuted in that other country for reasons of race, religion, nationality, membership of a particular social group or political opinion.
- (5A) Also, subsection (3) does not apply in relation to a country if:
- (a) the non-citizen has a well-founded fear that the country will return the non-citizen to another country; and
 - (b) the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen availing himself or herself of a right mentioned in subsection (3), there would be a real risk that the non-citizen will suffer significant harm in relation to the other country.

Determining nationality

- (6) For the purposes of subsection (3), the question of whether a non-citizen is a national of a particular country must be determined solely by reference to the law of that country.
- (7) Subsection (6) does not, by implication, affect the interpretation of any other provision of this Act.