IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-001112

First-tier Tribunal No: PA/52415/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 13th of June 2024

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

NY
(Anonymity Order made)

Respondent

Representation:
For the Appellant: Mr A Tan, Senior Home Office Presenting Officer
For the Respondent: Mr Rashid, instructed by Wimbledon Solicitors

Heard at Manchester Civil Justice Centre on 4 June 2024

DECISION AND REASONS

1. This is an appeal by the Secretary of State for the Home Department against the decision of the First-tier Tribunal allowing NY's appeal against the respondent's decision to refuse his asylum and human rights claim.

2. For the purposes of this decision, I shall hereinafter refer to the Secretary of State as the respondent and NY as the appellant, reflecting their positions as they were in the appeal before the First-tier Tribunal.

3. The appellant is a citizen of Iran of Kurdish ethnicity, born on 5 March 1993. He arrived in the UK on 20 September 2021 by dinghy, having left Iran on 8 August 2021

and travelled through Turkey and France, and claimed asylum the same day. His claim was refused on 4 April 2023. He appealed against that decision and his appeal is the subject of these proceedings.

4. The basis of the appellant's claim is that he would be executed by hanging by the government if he returned to Iran because he had sold wine to a customer, S, who had subsequently passed through a checkpoint and ran over and killed a soldier and injured two others and had been arrested. The appellant claimed that he made and sold alcohol inside his orchard. He claimed that two hours after he had sold the alcohol to S, military cars came towards his orchard, and he and his brother fled and hid. His brother was shot and killed. He then fled Iran, leaving illegally by lorry on 8 August 2021, two days after the incident. The appellant also claimed to have been arrested by the police and Passdar army on 2 January 2018 on his way to a demonstration in Mariwan, which he was attending as he hoped for a better life, and to have been taken to Mariwan prison and detained for 8 days. He clamed further that his father had been a kolbar and had been killed.

5. The respondent accepted that the appellant was an Iranian national, but rejected his claim about having attended a demonstration and been arrested and detained, and rejected his account of having sold alcohol and faced problems as a result of that. The respondent did not accept the appellant's claim to have left Iran illegally and did not accept that he was of any adverse interest to the Iranian authorities. It was not accepted that he would be at risk on return to Iran.

6. The appellant's appeal against that decision came before First-tier Tribunal Judge Meyler on 1 February 2024. The judge did not accept the appellant's account of selling wine on a large scale and rejected his claim to be at risk on return to Iran on that basis. However she accepted his account of having participated in a demonstration in Mariwan and having been arrested and detained for 8 days. She found, on that basis, and considering also his father's history as a kolbar, his ethnicity as a Kurd and his illegal departure, that the appellant would face a well-founded fear of persecution on return to Iran by reason of his political opinion. She accordingly allowed the appellant's appeal on asylum and Article 3 grounds, in a decision promulgated on 15 February 2024.

7. The respondent sought permission to appeal against the judge's decision on the grounds that she had failed to give adequate reasons for finding the appellant credible in relation to his claim to have been arrested and detained by the authorities and had failed to address the inconsistencies highlighted in the refusal letter in that regard.

8. Permission was granted by the First-tier Tribunal on the basis that: "*The judge does not appear to give any real explanation as to how he has managed to find the appellant simultaneously both credible and not credible.*" NY did not provide a rule 24 response.

9. The matter came before me for a hearing on 4 June 2024. Both parties made submissions.

10. Mr Tan submitted that, whilst the judge had given clear reasons for rejecting the appellant's account in relation to the production and sale of alcohol, she had given inadequate reasons for accepting his account of having been arrested and detained at a demonstration in 2018 and for concluding that he left Iran illegally, and she had failed to address the reasons in the refusal letter for rejecting those claims.

11.Mr Rashid relied upon the judge's comment at [10] of her decision, that she did not propose to rehearse all of the oral evidence and submissions, that the relevant details of the evidence were incorporated into her findings of fact below, and that she had carefully considered all the evidence and submissions before her with anxious scrutiny. He otherwise accepted that the judge's reasons for accepting the appellant's account, at [21], were limited.

12.Clearly Mr Rashid recognised that he was in some difficulty in asserting that the judge's findings at [21] were adequate, and properly so. Having undertaken a detailed analysis of the appellant's account about his production and sale of alcohol at [18] to [20] and provided reasons for rejecting that claim, the judge simply provided a bare statement, at [21], that she was satisfied as to the appellant's account of his participation in the demonstration in Mariwan and his arrest and detention. She provided no reasons for accepting the appellant's account despite the concerns raised by the respondent in the refusal letter about inconsistencies, and indeed she did not even address any of those concerns. Neither did she address the respondent's rejection of the appellant's claim to have left Iran illegally, but she simply accepted that that was the case.

13.Accordingly Judge Meyler's findings in that regard cannot stand and, since that was the basis for her decision to allow the appellant's appeal, that decision has to be set aside.

14.Mr Tan submitted initially that the judge's adverse findings on the other part of the appellant's claim relating to the sale of alcohol should be preserved and the decision re-made in the Upper Tribunal on the basis of those preserved findings, although he subsequently accepted that it may be neater for the case to be heard *de novo*. Mr Rashid submitted that the error made by the judge, if accepted, went to her credibility assessment as a whole and therefore materially undermined her entire decision such that it needed to be re-made *de novo*. I have to agree with Mr Rashid. It seems to me that, in circumstances when the judge's assessment of credibility has been found to be flawed it is difficult to compartmentalise that assessment and that it materially undermines the credibility assessment as a whole.

15.In the circumstances I consider that the appropriate course is for the matter to be decided *de novo* and for the case to be remitted to the First-tier Tribunal for a fresh hearing before another judge aside from Judge Meyler.

Notice of Decision

16.The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is set aside in its entirety with no findings preserved.

17.The appeal is remitted to the First-tier Tribunal to be dealt with afresh pursuant to section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Statement 7.2(b), before any judge aside from Judge Meyler.

Anonymity

The anonymity direction made by the First-tier Tribunal is maintained.

Signed: S Kebede
Upper Tribunal Judge Kebede

Judge of the Upper Tribunal
Immigration and Asylum Chamber

4 June 2024