IAC-AH-DP-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/05552/2014

THE IMMIGRATION ACTS

Heard at Bradford **Decision & Reasons Promulgated**

On 10th February 2016 **On 15th April 2016**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

[FAYCAL B]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Schwenk, instructed by South Yorkshire Refugee Law
For the Respondent: Mr Diwnycz, a Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, [Faycal B], was born on 27 July 1973 and is a male citizen of Algeria. He is in the United Kingdom with his wife and two children who claim as his dependants. The appellant arrived in the United Kingdom in August 2013 on a visit visa. He applied for asylum in September 2013.

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His application was refused by a decision of the respondent dated 21 July 2014. Directions were also made for his removal to Algeria. The appellant appealed against that latter decision to the First-tier Tribunal (Judge Law) who dismissed the appeal in October 2014. The decision was subsequently set aside by the Upper Tribunal (Judge Taylor). The matter was remitted to the First-tier Tribunal (Judge Lever) which, in a decision promulgated on 12 June 2015 dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. There are five grounds of appeal. First, the appellant asserts that the judge failed to approach the appeal with an open mind. At [24], Judge Lever wrote:

> "I am also bound to observe the assertion made before the Upper Tribunal that had their legal representatives been aware no record was available [of an asylum interview] they will have taken a witness statement from the son and had therefore been deprived of such opportunity, is without merit."

Frankly, I can see no problem with the judge's observation. Indeed, in the remainder of the same paragraph he gives reasons for considering that the submission had been "without merit" none of which are particularly contentious. Previous proceedings before other Tribunals (including the Upper Tribunal) are not sacrosanct in the sense that they are incapable of being criticised by subsequent judges. Viewed as a whole, Judge Lever's decision is both detailed and even-handed.

3. The second ground of appeal concerns the welfare of the appellant's child M. Evidence had been given about the child's state of mind by two teachers, JG and VH. The judge is criticised for having failed to take their evidence "in the round". At [41] the judge found there was nothing in the school reports to demonstrate "anxiety, moodiness, withdrawal or any other features that may suggest post-traumatic stress disorder or anxiety regarding alleged kidnap". The grounds set out a number of quotations from the evidence of both witnesses noting behaviour in the child which had been "out of character" and recording that the child occasionally sat at lunchtime "quietly and is sombre". One of the witnesses stated that she was "seriously concerned that [M] would attempt to take his life if faced with removal". The grounds record that the judge observed at [46], "professional teachers who have seen [M] daily and by their professional live and sensitive children and their emotions [may] be far more reliable than an immigration worker who has seen the appellant twice and the doctor has seen the appellant's son once". The criticism made of the judge is that that latter observation is in direct contradiction to his finding (quoted above) as to the absence of symptoms of PTSD. It is asserted that "the evidence of the teacher points in the same direction as that of the other professional".

4. There is no requirement on the judge to deal with each and every time of a witness's evidence. The child's teachers were witnesses of fact; they were not expert witnesses capable of offering a medical opinion regarding

the child's mental state, pathology or welfare. The school evidence does indicate some low mood on the part of M but also, as the judge points out at [41] M's "enthusiasm and habit of shouting out in class the answers to questions posed". Also, as I have noted above, the witnesses indicated that M's low mood was "out of character" a remark carrying the obvious implication that, generally, M's mood was not low. It is clear the judge has viewed the evidence as a whole and his conclusion, that the child was not suffering from PTSD, was plainly available to him. Likewise, the judge gives cogent and clear reasons for rejecting the appellant's account that the child had been kidnapped. In any event, as the respondent points out in her Rule 24 statement, the judge considered the risk on return of the family in the alternative and on the basis that M had been kidnapped as alleged [47]. The judge was not compelled to conclude the child would, seek to take his own life if returned or, indeed, that the kidnap (if it did occur) was any more than an isolated criminal incident which was not reasonably likely to be repeated. I note there is no criticism about the judge's finding in the alternative [47] in grounds of appeal to the Upper Tribunal.

5. Ground 4 concerns the judge's observation at [50] that "the evidence does not all inevitably point to the concept of trauma as a result of the kidnap". It asserted the judge has departed from the standard of proof of reasonable likelihood and has replaced this to the higher standard of "inevitability". I find that the ground has no merit and is little more than a descent into a semantic argument; read as a whole, there is no reason to suppose the judge has departed from the correct standard of proof in the asylum and Article 2/3 ECHR appeal. His use of the word "inevitably" occurs not in a finding of fact but in the judge's description of part of the evidence concerning the child M. By analogy, it is similar to medical evidence which indicates that, for example, scars on an individual's body can only have one specific cause; in such a case, there would exist "inevitability" as to the cause. All that the judge is saying in his decision is that the anxiety possibly demonstrated by M may have a cause other than a fear of being kidnapped in Algeria.

6. Ground 5 has no merit. The judge has referred to some pages in the appellant's bundle of documents. He says that these are "written by a variety of teaching staff who would have had daily contact with M". The cited pages, in fact, relate to M's brother, R. I am satisfied that this is no more than a typographical error on the part of the judge and does not indicate a misdirection by him as to the facts and evidence or any lack of care or anxious scrutiny of the evidence.

7. In the circumstances, this appeal is dismissed.

<u>Notice of Decision</u>

This appeal is dismissed.

No anonymity direction is made.

Signed Date 28 March 2016

Upper Tribunal Judge Clive Lane