



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: PA/00759/2019

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 8 July 2019**

**Decision & Reasons Promulgated  
On 17 July 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE FROMM**

**Between**

**FARUKH TURGAMBAYEV  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr I Khan, Counsel instructed by David Wyld & Co  
Solicitors

For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant in this appeal is Mr Farukh Turgambayev, a citizen of Kazakhstan who was born on 5 July 1996. He appeals with the permission of the First-tier Tribunal against a decision of Judge of the First-tier Tribunal M A Khan dismissing his appeal against the decision of the respondent to refuse his protection claim, dated 8 January 2019.
2. The background to the appeal is as follows. In October 2018 the appellant was issued with entry clearance to travel to the UK as a visitor. He arrived at Heathrow Terminal 4 on 13 November 2018. He was questioned about

his reasons for coming to the United Kingdom and he explained, in essence, that he was coming to do some sightseeing and to have a holiday. Evidently the Immigration Officer was not satisfied that this was genuinely the case because the appellant was refused entry. On 14 November 2018 removal directions were set and served on the appellant with a view to removing him to Kazakhstan on 16 November 2016. On the day of removal, the appellant claimed asylum. The following day, at his screening interview, the appellant said he was in fear of his life in Kazakhstan. He said there is a criminal gang which used to ask him to do things for them. If he did not do what they wanted, they threatened to beat him up. The appellant said he used to act as a taxi driver for this gang but he had no idea what he was delivering. He said the threats started in August 2017 and continued until September 2018. He also said he stopped working for the gang in August 2017.

3. The appellant's claim was processed in the Detained Asylum Casework system while the appellant remained in detention. There was an attempt to interview him about his reasons for claiming asylum on 11 December 2018. However, the appellant refused to answer questions, insisting he wanted his solicitor to be in attendance. Enquiries were made with the solicitor's firm and it transpired that the solicitor was aware of the date and time of the interview but had another appointment. As the appellant maintained that he would not answer questions, the interview was cancelled but the appellant was given five days in which he could submit further representations. This was confirmed by letter to the appellant's solicitor but no further representations were received.
4. Reasons for refusing the claim were set out in a letter dated 8 January 2019. This was based on the very limited information which the appellant had provided. Firstly, the letter noted that the reason the appellant gave for fearing to return to Kazakhstan was not a reason recognised by the Refugee Convention. The respondent accepted the appellant was a citizen of Kazakhstan. However, his account of fearing a criminal gang was rejected on credibility grounds. Even taking the case at its highest, there is a functioning police force in Kazakhstan and the appellant would receive a sufficiency of protection. Alternatively, he had the option of relocating away from his home town, Shymkent, to another area of Kazakhstan such as Taraz, Almaty or Astana.
5. The appeal was heard by Judge Khan sitting at Harmondsworth. The appellant was represented by counsel and the appellant and two of his friends gave oral evidence. Counsel confirmed that the appeal was pursued solely on Article 3 human rights grounds. It was acknowledged that the claim fell outside the Refugee Convention and there was no viable Article 8 claim. Judge Khan received a more detailed account than had been provided to date which he summarised in paragraph 35 of his decision:-

"The core of the appellant's case is that he with his two witnesses who came to give evidence in support of his claim were involved with a smuggling criminal gang smuggling items across the border from

Uzbekistan. According to the appellant's screening interview on 27/8/2017 they were to meet three drivers from the Uzbekistan side of the border about 20 km inside Kyrgyzstan, in a village named Allabukh; they were to pick up large amounts of US dollars. They were delayed getting to their collection point and in the meantime the three drivers were detained on the Uzbekistan side of the border. Upon finding out his loss the leader of the criminal gang, Mr Atabek, detained the appellant and his two colleagues, beat them up and then released them after two days. Thereafter, Atabek would call on them in order to warn them about speaking out about the event. An agent by the name of Aleksey arranged for them to leave Kazakhstan as visitors to the UK. They tried to enter this country as visitors but upon refusal of entry all three claimed asylum."

6. At paragraphs 36 to 44 of his decision, Judge Khan gave reasons for concluding that the appellant's account was a fabrication. The appeal was therefore dismissed.
7. The appellant then submitted grounds seeking permission to appeal which Judge of the First-tier Tribunal Ford considered "just about arguable". On that basis she granted permission to appeal on all grounds. I shall summarise those grounds but I would like to record that, in my view, permission to appeal should never have been granted.
8. Firstly, Judge Khan erred in paragraph 35 by stating that certain details of the claim had been provided at the appellant's screening interview, whereas they had not. Secondly, in concluding in paragraph 36 that the appellant had used deception to immigration officials with regard to his application for entry clearance and his statements to the Immigration Officer who interviewed him at Heathrow Airport, the judge had failed to consider the appellant's explanations. Thirdly, the judge's reliance on the inconsistent dates in the screening interview was erroneous. The appellant did not say at the screening interview that he last worked for the gang in September 2018. Fourthly, at paragraph 38, relying on the appellant's failure to answer questions at the asylum interview, the judge had failed to have regard to the appellant's explanations. Fifthly, the judge failed to give reasons for rejecting the witness evidence as incredible. Lastly, in reaching his conclusion on sufficiency of protection available to the appellant the judge had erred because he had not taken into account the appellant's past persecution.
9. The respondent then filed a Rule 24 response opposing the appeal and arguing that the decision was well-reasoned and detailed. Judges are not required to give consideration to each and every detail of the evidence in order to give sufficient reasons, relying there on paragraph 14 of the Upper Tribunal's decision in Budhathoki (reasons for decisions) [2014] UKUT 341 (IAC).
10. I heard oral submissions from the representatives as to whether Judge Khan's decision contains material errors of law such that it should be set aside and remade.

11. For the appellant, Mr Khan condensed the six grounds on which permission was granted to the four points identified in paragraph 2 of Judge Ford's order. In brief summary, he argued the error as to some of the information in the screening interview showed the judge was not focusing his mind properly. Secondly, delay in claiming asylum was not a point which should have been taken because of the short timeframe. Thirdly, the judge failed to attach weight to the witness evidence and had made no finding about the witness's evidence. Lastly, there was no contradiction in relation to the dates given by the appellant in his screening interview.
12. Ms Isherwood, for the respondent, submitted there was no material error of law in the decision. I have recorded her arguments in full in my record of the proceedings and I shall not set them out. Mr Khan gave a brief reply.
13. I have carefully considered the submissions of the representatives but, having done so, I have concluded the decision of Judge Khan does not contain any material error of law and should stand. None of the grounds disclose a material error of law. My reasons for this conclusion are as follows. I shall take them in the order as drafted in the original grounds seeking permission to appeal.
14. Ground 1 points to the error in paragraph 37 of Judge Khan's decision as to the source of the information provided by the appellant that he and his accomplices went to meet three drivers from Uzbekistan in a village called Allubakh. The grounds rightly point out this information did not emanate from the screening interview, as Judge Khan seems to say, but it is clear the evidence did emanate from the appellant and can in my view be traced to his appeal statement.
15. The error by the judge is wholly immaterial. The clear meaning and intent of paragraph 37 of Judge Khan's decision is to point out the discrepancy in the dates given by the appellant at different times. In the screening interview, the appellant gave an account of having problems in 2017. Paragraph 36 of the reasons for refusal letter made the point that it was not credible the appellant would be able to remain in Kazakhstan for over a year before leaving to come to the UK if he was being threatened by the gang. In that context, the inconsistency was potentially significant because the suspicion in the mind of the judge must have been that the appellant had simply changed his account to overcome this particular challenge to his credibility. The judge was perfectly entitled to take that approach and the fact he wrongly attributed the source of the evidence is simply immaterial.
16. Ground 2 in effect challenges the judge's reliance on the fact the appellant lied in his entry clearance application and also when interviewed by the Immigration Officer. Particularly, it was of concern the appellant did not disclose the true reason he had come to the United Kingdom when given the opportunity to do so but instead maintained the falsehood that he was a genuine visitor. It could be added that, as the reasons for refusal

pointed out, the appellant further delayed claiming asylum until two days after removal directions had been served on him and he was about to be removed.

17. The judge's treatment of this issue at paragraph 36 of his decision is concise. However, it does record that the appellant said he had been told to sign the visit visa application form. In any event, this paragraph should not be read in isolation. At paragraph 17 of his decision, the judge recorded that the appellant adopted his witness statement and the judge went on to record in considerable detail the oral evidence given by the appellant. At paragraph 19, he recorded the explanation offered by the appellant on this point. When that is considered it cannot conceivably be concluded that the judge's reasoning failed to take these matters into account. Ground 2 has no merit.
18. Ground 3 is simply incorrect. It seeks to undermine the judge's analysis of the point about inconsistent dates in paragraph 37 by suggesting the judge incorrectly recorded that the appellant last worked for the gang in 2017. However, that is precisely what is recorded towards the end of the handwritten note of the appellant's answer to question 4.1 of the screening interview. I have already explained why I consider the judge was entitled to rely on the inconsistent dates given. In paragraph 37 Judge Khan notes the explanation offered that the interpreter made a mistake at the screening interview. However, he rejected that explanation because a correction had not been made earlier. I see no error in that reasoning.
19. Ground 4 concerns the failure of the judge to consider the explanation provided by the appellant for not answering questions at his interview. Again, the judge's conclusions are concisely expressed in paragraph 38. However, the judge does state that the appellant said he did not want to be interviewed because his representatives were not present and could not attend on the day. As far as I can see, that is the explanation which the appellant has relied on. It follows it was considered and therefore this ground does not disclose any error of law.
20. Ground 5 argues the judge failed to give any reasons for rejecting the witness evidence. I note that the witnesses called were also seeking asylum claiming to be the other two members of the three-person group sent by the gang to receive the consignment of smuggled US currency from the Uzbeks. Again, closer analysis of Judge Khan's decision reveals that it does contain adequate reasons. At paragraph 39, he noted that he did not find it credible the appellant or his witnesses would be blamed by the gang given the delivery was intercepted by the Uzbek authorities. In other words, he reasoned that the loss of the money was not reasonably likely to have been viewed as the responsibility of the appellant or the witnesses, as all of them claimed, and at paragraph 40 he noted it was not credible that the appellant and the witnesses failed to report their problems to the police.

21. Again, the decision must be read as a whole. When recording the evidence of the witnesses given in cross-examination, it came to light that approximately half of each of their written statements were identical. The judge was plainly entitled to consider that this undermined the usefulness of the statements and the credibility of the witnesses, or at least diminished the weight that could be given to their evidence, because they had clearly colluded in order to give the same account. There is no material error in this approach.
22. At this point, I note the judge considered the claim at its highest in case he was wrong in rejecting the appellant's credibility and he concluded that the appellant could relocate internally in Kazakhstan. Such a conclusion would be sufficient to defeat the claim even if grounds 1 to 5 had thrown up errors by the judge because they could not have been material errors. The judge rejected the appellant's opposition to the suggestion that he could relocate internally, which was that he would be traced by the gang if he registered in a new area, because there was no evidence that the gang would be able to trace him. There is no error in that approach.
23. Ground 6 seeks to challenge the judge's finding on sufficiency of protection. I find this odd because I cannot see the judge made one. At paragraph 44 he concluded that the appellant had fabricated his claim and in the following paragraphs he explained the appellant could return safely to Kazakhstan because he was not at a real risk of harm. In paragraph 41 he did note that there was no evidence that the police force throughout Kazakhstan is wholly corrupt. Then, at paragraph 34, he confirmed he had taken into account the background evidence. It has not been explained to me therefore how it could be argued Judge Khan erred in his consideration of sufficiency of protection. Ground 6 has no merit either.

### **Notice of Decision**

24. For these reasons the appellant's appeal is dismissed and the decision of Judge Khan dismissing his appeal shall stand.

Signed

Date 10 July 2019



Deputy Upper Tribunal Judge Froom

**TO THE RESPONDENT**  
**FEE AWARD**

This is a fee exempt appeal.

Signed

Date 10 July 2019

Deputy Upper Tribunal Judge Froom