



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Appeal Nos: **UI-2024-000960**  
**UI-2024-000961**  
**UI-2024-000962**  
**UI-2024-000964**

First Tier Nos:  
**HU/53142/2023, LH/03911/2023**  
**HU/53143/2023, LH/03915/2023**  
**HU/53141/2023, LH/03908/2023**  
**HU/53140/2023, LH/03907/2023**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On 25 June 2024**

**Before**

**UPPER TRIBUNAL JUDGE KOPIECZEK**  
**DEPUTY UPPER TRIBUNAL JUDGE FARRELLY**

**Between**

**MN**  
**AN**  
**SN**  
**MSN**

**(ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Osmani, legal representative, Times PBS.

For the Respondent: Ms S. Nwachukwu, Senior Home Office Presenting Officer

**Heard at Field House on 5 June 2024**

**Order Regarding Anonymity**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellants are granted anonymity.**

**No-one shall publish or reveal any information, including the name or address of the appellants, likely to lead members of the public to identify any of them. Failure to comply with this order could amount to a contempt of court.**

## **DECISION AND REASONS**

### **Introduction**

1. The appellants are all adults. They are nationals of Afghanistan, currently living there with their mother ZN.MN was a lawyer in Afghanistan and served as a judge.
2. They applied for entry clearance to join their father Mr AHN, hereinafter referred to as their sponsor. He came to the United Kingdom in 2001 and claimed protection. He was granted refugee status in 2020.
3. Their applications were refused and their linked appeals before First tier Tribunal Judge Buckwell dismissed. It was accepted that the immigration rules could not be met, and their situation had to be considered outside the immigration rules in relation to Article 8. The presenting officer argued that, in the circumstances, family life within the meaning of article 8(1), did not exist. If it did, the decision was proportionate. The judge acknowledged the threshold to engage Article 8(1) is not particularly high but concluded family life was not engaged in relation to the sponsor.
4. On a renewed application permission to appeal was granted by Upper Tribunal Judge Keith. He concluded that it was arguable that the judge had not indicated why family life, given the circumstances, did not exist beyond referring to the appellants' ages and concluding the emotional, financial, or other support provided did not constitute family life.
5. At the hearing before us, Ms Nwachukwu confirmed there was no rule 24 response. Of the three grounds put forward in the leave application she accepted that the First-tier tribunal judge failed to give adequate reasons for finding that Article 8 was not engaged (ground 1). Consequently, she conceded that there was a material error of law in this regard. She was not prepared to concede any error of law in respect of the other two grounds namely, that the judge had incorrectly applied the legal test as to the definition of family life and secondly, failed to consider the particular circumstances, especially the risk for the appellant who served as a judge from the Taliban.
6. Having considered the decision, we find the presenting officer was right to concede a material error of law. The judge had acknowledged the low threshold to demonstrate the existence of family life. Consideration of family life was against the backdrop of the circumstances in Afghanistan. It was not clear from reading the decision that the judge fully engaged with all of the circumstances advanced by the appellants in terms of the existence of family life.

7. The decision of the First tier Tribunal Judge Buckwell materially errs in law and is set aside.
8. In terms of disposal, we considered retaining the appeal in the Upper Tribunal given that there are limited findings of fact that can be preserved. However, we were advised that the appellants' mother had made an application for entry clearance around the same time as the appellants, but the appeals were not synchronised. Her application was also unsuccessful, and she has lodged an appeal in the First-tier tribunal. It is preferable for consistency that her appeal is linked to those of these appellants. Accordingly, the appropriate course is to remit the present appeals to the First tier Tribunal for a *de novo* hearing with a view to facilitating the linking of their mother's appeal.
9. Unusually, but necessarily given the circumstances, we direct that certain limited findings of fact be preserved, as set out in the directions below.

### **Notice of Decision**

The making of the decision of the First-tier Tribunal involved the making of a material error on a point of law and is set aside. The appeal is to be listed for a *de novo* hearing in the First tier Tribunal.

### **Directions**

1. The anonymity order is to continue in the First-tier Tribunal.
2. The following findings of fact are preserved:
  - (i) the appellants are all related to each other.
  - (ii) the appellant MN was a judge in Afghanistan.
3. The appeal to be relisted for a *de novo* hearing in the First tier Tribunal at Hatton Cross and not before First tier Tribunal Judge Buckwell.
4. The appeal is to be linked with that of the appellants' mother, ZN (appeal reference HU/63667/2023).
5. The appeal listing should be expedited.
6. The provisional time estimate is 2 ½ hours, subject to any submissions from the parties or modification by the First-tier Tribunal.
7. A Pashtu interpreter will be required for the sponsor.
8. Further directions may be left to the discretion of the First-tier Tribunal.

Francis J Farrelly.

DUT Judge of the Upper Tribunal  
Immigration and Asylum Chamber  
5<sup>th</sup> June 2024