



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

Case No: UI-2024-004189

First-tier Tribunal Nos: HU/60832/2023

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

On 6<sup>th</sup> of December 2024

**Before**

**UPPER TRIBUNAL JUDGE SHERIDAN**  
**DEPUTY UPPER TRIBUNAL JUDGE JACQUES**

**Between**

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

Appellant

**and**

**BIBI BENZAER GHAFOORI**  
**(NO ANONYMITY ORDER MADE)**

Respondent

**Representation:**

For the Appellant: Ms A Nolan, Senior Home Office Presenting Officer

For the Respondent: Mr M Osmani, Counsel instructed by Times PBS

**Heard at Field House on 15 November 2024**

**DECISION AND REASONS**

**Introduction**

1. The Secretary of State is appealing against a decision of Judge of the First-tier Tribunal Wyman (“the judge”) dated 15 July 2024. There were two appellants in the appeal before the judge: Bibi Ghafoori and Delshad Ghafoori. We will refer to them as BG and DG.
2. BG and DG are citizens of Afghanistan currently living in Pakistan. The sponsor is BG’s son and DG’s husband. DG and the sponsor have three children, who live with DG and BG in Pakistan. The children are all British citizens.
3. The judge allowed the appeal in respect of both BG and DG. The Secretary of State does not challenge the decision in respect of DG and the appeal before us concerns only BG.

### **Decision of the First-tier Tribunal**

4. It was common ground before the First-tier Tribunal that neither BG or DG met the requirements of the Immigration Rules.
5. The first question for the judge to determine was whether there was a family life between BG, DG and the sponsor that engaged Article 8. The judge's findings in respect of family life being engaged are set out in paragraphs 33-35 of the decision. In paragraph 34, the judge found that DG and the sponsor enjoy a family life engaging Article 8 because there was evidence of the marriage, visits, and money transfers. In paragraph 33, the judge found that family life engaging Article 8 exists between BG and the sponsor because there was DNA evidence confirming that BG is the sponsor's mother.
6. Having found family life was engaged, the judge proceeded to consider whether refusing entry to BG and DG would be disproportionate. The judge made findings about the difficult circumstances faced by BG and DG in Pakistan; and that they would likely face in Afghanistan, from where they had fled when the Taliban took power. The judge concluded that the factors weighing in favour of permitting BG and DG to join the sponsor in the UK outweighed the public interest in the maintenance of effective immigration controls.

### **Grounds of Appeal**

7. The Secretary of State's grounds concern only BG. They argue that the judge "failed to identify the Article 8 findings" for BG. It is also submitted that the impact on the sponsor was not considered, contrary to the Upper Tribunal decision in *KF and others (entry clearance, relatives of refugees) Syria* [2019] UKUT 413 (IAC).
8. The grant of permission states:

"Aside from noting their biological relationship as evidenced by a DNA report, the Judge makes no other findings with reference to the first Appellant that establish family life within the meaning of Article 8. The Judge also does not reference the test for family life".

### **Error of Law**

9. Ms Nolan framed her argument in accordance with the grant of permission, rather than the grounds as drafted. She submitted that the judge found that family life was engaged solely because there was a biological relationship between the sponsor and BG, which is contrary to the well-established authorities on what is necessary for family life to exist between adult relatives; i.e. that there must be real, committed or effective support.
10. Ms Nolan clarified that the judge's proportionality assessment was not being challenged: the Secretary of State's challenge is solely to the finding that the relationship between BG and S amounts to family life that engages Article 8.
11. Mr Osmani argued that it was never in dispute that BG and S enjoy a family life and that, reading the decision as a whole, it is apparent that the judge made findings of fact that support the conclusion that family life was engaged. This includes that BG, DG and DG's children live together in a single family unit that is supported by the sponsor.

12. We are in no doubt that the judge erred as argued by Ms Nolan. Family life between adult relatives will only engage Article 8 in circumstances where there is effective, real or committed support and the assessment of whether family life exists is fact sensitive. See *Singh v SSHD* [2015] EWCA Civ 630 and *Uddin v SSHD* [2020] EWCA Civ 338. The judge did not apply the test of “effective, real or committed support” and did not engage with the factual circumstances when assessing whether family life existed: she found that family life existed between BG and the sponsor solely because they are biologically related. This is a clear error.
13. We are not persuaded that the error is immaterial. The applicable test to determine materiality, as explained in paragraph 43 of *ASO (Iraq) v SSHD* [2023] EWCA Civ 1282 is “*whether it is clear on the materials before the F-tT any rational Tribunal must have come to the same conclusion. If that is clear, then any error of law would be immaterial, and the appeal should fail*”. Whilst we accept that, as argued by Mr Osmani, the judge, when considering proportionality, made findings that are relevant to whether Article 8 is engaged, it is far from clear that, had the correct test been applied the same conclusion would have been reached.

### **Re-made Decision**

14. Both Ms Nolan and Mr Osmani were in agreement that we should proceed to re-make the decision, as the only issue in dispute was whether Article 8 was engaged. Ms Nolan accepted that if we were satisfied that Article 8 was engaged the appeal would be fall to be made in BG’s favour given that the judge’s proportionality assessment was unchallenged.
15. We heard oral evidence from the sponsor. His unchallenged evidence was that he financially supports DG, BG and his children, paying for their accommodation and expenses in Pakistan (and in Afghanistan before they relocated to Pakistan).
16. Ms Nolan submitted that providing some financial support does not mean that the sponsor’s support for BG goes beyond normal emotional ties, or that it demonstrates real, committed or effective support, as he is merely acting in accordance with a cultural norm to support his mother.
17. We are not persuaded by Ms Nolan’s argument. BG lives with the sponsor’s wife and children; is financially dependent on the sponsor; and was taken by the sponsor to Pakistan along with the sponsor’s wife and children (as part of a single family unit). These factors strongly indicate that the sponsor provides BG with a level of support that goes well beyond the norm between adult relatives, and that he provides her with support that is effective, real and committed. Accordingly, we find that Article 8 is engaged.
18. As Ms Nolan accepted that if Article 8 was engaged the appeal fell to be decided in BG’s favour, we allow BG’s appeal.

### **Notice of Decision**

19. The decision of the First-tier Tribunal involved the making of an error of law and is set aside.
20. We re-make the decision by allowing the appeal.

Appeal Number: UI-2024-004189  
First-tier Tribunal Numbers: HU/60832/2023  
HU/50890/2024

**D. Sheridan**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**3.12.2024**