Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/03430/2019

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 28 November 2019	**On 11 December 2019**

Before

UPPER TRIBUNAL JUDGE KEKIĆ

Between

KC
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms Z Harper, of Counsel, instructed by Wimbledon Solicitors
For the Respondent: Ms J Cunha, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a North Korean national born in 1953. He entered the UK on 28 January 2017 and claimed asylum on 6 March 2017. His application was refused on 26 March 2019 because the respondent was of the view that he would be able to return safely to South Korea as per the country guidance set out in GP and others (South Korean citizenship) North Korea CG [2014] UKUT 00391 (IAC) and because it was considered that article 8 was not engaged in respect to his private and family life with his daughter and granddaughter. Initially the

respondent certified the appellant's claim but following judicial review litigation and the grant of permission by Upper Tribunal Judge Finch on 27 July 2018, the appellant withdrew his challenge by consent in September 2018 and the respondent agreed to reconsider the claim and issue a fresh decision. Although refusal was subsequently maintained, the appellant was given an in country right of appeal on 26 March 2019.

2. The appeal was heard by Judge Pears at Hatton Cross on 11 July 2019. He dismissed the appeal by way of a determination promulgated on 26 July 2019. Although he found the appellant's evidence credible, accepted his account of escaping from North Korea on two occasions and being subjected to harsh treatment in his country, and although he accepted that North Koreans may have difficulties adjusting to life in South Korea and that there may be discrimination in social integration, employment and housing, he concluded that that did not warrant international protection. He did not accept that the North Koreans would seek out the appellant in the South. He accepted that the appellant suffered from PTSD but found that there was no risk of suicide, that medication would be available in South Korea and that his ill health did not reach the required article 3 threshold. He found that the appellant could not meet the requirements of paragraph 276ADE(1)(vi) because he spoke Korean and would receive assistance from the protection programme. With respect to the article 8 claim, he found that the appellant had been living with his daughter only since 2017, although they had been separated *"by circumstances leading to legitimate asylum claims for asylum by both of them"*. He found that the appellant did not speak English, that the family was not financially independent, that it was highly unlikely that the appellant would find employment, that his family and private life had developed whilst his immigration status was precarious, and that the refusal did not result in unjustifiably harsh conditions.

3. Permission to appeal was granted by Designated First-tier Tribunal Judge Macdonald on 29 August 2019 and the matter came before me on 3 October 2019. In a determination promulgated on 9 October 2019, I upheld the decision on the asylum limb of the claim as following the country guidance of GP and others (South Korean citizenship) CG [2014] UKUT 00391 the judge properly found that the appellant would be admissible to South Korea under the Readmission Agreement. However, I set aside the First-tier Tribunal Judge's decision on private/family life.

4. At paragraph 19 of my earlier determination, I gave the following reasons for my decision.

> *"On the claim of family and private life, the judge's findings are sparse and unclear. Although he does not specifically make a finding on whether there is family or private life in the UK, he makes a brief reference to family and private life being developed at a time when the appellant's immigration status was precarious (at 59). It is unclear whether this means that a positive finding on family/private life has been made. If it has, there is no*

consideration, as Ms Harper argued, of the context and circumstances in which the appellant's family life with his daughter was disrupted, no consideration of the principles of family reunion or the UNHCR guidance that was relied upon at the hearing. Nor is there any engagement with the appellant's individual circumstances, his age, vulnerability (given that his account of torture, past ill treatment, flight from North Korea and the manner in which he was forcibly separated from his daughter has been accepted) and close relationship with his daughter and granddaughter, the only relatives he has contact with worldwide. The impact of his removal upon his daughter and her ten year old child has also been disregarded. The appellant's integration into South Korea where he has never lived and where the evidence demonstrates he will be discriminated against and socially isolated are also factors that the judge failed to have regard to when he considered paragraph 276ADE(1)(vi). It was insufficient to rely on GP as determinative of the appellant's claim on article 8 grounds within and outside the rules as his circumstances are wholly different from the appellants in GP where the individuals were fit, healthy and younger and where an article 8 claim was not even actively pursued. Even if it had been, an individual assessment is called for".

5. The matter was retained in the Upper Tribunal and re-listed before me.

The Hearing

6. The appellant and his daughter both attended the hearing and I heard evidence from each in turn with the assistance of an interpreter.

7. The appellant gave evidence first. He relied on his witness statement and in response to further questions put by Ms Harper explained how reuniting with his daughter was akin to "*getting my life back*". He described how after being caught in China, returned to North Korea and punished, he still risked his life by escaping for a second time only because he wanted to try and find his daughter. He said he now realised how precious family was. He cherished his daughter and grand daughter. He said he could not imagine life without her and that it would like a death penalty if they were separated. He would not be able to see blue skies without them. He confirmed that he was not well physically and mentally and said he was taking co-codamol and fluoxetine. However, the medication could not compare to the love he received from his family. They would also find it difficult to be parted from him. He said he had no idea of what freedom was when he was in North Korea but that he had seen it since being here and he begged for freedom and his human rights.

8. The appellant said that he spent all his time with his grand daughter when she was not in school. They were very close. Her grades had improved, she was now top of the class and had recently won an award. He said he had been trying to study English, but his concentration was poor. Although he and his grand daughter managed to communicate using simple language and signs,

that would not be possible via telephone calls or Skype. She had also been happier since he had been around. That completed examination in chief.

9. In cross examination, the appellant described how he had been parted from his daughter and how he came to find her. He had not known for many years whether or not she was alive. She had been around 15-17 when they first fled to China in 2005 and, after their separation, he had no news of her until he escaped a second time in 2017 and found out she was here. He said that after the breakdown of his marriage in 2002, his daughter had lived with him.

10. The appellant said his grand daughter was around ten and was in the third year at school when he came here. She had been born in the UK. She was not fluent in Korean, but they spoke simple words together. He had also tried to learn English and could manage basic words when he went out. He said his daughter paid for his accommodation and food. He received free prescriptions and went to see an NHS doctor.

11. The appellant said that he had worked secretly in China on a farm for a Chinese family and at a noodle factory.

12. He said that he had never been to South Korea and they had been brainwashed that the South Koreans were the worst enemy in the world. His reference in his witness statement to facing discrimination and abuse there was based on what he had seen on the internet and YouTube. He said there was a whole world that he had not known about before. He was able to receive news on his mobile phone and could use it to speak to his daughter.

13. That completed cross examination. There was no re-examination. In response to my question, the appellant said that his grand daughter had not had any contact with her father since he (the appellant) had been in the UK.

14. I then heard from the appellant's daughter, Y. She confirmed the contents of her witness statement. She said she had been overwhelmed when reunited with her father. She described how all families had parents but how she had been living without hers for a very long time. She was unable to express how she felt but said she could be described as a withering flower that started to blossom. She said that her daughter had problems because she did not have a father around, so the appellant had taken up that role. The appellant prepared her breakfast and spent time with her after school. She could not imagine being apart from him. She asked that they be allowed to stay together. She started to weep. She said that he was not fit mentally to move to South Korea. Her daughter would not be able to understand it if he were to be removed. They would not be able to have the same kind of relationship over the telephone. She said it would not be feasible for them to visit South Korea.

15. The witness confirmed that she worked at a restaurant for 16 hours a week.

16. In response to questions then put by Ms Cunha, the witness confirmed that her daughter had been born in 2009. She had no contact with her father as they had separated when the child was 3 years old. He did not provide for the appellant or the child.

17. The witness received benefits as a single mother. Her father helped to look after her child. She had worked prior to his arrival and her friends helped her out. She said her father's medical treatment was free. She paid for his travel and his mobile phone. She said it would be impossible to support him in South Korea. She said he would kill himself if he had to go there. He still thought he was dreaming by being here with her. She had never travelled since arriving here. She had a British passport. No one else helped to support her father.

18. That completed oral evidence. I then heard submissions.

19. Ms Cunha relied on the decision letter. She submitted that the appellant would be able to receive voluntary aid funding on removal and that would assist him. He would be entitled to apply to the IOM for funds for up to £2000. She accepted that there was a genuine, effective and emotional relationship between the appellant and his daughter and between him and his grand daughter but argued that removal would not result in any unjustifiably harsh circumstances. The circumstances in South Korea could not be considered to be exceptional. There was no unjustifiably harsh interference with family life. Whilst he had a genuine relationship with his grand daughter, it was not unreasonable for him to leave her in terms of s.117B(6). She had been here for seven years without him. Her mother was able to manage and had support from friends. If it were found that the relationship was akin to a parental relationship, interference was proportionate.

20. With reference to private life, there were no exceptional circumstances and removal would not lead to unjustifiably harsh consequences. Nor were there very significant obstacles. She relied on Lal [2019] EWCA Civ 1925 and submitted that an objective and not a subjective view should be taken. The appellant's comments in the witness statement about discrimination in South Korea were speculative and should not be given weight. There was no evidence that this would happen to him. As he had already defected, the sections of the expert report on defectors did not apply to him. The present government in South Korea was doing its best to improve relations with the north. Discrimination was not a very significant obstacle. He had shown great fortitude in escaping to China where he was able to work even without speaking the language. He was able to communicate in shops here. It would therefore be easier for him in South Korea where he would know the language. He would not be living in fear of being deported as he had been in China. The appeal should be dismissed.

21. Ms Harper commenced her submissions with a look at paragraph 276ADE(1)(vi). She referred me to the judgment of Kamara [2016] EWCA Civ

813, as cited in Treebhawon (NIAA 2002 Part 5A - compelling circumstances test) [2017] UKUT 00013 (IAC), as to the meaning of integration. She submitted that if the appellant met those requirements there would be a breach of article 8. She submitted that the situation in South Korea was very difficult. The court had accepted in GP that there was discrimination there. The expert report confirmed that only half of North Korean refugees found work. The situation for the appellant was even more difficult due to his age and his mental health. He had never lived there before and had no relatives or contacts there. His family relationships were what gave substance to his life. He had risked his life for that. Article 8 was not pursued in GP and anyway those appellants were young and fit and had relatives in the south. The appellant was a pensioner with no particular skills. He would find it impossible to achieve a decent income and would struggle to survive. He had made no contribution to the pension scheme. The discrimination against the northerners was accepted in the Home Office report. This was particularly important in the appellant's case as he had suffered torture and had PTSD. For him to be detained and then have to cope alone without the support of family would be very difficult. Reliance was placed on his witness statement. Had the funding from IOM been a realistic prospect, it would have been referred to by the respondent in the decision letter. That was not the respondent's case and no specifics had been given today. In any case, according to the expert, where a returnee had money, it was common for brokers to take control and extortion was common. The appellant's daughter provided food and accommodation but that was different to supporting the appellant in South Korea. There were very significant obstacles to integration. The submissions on the unduly harsh finding in GP were misunderstood. They applied to humanitarian protection and that was not an issue here. Moreover, those appellants were a married couple.

22. Ms Harper submitted that all the same factors applied when the claim was considered outside the rules. There was strong family life with emotional and financial dependency. The appellant's mental health was stable because he was here with his daughter and grand daughter. He would not be able to maintain family life from South Korea. His first six months there, if not longer, would be in detention. He would struggle to survive. The article 8 assessment had to take account of the displacement suffered by the appellant and his daughter. They were separated due to circumstances of persecution and came here with genuine asylum claims. The appellant had risked everything to find his daughter. The thought of her kept him going. The principle of family unity had to be recognised and assessed in the specific context of the appellant's circumstances. There was no public interest in the appellant's removal due to the importance of refugee family unity. The appellant was making attempts to learn English. He had integrated here through his family. Interference in his private/family life would be disproportionate.

23. Ms Cunha then submitted that Ms Harper had been wrong to say that there was no reference to IOM funding in the decision letter. However, it soon became

apparent that she was referring to the September 2017 decision letter which had been withdrawn by the respondent following the judicial review claim.

24. That completed submissions. At the conclusion of the hearing, I allowed the appeal and I now give reasons for so doing.

Discussion and Conclusions

25. I have considered all the evidence before me and have had regard to the submissions made. I reach my decision only after having considered the evidence as a whole even if some is not specifically referred to in my determination. I have had regard to the judgments to which I was referred. I would state at the outset that this has been a very moving and emotional case and that in my view the circumstances are extremely compelling.

26. The facts are not in dispute other than whether the appellant would face discrimination as described in the background material. The appellant and his daughter were found to be credible witnesses by the First-tier Tribunal and I concur with that conclusion. I found that they gave their evidence in a straightforward and heartfelt manner and I accept the accounts in their entirety. The ten years of compulsory military service endured by the appellant, his escape to China with his daughter, his capture and forced return to North Korea, separation from his daughter (who managed to remain in China and subsequently travel to the UK), his subsequent torture, over a year of hard labour, the long term effect it had on his mental and physical health and his second escape are all matters which I accept and which indeed were accepted by the respondent in the decision letter.

27. I consider first whether the appellant meets the requirements of the rules in terms of his private life as that will impact on the issue of article 8.

28. Paragraph 276ADE(1) provides;

> *276ADE (1). The requirements to be met by an applicant for leave to remain on the grounds of private life in the UK are that at the date of application, the applicant:*
>
> > *(i) does not fall for refusal under any of the grounds in Section S-LTR 1.1 to S-LTR 2.2. and S-LTR.3.1. to S-LTR.4.5. in Appendix FM; and*
> >
> > *(ii) has made a valid application for leave to remain on the grounds of private life in the UK; and*
> >
> > *…*
> >
> > *(vi) subject to sub-paragraph (2), is aged 18 years or above, has lived continuously in the UK for less than 20 years (discounting any period of imprisonment) but there would be very significant obstacles to the applicant's integration into the*

> *country to which he would have to go if required to leave the UK.*

29. There is no dispute that the appellant meets the requirements of sub-paragraphs (i) and (ii) so I now consider whether there would be very significant obstacles to his integration in South Korea as a North Korean defector. In assessing that issue, I have regard to what is meant by integration, to the personal circumstances of the appellant as set out above and to the background material in so far as it pertains to the issue to be determined.

30. I take into account the appellant's pensionable age of 66 years, the fact that he has been diagnosed with post traumatic stress disorder as a result of his past physically and mentally challenging experiences and abuse, and the conditions in South Korea, as taken at their highest, where he is expected to go. I do not use the word *"return"* as he has never previously been to South Korea. I also consider the circumstances in which he was separated from his daughter and the process of reunification.

31. Ms Harper relied on the guidance given in the case of Treebhawon as to the interpretation of the test of integration where the following extract from Kamara on the "broad concept" was cited at paragraph 37:

> "*It is not confined to the mere ability to find a job or to sustain life while living in the other country. It is not appropriate to treat the statutory language as subject to some gloss and it will usually be sufficient for a court or tribunal simply to direct itself in the terms that Parliament has chosen to use. The idea of "integration" calls for a broad evaluative judgment to be made as to* ***whether the individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual's private or family life***"(added emphasis).

32. I, therefore, look to see whether the appellant would have a reasonable chance of being accepted by the South Koreans to the extent that he would be able to meaningfully participate in that society, to cope on a daily basis and to be able to build up relationships that would give him a meaningful private/family life.

33. I have considered the letter from the appellant's GP and the psychiatric report of a highly experienced consultant psychiatrist. Dr Alikhan's letter dated 19 September 2018 confirms that the appellant suffers from depression which was described as stable and for which he had been prescribed Fluoxetine. The doctor opines that the depression would get worse if he were to be removed and there was a possible risk of suicide. It is confirmed that the appellant lost teeth from his upper and lower jaw (it was the appellant's accepted evidence that this was as a result of beatings he sustained)..

34. Dr Hajioff, the consultant psychiatrist, assessed the appellant on 26 September 2018 and prepared his report two days later. The account of the appellant's past experiences and ill treatment in North Korea set out therein accords with the other evidence. The appellant was found to be suffering from PTSD and to have some symptoms of depression as a result of his traumatic experiences (at paragraphs 5, 41 and 44). It was noted that he was calm other than when he spoke about his daughter and granddaughter at which point "*his face reddened, his voice was choked and his eyes filled with tears*" (at 27). He was described as having felt "*low and hopeless*" but "*the hope of reuniting with his daughter helped to keep him going*" (at 28).

35. Dr Hajioff sets out the progress the appellant has made since being here with his daughter. He is now able to close his bedroom door at night whereas before he was afraid to do so; he is able to be outdoors after dark; he is no longer afraid when he sees policemen and his concentration and sleep have improved; his nightmares are less frequent (at 29-33). Dr Hajioff found that the appellant's "*depressive and anxiety symptoms have improved during his time in the UK…since he joined his daughter. He is now very close to her and receives emotional support from her. There is a significant risk that, if he is separated from her, his condition will deteriorate, he will become depressed and his PTSD symptoms will become worse*" (at 42). Whilst the doctor found that antidepressants may have assisted the appellant's improvement, it was "*more likely to be because he is in what he sees as a safe place and has the support of his daughter*" (at 44). Removal would increase depression and anxiety (at 48). The doctor did not consider there was a risk of suicide (at 49).

36. I have had regard to the expert report from Dr Christopher Bluth whose expertise is unquestioned and who gave assistance to the Upper Tribunal for country guidance in GP. Whilst his report was presumably prepared to assist the appellant's asylum claim, it is also useful material for the consideration of the circumstances the appellant would be going to in South Korea and is relevant to the issue of integration. No challenge was made to the objective contents of the report by Ms Cunha although she did submit that it had not been shown that the appellant would suffer the difficulties highlighted in the report.

37. Dr Bluth states that whilst "*on the one hand the South Korean government feels it has to accept North Korean refugees because of the constitution … it wants to discourage defections and in practice will not recognise North Koreans as nationals where there is evidence that they do not wish to live in the Republic of Korea …*" (at 5.3.4, 5.3.10-5.3.13). As someone who did not seek refugee in the south after his defection and indeed who came to the UK and sought asylum, the appellant is likely to be seen as a person who does not want to live there. It is explained that the defector issue is a serious irritant in relations between North Korea and China and between North and South Korea who are also seeking to improve relations (5.3.5). There is resentment in South Korea about the costs of providing for refugees who do not integrate well with the Southerners (5.3.6).

38. The report deals at length with the discrimination suffered by the newcomers to the South and whilst Ms Cunha is right to point out that this does not amount to persecution, it is a relevant factor when considering whether there are very significant obstacles to the appellant's integration and whether it would be reasonable to expect him to relocate there. To all intents and purposes, the South is a foreign country and the northerners are ostracised and have to adapt to an alien culture (6.3). There is severe informal discrimination, there are language problems and the refugees face serious problems in making a living once they are left to fend for themselves after their initial adaptation/debriefing process (at 6.4-6.7). For refugees who are largely farmers or manual workers (such as the appellant who worked moving goods in a watch factory, in building, farming and factories), life chances in the south are very poor (at 6.8). Further, as a pensioner, the appellant would face additional problems having no employment skills and not having paid anything into the South Korean pension scheme. "*Old age poverty is a serious problem in South Korea and due to his situation, the appellant will be among the very poorest, literally struggling to survive month by month*" (at 6.10).

39. Dr Bluth concludes: "*Due to the level of informal discrimination, and the extent of social exclusion experienced by North Koreans, it will be very difficult for the appellant to make a decent life for himself in South Korea. As a person of pension age who has not contributed to the South Korean pension scheme and without experience of working in South Korea or marketable skills, he is likely to struggle with extreme poverty if forced to relocate to South Korea. I believe that it would be unduly harsh for him to be forced to love in South Korea …*" (at 7.5).

40. The Home Office Country Information and Guidance on North Korea, October 2016, supports the contents of the expert report in many respects. On the initial debriefing process, it reports that defectors are detailed on arrival and held for up to six months. They have no access to counsel and there are reports of abuse and violence in custody, interrogations and some are deported to North Korea (at 7.1.2-7.1.3 and 7.1.6). It is reported that whilst in principle there is no discrimination, in reality refugees face difficulties in terms of legal protection from abuse, access to job opportunities and obtaining just wages (at 7.1.4). After some initial help, they are left to their own devices (ibid). The reports from the American Psychological Association and Crisis Group also report that refugees from the north are mistreated, viewed with suspicion, discriminated against, alienated and isolated. For many this exacerbates their already poor mental health and there is a high suicide rate (AB : B44 and B47).

41. The debriefing period is also described in the report from the Asia Pacific Journal. It amounts to several months of detention during which the new arrivals are taught about South Korea's domestic, social, political, economic and cultural policies (AB:B52). Some financial support is then offered before they are left to their own devices (B53). There is a high level of unemployment amongst refugees and even those who do secure work are beset with uncertainties and earn low wages. They are marginalised and excluded by the

southerners (ibid). There are problems of loneliness in living away from family and little support in dealing with the PTSD symptoms suffered by many (B66).

42. In his witness statement the appellant sets out details of the ill treatment, torture and hard labour he was subjected to (at paragraphs 5, 8, 9, 13 and 14). He was left with only five teeth following the beatings and has suffered with hearing loss as a result (at 8). He has also endured unimaginable mental torture, having been forcibly separated from his young daughter in China and then having spent some ten years not knowing what had happened to her or even whether she was alive or not. These facts have not been disputed by the respondent.

43. The appellant's daughter and granddaughter are the only relatives with whom the appellant has contact. His marriage broke down in 2002 and he lost contact with his two brothers in 2008 and 2014 respectively. His parents are dead. It is accepted that the appellant has never been in South Korea and that he has no contacts there.

44. Given the personal characteristics of the appellant as detailed above and the conditions in South Korea for incoming refugees/defectors, I find that there would be very significant obstacles to the appellant's integration in South Korea. He is of pensionable age with no employment skills. He has significant mental health issues and the unchallenged medical evidence is that a separation from his daughter and grand daughter, the only living family he has, would mean a substantial deterioration in his mental health. He has clearly suffered physically and mentally and having been reunited with his daughter after a separation in traumatic circumstances, and after having spent almost a decade without any news of her welfare or whereabouts, I find that to separate him now and expect him to relocate to a country where he would plainly have great problems in being accepted and in having any kind of meaningful private life and no family life to speak of amount to very significant obstacles. The initial period of detention for several months would, I find, damage his fragile mental health even further. He is only now gradually beginning to settle and show signs of improvement and the medical evidence is that that is primarily due to the security he feels in being with his daughter rather than the effect of anti-depressants.

45. Even if the appellant were to receive some financial support on removal, and I note that despite Ms Cunha's submission to that effect there is no evidence of this or even of whether he would qualify, that would be a finite amount and the chances for the appellant to eke out a long term means of support are, according to the evidence, dismal. Whilst Ms Cunha submitted that there was no evidence the appellant would be subjected to all the difficulties highlighted not only by the expert but in the other country background material including the Home Office report, it is more than likely that a person with fragile mental health, of pensionable age and no employment skills other than manual work

would not be in a position to avoid the hardships and other serious issues that North Koreans can expect to face in starting a new life in the south.

46. For these reasons I conclude that the requirements of paragraph 276ADE(1)(i), (ii) and (vi) have been met.

47. I now turn to the claim of family life on article 8 grounds. A major criticism of the First-tier Tribunal's decision was that no finding had been made on whether the appellant enjoyed family life in the UK with his daughter and granddaughter. It was argued for the appellant that he had more than the usual emotional ties with his family given his age, vulnerability and the fact that his family life had been disrupted by forced displacement.

48. That submission was accepted by Ms Cunha who rightly conceded that there was a Kugathas dependency between them as the appellant's daughter too has greatly benefited from being reunited with her father. Details of how they found one another again are contained in the letter from the North Korean Residents Society dated 17 April 2019. I accept that the appellant's daughter gives him courage at difficult times, that she looks after him and that the appellant, his daughter and her child form an extremely close knit and mutually reliant family.

49. It follows that I find that the appellant clearly has established family life here. Indeed, he has no family elsewhere and there is no prospect of a realistic family life outside the UK. The appellant is wholly dependent upon his daughter for financial and emotional support; there is no suggestion that he has any other source of support or income. His daughter too has developed a dependency on him having been forcibly parted from him when she was a child/adolescent and then having no information about his fate until they were reunited here some ten years later. To that extent, this is an unusual case and I accept the submission that circumstances in which their family life previously came to an end is a wholly relevant consideration.

50. As I have found that the appellant meets the requirements of the Immigration Rules on private life, his removal would not be in accordance with the law. However, even if I am wrong in my assessment under the rules, I find that the appellant's removal would be a disproportionate interference with his family/private life in the UK.

51. In reaching that conclusion, I have had regard to s.117B of the Nationality, Immigration and Asylum Act 2002. This sets out the public interest considerations applicable in all cases and provides:

> *(1) The maintenance of effective immigration controls is in the public interest.*
>
> *(2) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English –*

(a) are less of a burden on taxpayers, and

(b) are better able to integrate into society.

(3) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons –

(a) are not a burden on taxpayers, and

(b) are better able to integrate into society.

(4) Little weight should be given to –

(a) a private life, or

(b) a relationship formed with a qualifying partner,

that is established by a person at a time when the person is in the United Kingdom unlawfully.

(5) Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious.

(6) In the case of a person who is not liable to deportation, the public interest does not require the person's removal where –

(a) the person has a genuine and subsisting parental relationship with a qualifying child, and

(b) it would not be reasonable to expect the child to leave the United Kingdom.

52. I rely on all the matters set out above. This is not the normal run of the mill case where family/private life has commenced during a precarious/unlawful period of residence. The appellant fled North Korea for genuine reasons and was forcibly separated from his daughter after they escaped to China. Their family life is more akin to the family reunion envisaged for refugees and that is a matter I take account of.

53. I do not accept that there would be any realistic prospect of family life continuing in South Korea. For starters, the appellant would be held in detention for at least six months and contact with his daughter would therefore be on hold for several months. I also have regard to the close relationship the appellant has with his grand daughter. I accept that they spend a large amount of time together and that despite their language problems they have found a way to communicate and are both learning one another's language in order to do so more effectively. I accept that telephone calls would be problematic in such circumstances. Maintaining family life via visits is unrealistic. As a single mother with a waitressing job, the appellant's daughter is hardly in a position to make regular visits with her daughter to see the appellant in South Korea.

54. I also accept that as a fatherless child, the appellant's grand daughter has come to look upon him as a father figure. I have no reason to dispute the evidence that the appellant prepares her meals, accompanies her to and from school and

spends all his time with her when she is at home. I accept that her grades at school have improved and that she has been happier with him around. None of this evidence was challenged. To that extent, I find that the appellant has a relationship akin to a parent with his grand-daughter. She is a qualifying child; a British national, born here and who has spent all ten years of her life here. Plainly she cannot be expected to leave and I find that even if I am mistaken about the parental aspect of their relationship, it is in the child's best interests for the appellant to remain here with her. I find she would be severely disadvantaged by his removal having developed such a closeness to him over the last three years.

55. I take note of Ms Cunha's submission that the child had been here seven years without the appellant. That is true but it must be borne in mind that she did not know of him during those years so it was not a separation as it would be were he to leave her life now. The daily contact and closeness to the appellant that she enjoys, and which is confirmed by a neighbour in a written statement, would be lost and that cannot be in her best interests. Her mother too would, as the evidence and her demeanour in court demonstrated, be distraught to be forcibly separated from her father again and that is bound to have an impact upon her own well being and hence upon her child.

56. It was not suggested that little weight should be given to the appellant's family life because his status was precarious and, in any event, it is the case that a precarious status would only impinge on private life and not on family life (Rhuppiah [2018] 1 WLR 5536 and Agyarko [2017] UKSC 11). Indeed, what weight it is appropriate to give to such a relationship in the proportionality assessment depends on the particular circumstances (Lal [2019] EWCA Civ 1925 at paragraph 64). Those circumstances are set out at length above. No submissions were made on the appellant's use of an NHS doctor for his anti-depressants. The appellant's daughter works and receives child tax credits. It was not submitted by Ms Cunha that these amounted to benefits or that the family was a drain on public resources. There was also no challenge to the appellant's evidence that he was learning English in an effort to integrate better. I also consider the evidence from Kingston United Reformed Church which confirms the appellant's membership and his regular attendance and participation in activities and classes.

57. Given the unusual circumstances of this case and the personal circumstances of the appellant, his daughter and his grand-daughter, I am satisfied that the appellant's removal would not be in the public interest and that there are compelling circumstances which would make his removal a disproportionate interference in his family / private life.

Decision

58. The appeal is allowed under the Immigration Rules on private life grounds and on article 8 human rights grounds.

Anonymity

59. I continue the anonymity order made by the First-tier Tribunal.

Signed

Upper Tribunal Judge

Date: 6 December 2019