Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: HU/02238/2018**

THE IMMIGRATION ACTS

Heard at: Field House	**Decision & Reasons Promulgated**
On: 5th July 2019	**On: 16th July 2019**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

NICOLE APRIL STINSON

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Roberts of Cromwell Wilkes Solicitors
For the Respondent: Ms A Fijiwala, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Australia born on 16 August 1990. She has been given permission to appeal against the decision of the First-tier Tribunal Judge dismissing her appeal against the respondent's decision to refuse her application for leave to remain in the UK.

2. The appellant entered the UK on 20 October 2014 with leave to enter as a Tier 5 Migrant, valid until 28 October 2016. On 12 September 2016 she applied for leave to remain on the basis of her family and private life, in particular on the basis of her relationship with her partner Joseph John Cordle.

3. The appellant's application was considered under the ten-year partner route and refused on the basis that she did not meet the eligibility requirements of

section E-LTRP of Appendix FM. She did not meet the requirements of GEN.1.2 as she was not married to Joseph John Cordle and had not been living with him in a relationship akin to marriage for at least two years prior to the application. The respondent accepted that the appellant had a genuine and subsisting relationship with her British partner and noted her claim that she and her partner were devout Christians who did not believe in residing together before marriage. The respondent did not consider that there were insurmountable obstacles to family life being enjoyed outside the UK and therefore considered that the requirements of EX.1.(b) of Appendix FM were not met. The respondent did not accept that the appellant could meet the requirements in paragraph 276ADE(1) on the basis of her private life and considered that there were no exceptional circumstances justifying a grant of leave outside the immigration rules.

4. The appellant appealed against the decision and her appeal was heard by First-tier Tribunal Judge Oliver on 24 August 2018. The judge recorded the evidence that the appellant and her partner had been in a relationship since 25 March 2014 and that they were not living together because of their religious beliefs. They considered that the immigration rules amounted to indirect discrimination against them. They had met on a Christian holiday in the United States. She was a journalist and he was a primary school teacher. It was argued that it would be difficult for Mr Cordle to enter Australia as an unmarried partner because the same rules applied. They intended to get married and to spend the rest of their lives together but could only do so when they were spiritually ready. The judge heard from the appellant, her partner and her partner's father and accepted that they had all told the truth. It was accepted that the requirements of the immigration rules could not be met but the case was being argued outside the rules. The judge did not understand why the couple were reluctant to get engaged and said that he would have allowed the appeal if they were engaged. In the absence of an explanation as to why they had failed to take that step he considered that their relationship fell to be considered under private life and he dismissed the appeal in a decision promulgated on 11 October 2018.

5. Permission to appeal to the Upper Tribunal was sought by the appellant on the basis that the judge's comment, that he would have considered allowing the appeal if the couple had been engaged, did not take account of their Statements of Evidence confirming that they regarded themselves as being in a state of religious betrothal. The judge had imported a secular understanding of "engagement" and thereby unlawfully constrained himself from the allowing the appeal on family life grounds.

6. Permission was granted on 22 June 2018.

7. Permission was refused in the First-tier Tribunal and the Upper Tribunal. However, in a "Cart" challenge to the Administrative Court, the appellant sought to judicially review the refusal to grant permission. Permission was granted by Sr Ross Cranston sitting as a High Court judge on the following basis:

> "As FTTJ Oliver observed this is a highly unusual case. Because of their strongly held religious beliefs the applicant does not meet the definition of partner. The crucial factor for the judge was the lack of an engagement: if they had been engaged he "would seriously have considered allowing the appeal outside the rule under article 8". However the judge does not address the religious beliefs which have led the applicant and Mr Cordle not to become engaged. In my view this is one of those very exceptional Cart cases where the matter requires further examination in the Upper Tribunal."

8. In the absence of any request for a substantive hearing following the grant of permission the Administrative Court quashed the decision of the Upper Tribunal refusing permission. Permission was subsequently granted by Vice-President Ockelton in the Upper Tribunal on 29 May 2019. Thus the matter came before me.

9. Mr Roberts submitted that the appellant and her partner were Evangelical Christians. They did not recognise a secular form of relationship and would only marry when their spiritual guidance dictated that they could. The judge questioned why the couple had not become engaged, but their evidence was that they considered themselves as betrothed and committed and they would marry when they were spiritually ready to do so. The judge was wrong to find that the case was restricted to Article 8 private life. There was a genuine intention to marry which was sufficient to amount to family life.

10. Ms Fijiwala submitted that the judge had properly looked at the ambit of the relationship and considered it under private life not family life. The judge had correctly applied the law as set out in Rhuppiah v Secretary of State for the Home Department [2016] EWCA Civ 803 and he had properly found that little weight could be given to the appellant's private life. There were no insurmountable obstacles to integration in Australia. He appropriately found that he could not allow the appeal.

11. Mr Roberts reiterated his previous submissions in response.

Consideration and findings

12. It was accepted by the appellant that the requirements of the immigration rules in Appendix FM and paragraph 276ADE(1) could not be met, and rightly so. The appellant could not meet the criteria in Appendix FM as a spouse or a partner within the definition in GEN.1.2. The case was pursued outside the immigration rules on the basis that the sole reason why the appellant could not meet the requirements of the rules was that she and her partner could not meet the secular meaning of a partnership because of their religious beliefs but nevertheless had an enduring relationship which engaged Article 8.

13. Permission was granted by the Administrative Court by way of the "Cart" appeal on the basis that the judge had failed to address the religious beliefs that led the appellant and her partner not to become engaged, having considered the lack of an engagement to be a crucial factor.

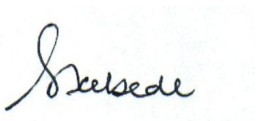
14. It seems to me, however, that the judge gave full consideration to the appellant's religious beliefs and to the reasons she provided for not marrying her partner or living together with him and was sympathetic to her situation. In making the comments that he did about the fact that the couple were not engaged, the judge was simply assessing the ambit of the relationship and drawing conclusions from that assessment as to whether or not he considered that the level of commitment of the parties amounted to family life which outweighed the public interest in the maintenance of immigration control.

15. The judge had full regard to the appellant's evidence as recorded at [7], noting that the appellant's answer to the question as to whether she and her partner had any firm plans to marry after four years of relationship was that they were not engaged, that they saw each other two or three times a week but sometimes did not meet in one week and that the Bible stated that marriage was for when they felt the time was right and when they could say that they would stick by the other person for ever. The judge also recorded Mr Cordle's evidence, that they were not yet spiritually ready for marriage and were waiting for the right time to commit to spending the rest of their lives together. It is clear from his findings at [20] that the judge was not persuaded that the parties' religious beliefs alone were sufficient to explain why they were not prepared to make a commitment towards each other and that he considered there to be an absence of a proper explanation in that regard. It seems to me that he was fully entitled to have such concerns and to consider that the appellant had not demonstrated that the relationship she had with Mr Cordle was sufficient to amount to family life for the purposes of Article 8 and was sufficiently weighty in the proportionality assessment.

16. Having found that the relationship was an aspect of the appellant's private life, the judge had regard to the relevant factors and public interest considerations under section 117B of the Nationality, Immigration and Asylum Act 2002 and the relevant caselaw and balanced those interests accordingly. He reached a conclusion that was fully and properly open to him on the evidence before him and which was supported by full and cogent reasons. I cannot see that there were any errors of law in the judge's approach to the case, in his consideration of the evidence and the explanations provided in regard to the relationship or in his assessment of that evidence in line with the relevant legal principles and caselaw. Accordingly, I uphold the decision.

DECISION

17. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The decision to dismiss the appeal stands.

Signed 
Upper Tribunal Judge Kebede Dated: 10 July 2019