IN THE UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)

R (on the application of Waleed Ahmad Khattak) v Secretary of State for the Home Department (“eligible to apply”- LTR - “partner”) [2021] UKUT 00063 (IAC)

Field House,

Breams Buildings

London, EC4A 1WR

JUDGMENT DATE

23 February 2021

Before:

UPPER TRIBUNAL JUDGE BLUM

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Between:

THE QUEEN

on the application of

WALEED AHMAD KHATTAK

Applicant

- and -

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

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Mr Billal Malik

(instructed on a Direct Access basis), for the applicant

Mr Zane Malik

(instructed by the Government Legal Department) for the respondent

Hearing date: 8 February 2021

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J U D G M E N T

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This decision follows a remote hearing in respect of which there has been no objection by the parties. The form of remote hearing was by video (V), the platform was Skype for Business. A face to face

hearing was not held because it was not practicable and all issues could be determined in a remote hearing.

An applicant is “eligible to apply for leave to remain as a partner” within the meaning of para E-LTRPT .2.3 of Appendix FM only if it is readily apparent from the information contained in their application and any information available to the Secretary of State that they meet the autonomous definition of “partner” in GEN.1.2. of Appendix FM unless the route under which the application is being made clearly provides for a different meaning of “partner”.

Judge Blum:

Background

1.
There is no dispute as to the factual matrix underpinning this challenge. The applicant is a national of Pakistan born on 14 January 1985. He married Aliya Ahmad, a British citizen, on 15 August 2013. He was granted entry clearance to the United Kingdom as the spouse of Ms Ahmad on 14 January 2015, with leave valid until 14 October 2017. He arrived in the United Kingdom on 29 January 2015. Ms Ahmad gave birth to their child on 28 October 2015. The marriage however ended with a divorce on 26 August 2016. The applicant’s entry clearance was consequently curtailed on 9 November 2016 so as to expire on 15 January 2017.

2.
On 2 December 2016 the applicant applied for Limited Leave to Remain (LTR) under the 5-year parent route, the requirements of which are contained in Appendix FM of the Immigration Rules. The respondent was satisfied the applicant met the requirements of paragraphs R-LTRPT.1.1 (a), (b) and (c) and, on 10 December 2016, he was granted LTR for a period of 30 months ending on 30 June 2019.

3.
In May 2017 the applicant began a relationship with Razia Begum, a British citizen. They began to cohabit in December 2017. She gave birth to their child on 20 November 2018.

4.
On 29 June 2019 the applicant applied for further LTR as a parent of a British citizen child. The application was principally based on his continuing relationship with his eldest child.

The decisions under challenge

5.
The application was determined in a decision dated 1 October 2019. The decision made no reference to the applicant’s relationship with his eldest child or to the 5-year parent route in Appendix FM. The applicant was informed that he did not meet the requirements for a grant of leave under the 10-year partner route under paragraphs R-LTRP.1.1.(d) of Appendix FM because:

Your partner is unmarried, and you have not provided 2 years evidence of co-habitation prior to the application.

You therefore fail to meet the requirements of GEN1.2. of Appendix FM of the Immigration Rules.

6.
The respondent however considered that there were “exceptional circumstances” in the applicant’s case, as understood by reference to GEN.3.2. of Appendix FM, which would render a refusal of LTR a

breach of Article 8 ECHR. The respondent accepted that the applicant held a genuine relationship with both his British citizen partner and child (although it is unclear which child was being referred to) and that any removal of the applicant would result in a breach of Article 8. The applicant was therefore granted a period of 30 months LTR but, significantly for him, this was now on the 10-year partner route under paragraph D-LTRP.1.2 of Appendix FM.

7.
On 9 October 2019 the applicant requested a reconsideration of the decision to grant him LTR under the 10-year partner route. I have not been provided with a copy of this application but nothing turns on it. It is apparent from the reconsideration decision, dated 20 November 2019, that the applicant was aggrieved that he had been placed on the 10-year route to settlement and believed he should have been granted a further period of LTR under the 5-year parent route to settlement. It is uncontroversial that the applicant and Ms Begum had only been living together for approximately 1½ years when he made his application in June 2019. He could not therefore meet the definition of partner contained in GEN.1.2.

8.
In her reconsideration decision of 20 November 2019 the respondent acknowledged that the applicant had previously been granted LTR under the 5-year parent route to settlement but stated that his circumstances, as detailed in his June 2019 application and supporting documents, had changed. The decision explained:

As you now have a partner your application was considered under the partner routes of Appendix FM of the Immigration Rules. However, as you fail to meet the requirement of GEN.1.2. of Appendix FM of the Immigration Rules, as detailed in our decision letter of 01 October 2019, you do not meet the requirements for leave as a partner on either the 5 or 10 year routes to settlement.

As you now have a partner you do not meet the requirements for leave as a parent on either the 5 or 10 year routes to settlement as you fail to meet the requirement of E- LTRPT.2.3.

However, as detailed in our letter of 01 October 2019, under paragraph GEN.3.2. of Appendix FM, there are exceptional circumstances in your case which would render refusal a breach of Article 8.

Any grant of leave on the basis of exceptional circumstances is either leave outside the rules or on one of the 10 year routes to settlement as a partner or parent. Leave on the basis of exceptional circumstances is not granted on one of the 5 year routes to settlement as a partner or parent, as appropriate. As you have a partner you were granted a period of 30 months limited leave to remain on the 10-year partner route under paragraph D- LTRP.1.2 of Appendix FM.

I hope this clarifies our decision making process.

9.
The applicant lodged his judicial review on 3 January 2020. In summary, he asserts that the term “partner” in E-LTRPT.2.3(b)(iii) of Appendix FM should be given the same meaning as the definition of partner under GEN.1.2 of that Appendix, and that if he does not meet that definition of “partner” he cannot be said to be “eligible to apply for leave to remain as a partner”. The respondent however contends that the term “eligible to apply for leave to remain as a partner” is to be given a broader meaning.

10.

Permission to proceed with the judicial review challenge was granted on the papers by Upper Tribunal Judge Norton-Taylor in a decision sent on 8 February 2020.

Relevant legislative framework

11.
Paragraph GEN.1.2. of Appendix FM to the Immigration Rules provides:

GEN.1.2. For the purposes of this Appendix "partner" means-

(i) the applicant's spouse;

(ii) the applicant's civil partner;

(iii) the applicant's fiancé(e) or proposed civil partner; or

(iv) **a person who has been living together with the applicant in a relationship akin to a marriage or civil partnership for at least two years prior to the date of application, unless a different meaning of partner applies elsewhere in this Appendix** . [**my emphasis**]

12.
GEN.3.2. of Appendix FM is located under the heading 'Exceptional Circumstances'. GEN.3.2. states, so far as material for this decision:

(1) … where an application for entry clearance or leave to enter or remain made under this Appendix, or an application for leave to remain which has otherwise been considered under this Appendix, does not otherwise meet the requirements of this Appendix or Part 9 of the Rules, the decision-maker must consider whether the circumstances in sub-paragraph (2) apply.

(2) Where sub-paragraph (1) above applies, the decision-maker must consider, on the basis of the information provided by the applicant, whether there are exceptional circumstances which would render refusal of entry clearance, or leave to enter or remain, a breach of Article 8 of the European Convention on Human Rights, because such refusal would result in unjustifiably harsh consequences for the applicant, their partner, a relevant child or another family member whose Article 8 rights it is evident from that information would be affected by a decision to refuse the application.

(3) Where the exceptional circumstances referred to in sub-paragraph (2) above apply, the applicant will be granted entry clearance or leave to enter or remain under, as appropriate, paragraph D-ECP. 1.2., D-LTRP.1.2., D-ECC.1.1., D-LTRC.1.1., D-ECPT.1.2., D-LTRPT.1.2., D-ECDR.1.1. or D-ECDR.1.2.

13.
The requirements for further leave to remain as a parent are set out in section R-LTRPT of Appendix FM to the Immigration Rules. Paragraph R-LTRPT.1.1. of Appendix FM, so far as relevant, provides:

LTRPT.1.1. The requirements to be met for limited leave to remain as a parent are-

…

(c)

…

(ii) the applicant meets all of the requirements of Section ELTRPT:

Eligibility for leave to remain as a parent …

14.
The “Eligibility” requirements include the following:

E-LTRPT.2.3. Either-

(a) the applicant must have sole parental responsibility for the child or the child normally lives with the applicant and not their other parent (who is a British Citizen or settled in the UK), **and the applicant must not be eligible to apply for leave to remain as a partner under this Appendix** ; or

(b) the parent or carer with whom the child normally lives must be-

(i) a British Citizen in the UK or settled in the UK;

(ii) **not the partner of the applicant** (**which here includes a person who has been in a relationship with the applicant for less than two years prior to the date of application**); and

(iii) the applicant must not be eligible to apply for leave to remain as a partner under this Appendix . [**my emphasis**]

15.
The respondent has produced guidance on how caseworkers are to apply the Immigration Rules. Of relevance is the ‘Family Policy – family life (as a partner or parent), private life and exceptional circumstances’, version 5.0. This reads, in material part, under the heading ‘Family life as a parent – eligibility’, and the subheading ‘Eligibility that must be met by a parent on a 5 or 10-year route (without consideration of exceptional circumstances under GEN.3.1. or GEN.3.2.)’:

For both entry clearance and leave to remain applications as a parent, if the child normally lives with their other British citizen or settled parent or carer, that person cannot be the partner of the applicant (which for leave to remain includes a person who has been in a relationship with the applicant for less than 2 years prior to the date of application) and the applicant must not be eligible to apply for entry clearance or leave to remain as a partner under Appendix FM.

The parent route is not for couples who are in a genuine and subsisting partner relationship. An applicant cannot meet the parent route if they are or will be eligible to apply under the partner route, including where for example the definition of partner cannot be met, or other eligibility criteria for access to a 5-year route are not met. Applicants in this position must apply or will only be considered (where they are not required to make a valid application), under the partner route, or under the private life route.

The applicant’s submissions

16.
I summarise the written and oral submissions made by Mr B Malik on behalf of the applicant. The applicant meets all the requirements for a grant of leave to remain as a parent under the 5-year parent route in Appendix FM as he did not meet the definition of partner in GEN.1.2. of Appendix FM and was not therefore “eligible to apply for leave to remain as a partner under this Appendix.”

17.
When approaching the term “eligible to apply for leave to remain as a partner” the Tribunal should apply the principles enunciated in Mahad v Entry Clearance Officer [2009] UKSC 16 and determine the natural and ordinary meaning of the words in the context of an objective reading of the structure

and wording of the relevant provisions. The references to “partner” in Appendix FM should, as a starting point, be read with reference to the autonomous definition contained in GEN.1.2. unless a different meaning of “partner” applies. A different meaning of “partner” can only “apply” if the wording of Appendix FM so prescribes, or by necessarily implication from the relevant provision.

18.
Appendix FM, read as a whole, does not support an interpretation of the term “partner” in paragraph E-LTRPT.2.3(b)(iii) that differs from the autonomous definition in paragraph GEN.1.2. If such a departure from the autonomous definition had been intended then paragraph E-LTRPT.2.3(b)(iii) itself, or some other specific provision in the Immigration Rules, would have expressly said so. By way of example, paragraph E-LTRPT.2.3(b)(ii) specifically provides that a “partner” includes “a person who has been in a relationship with the applicant for less than two years prior to the date of application”. Paragraph E-LTRPT.2.3(b)(iii) in contrast contains no such provision.

19.
To the extent that the respondent contends that the words “eligible to apply” in paragraph E-LTRPT. 2.3(b)(iii) connotes a meaning different from the autonomous meaning in GEN.1.2., this is to be rejected. If eligibility in the sense of a mere ability to make an application under the partnership route was sufficient to exclude an applicant under paragraph E-LTRPT.2.3(b)(iii) this could lead to “odd outcomes”. The applicant gives an example of a person whose application under the “partner” route could be refused because the relationship was not accepted as genuine, but an otherwise meritorious claim under the “parent” route would simultaneously be refused because the person was deemed “eligible to apply” under the “partner” route.

20.
The applicant rejects the respondent’s contention, contained in her Detailed Grounds of Defence, that the “general scheme and structure of Appendix FM to the Immigration Rules” would be undermined by the construction he advances. Although a person who fails to meet the requirements of Appendix FM may, by virtue of paragraph GEN.3.2, be granted LTR as a partner under the 10-year route, GEN. 3.2 invites the decision-maker to carry out a residual Article 8 assessment where the substantive requirements of Appendix FM are not met. Although such an assessment is triggered by the provisions of Appendix FM itself, the substantive requirements of the assessment are not confined to the provisions of Appendix FM. Appendix FM demarcates cases which can conceivably succeed under the substantive provisions of the Appendix alone (‘Appendix FM cases’) from those – such as that of the applicant – which cannot succeed under the substantive provisions (‘Article 8 cases’). The applicant’s proposed interpretation is not inconsistent with this distinction in principle. The Family Policy guidance is of no assistance in interpreting the Immigration Rules, as per the ruling in Mahad and Pokhriyal v SSHD [2013] EWCA Civ 1568, at [39] - [42].

21.
The applicant finally rejects the respondent’s contention that his interpretation would enable individuals to choose whether to apply under the parent or partner route which would, according to the respondent, compromise the financial requirements for applicants under the partner route and which would enable them to avoid those requirements by applying under the parent route.

The respondent’s submissions

22.
The respondent contends that the construction advanced by the applicant ignores the significance of the words “eligible to apply” in paragraph E-LTRPT.2.3. This provision is not triggered simply when a

person actually qualifies for leave to remain as a partner or in fact meets all the requirements for leave to remain as a partner. There is a distinction between someone who qualifies as a partner and someone who is eligible to apply as a partner. As the applicant had a ‘partner’ at the time of his application he was at least “eligible to apply” on the basis of his relationship with Ms Begum. This, the respondent submits, was sufficient to hold that he did not meet the requirement in E-LTRPT.2.3.

23.
The respondent further contends that the applicant’s interpretation undermines the general scheme and structure of Appendix FM. A person may qualify for LTR under Appendix FM on the basis of their relationship with a settled person even in the circumstances where the definition in GEN.1.2 of that Appendix is not met. As happened in this case, although the applicant did not meet the definition in paragraph GEN.1.2 of Appendix FM, he was granted leave to remain pursuant to paragraph GEN.3.2 of that Appendix on account of exceptional circumstances. There is therefore no basis for the suggestion that a person’s failure to meet the definition in paragraph GEN.1.2 of Appendix FM somehow excludes him or her from that Appendix altogether.

24.
The applicant ignores the significance of the words “unless a different meaning of partner applies elsewhere in this Appendix” in GEN.1.2 of Appendix FM. These words make plain that the definition in that provision does not apply to the word “partner” whenever it is used, irrespective of its context. The context in which this word is used in paragraph E-LTRPT.2.3 of Appendix FM to the Immigration Rules is clear. The obvious purpose is to limit grants of LTR as a parent to those who are not eligible to apply for LTR as a partner under the Appendix. When read in its proper context, the word “partner” in this provision is not limited to an applicant who has a partner that meets the definition in paragraph GEN.1.2 of Appendix FM.

25.
With respect to the guidance document ‘Family Policy: Family life (as a partner or parent), private life and exceptional circumstances’, this provides that an applicant cannot meet the requirements of the parent route if they are or will be eligible to apply under the partner route, including where the definition of “partner” cannot be met. The respondent does not invite the Tribunal to read the policy guidance as an aid to the construction of the Immigration Rules, but the document is obviously correct and consistent with the interpretation advanced by the respondent.

26.
Finally, the applicant’s construction would enable applicants to choose whether to apply under the parent or the partner route and this, in turn, would compromise the financial requirements for applicants under the partner route and would enable them to avoid those requirements by applying under the parent route.

Discussion

27.
In Mahad v Entry Clearance Officer [2009] UKSC 16 Lord Brown stated, at [10]:

There is really no dispute about the proper approach to the construction of the Rules. As Lord Hoffmann said in Odelola v Secretary of State for the Home Department [2009] 1 WLR 1230, 1233 (paragraph 4):

"Like any other question of construction, this [whether a rule change applies to all undetermined applications or only to subsequent applications] depends upon the language of the rule, construed against the relevant background. That involves a consideration of the immigration rules as a whole and the function which they serve in the administration of immigration policy."

That is entirely consistent with what Buxton LJ (collecting together a number of dicta from past cases concerning the status of the rules) had said in Odelola in the Court of Appeal and, indeed, with what Laws LJ said (before the House of Lords decision in Odelola) in the present case. Essentially it comes to this. The Rules are not to be construed with all the strictness applicable to the construction of a statute or a statutory instrument but, instead, sensibly according to the natural and ordinary meaning of the words used, recognising that they are statements of the Secretary of State's administrative policy. The respondent's counsel readily accepted that what she meant in her written case by the proposition "the question of interpretation is . . . what the Secretary of State intended his policy to be" was that the court's task is to discover from the words used in the Rules what the Secretary of State must be taken to have intended. After all, under section 3(2) of the Immigration Act 1971, the Secretary of State has to lay the Rules before Parliament which then has the opportunity to disapprove them. True, as I observed in Odelola (para 33): "the question is what the Secretary of State intended. The rules are her rules." But that intention is to be discerned objectively from the language used, not divined by reference to supposed policy considerations. Still less is the Secretary of State's intention to be discovered from the Immigration Directorates' Instructions (IDIs) issued intermittently to guide immigration officers in their application of the rules. IDIs are given pursuant to paragraph 1(3) of Schedule 2 to the 1971 Act which provides that:

"In the exercise of their functions under this Act immigration officers shall act in accordance with such instructions (not inconsistent with the immigration rules) as may be given them by the Secretary of State . . ." (emphasis added)."

28.
I adopt and apply the approach identified in Mahad . I note in particular that the Immigration Rules, including Appendix FM, are to be construed sensibly according to the natural and ordinary meaning of the words used, recognising that they are statements of the Secretary of State's administrative policy. I bear in mind further that the Secretary of State's intention is to be discerned objectively from the language used, not divined by reference to supposed policy considerations or from her Instructions, Guidance or Policy documents.

29.
Neither party was able to locate any authority considering the meaning of the term "eligible to apply" and my attention was not drawn to any other provision within the immigration laws containing or concerning that term.

30.
Although neither party referred me to the Oxford English Dictionary definition of 'eligible', I consider it to be of some assistance in discerning the natural and ordinary meaning of the phrase "eligible to apply for leave to remain as a partner" and thus the Secretary of State's intentions. The relevant definition of "eligible" reads:

Fit or proper to be chosen for an office, position, award, etc.; regarded as fulfilling the necessary criteria or qualifications to be considered for a particular benefit.

31.

The relevant term, as it appears in paragraph E-LTRPT.2.3(b)(iii), requires an applicant under the parental route to "not be eligible to apply for leave to remain as a partner under this Appendix." There is a distinction between someone who is "eligible to apply" for a particular position or status and someone who meets the substantive criteria necessary for the grant of that position or status. Paragraph E-LTRPT.2.3(b)(iii) could have stated, by way of example, that an applicant must not be eligible for 'a grant of leave to remain as a partner'. The natural and ordinary meaning of the words used indicate that the substantive criteria for the grant of LTR as a partner is distinct from the threshold criteria that governs eligibility to apply for LTR as a partner.

32.
What then is the threshold criteria for an applicant to be eligible for apply for leave to remain as a partner? On the most expansive view anyone could be considered as being eligible to make an application for a particular immigration status if their eligibility is not measured by reference to compliance with the substantive criteria for the grant of that status. This could conceivably mean that an applicant is "eligible to apply" for LTR as a partner even if they do not have a partner in the general sense of the word. I do not however consider this to be a sensible construction or one that was envisaged by the Secretary of State. The respondent's submissions did not, in any event, go this far and focused instead on the meaning of "partner" (see, for example, paragraph 21 of the respondent's skeleton argument). It is irresistibly implicit in the submissions from both parties that they regarded the word "partner" as conditioning the threshold criteria. This is not surprising given that the threshold criteria in E-LTRPT.2.3(b)(iii) is framed by reference to the word "partner". This suggests that the threshold criteria that must be met to make an applicant "eligible to apply for leave to remain as a partner" is that they meet, at least on a prima facie basis, the meaning of "partner" (a person may of course ultimately be refused LTR as a partner if, on detailed consideration, it is found that they do not meet the definition of partner). What then is the appropriate meaning of "partner"?

33.
I agree with Mr B Malik that the starting point is the formal or autonomous definition in GEN.1.2. This definition requires the applicant to have lived together with the person with whom he or she is in a relationship akin to marriage for at least two years prior to the date of the application. These requirements stand "unless a different meaning of partner applies elsewhere" in Appendix FM. The effect of the proviso is that, unless "a different meaning of partner applies elsewhere", the definition in GEN.1.2. falls to be applied. This approach is supported by the legal principles of consistency and certainty.

34.
E-LTRPT.2.3.(a) requires, inter alia , that "the applicant must not be eligible to apply for leave to remain as a partner under this Appendix". There is no express qualification to the word "partner". There is however an express qualification in E-LTRPT.2.3.(b)(ii). This states that the parent or carer with whom the child normally lives must be "not the partner of the applicant (which here includes a person who has been in a relationship with the applicant for less than two years prior to the date of application)". E-LTRPT.2.3.(b)(iii) does not contain this qualification. If the qualification was intended to apply to either E-LTRPT.2.3.(a) or (b)(iii) one would reasonably have expected this to have been expressed in clear terms. A textual analysis of the structure and content of E-LTRP.2.3. therefore supports the construction advanced by the applicant.

35.
Nor can I find any phrase or term within E-LTRPT.2.3 or Section E-LTRPT or Appendix FM in general that would support the respondent's contention that a different and more expansive definition of

“partner” was intended for either E-LTRPT.2.3.(a) or (b)(iii). The respondent has pointed out that GEN. 3.2. enables her to grant LTR as a partner if an applicant does not otherwise meet the requirements of Appendix FM and a refusal to grant LTR would breach Article 8 ECHR because it would have unjustifiably harsh consequences on, inter alia , an applicant’s partner. GEN.3.2. is however designed to enable an Article 8 proportionality assessment to be undertaken within the context of Appendix FM and is not concerned with the formal requirements needed to make an application under Appendix FM (indeed GEN.3.1.(1) explains that it can apply even if an application for LTR is not made under Appendix FM). Moreover, E-LTRPT is concerned with applications for LTR, not with grants of leave. The possibility of a grant of LTR as a partner is, in any event, a separate matter from compliance with the Eligibility requirements. In these circumstances it is difficult to see how the construction advanced by the applicant “undermines the general scheme and structure of Appendix FM.” The fact that a person may be granted LTR under GEN.3.2. as a partner even if they do not meet the definition of partner in GEN.1.2 does not meaningfully assist in understanding what is meant by “eligible to apply for leave to remain as a partner.”

36.
I have additional concerns with the respondent’s contention that the term “eligible to apply for leave to remain as a partner” in E-LTRPT.2.3.(a) or (b)(iii) contemplates a different meaning of partner from the autonomous meaning contained in GEN.1.2.(iv). There is nothing in those provisions explaining or identifying what that different meaning is. A specific different meaning is prescribed in E-LTRPT.2.3(b)(ii), but if that meaning was intended to apply to E-LTRPT.2.3.(a) and (b)(iii) there is no reason why it was not expressly stated in these provisions. In the absence of any indication of the nature of the different meaning that the respondent maintains should be ascribed to “partner”, the definition in GEN.1.2. falls to be applied. Moreover, a potential applicant reading the relevant Immigration Rules should be able to readily ascertain whether they meet the criteria for being eligible to apply for leave to remain as a partner as this is relevant in determining whether they could succeed in their application. It would, in my judgment, offend common sense to expect an applicant who is contemplating making an application under the parent route and who is reading the relevant Immigration Rules, and in particular paragraph GEN.1.2. and paragraph E-LTRPT.2.3., to conclude that a different meaning to that in GEN.1.2. applies to the word “partner” in E-LTRPT.2.3(b)(iii), or to expect such an applicant to able to ascertain what that different meaning is. A reasonable applicant would conclude, based on the natural and ordinary meaning of the term under scrutiny, that they would not be eligible to apply for leave to remain as a partner if it was clear from the evidence supporting their application and their answers in the application form that they had not lived with the person with whom they were in a relationship akin to marriage for at least two years.

37.
Mr Z Malik submitted that the applicant’s proposed construction would enable applicants to choose whether to apply under the parent or the partner route, and this would enable those who chose the parent route to avoid the stricter financial requirements contained in the partner route. I do not accept this submission. There is in reality no choice available to applicants who may wish to apply under the parent route if they are in fact “eligible to apply for leave to remain as a partner” (i.e. if the definition of partner in GEN.1.2. is or appears to be met on the face of the application or based on the information available to the Secretary of State). I additionally note that the 10-year partner route does not require an applicant to meet the financial requirements for LTR as a partner. In any event, an applicant under the 5-year parent route must still meet financial requirements that ensure they can adequately maintain and accommodate themselves without recourse to public funds. Any difference in the level of financial maintenance required under the 5-year partner route does not undermine the

construction advanced by the applicant in light of the natural meaning of the language used in Appendix FM.

38.
Both parties accepted that the Family Policy guidance, the relevant part of which is set out at paragraph 15 above, was not to be used as an aid to interpreting the Immigration Rules as per the authorities of Mahad and Pokhriyal . Mr Z Malik invited me to find that the Family Policy guidance was obviously correct and consistent with the interpretation advanced by the respondent. For the reasons I have given I do not accept that the Policy Guidance is correct or consistent with the natural and ordinary meaning of the words used in Appendix FM.

39.
In my judgment an applicant is “eligible to apply for leave to remain as a partner” only if it is readily apparent from the information contained in their application and any information available to the Secretary of State that they meet the autonomous definition of “partner” in GEN.1.2. of Appendix FM, unless the route under which the application is being made clearly provides for a different meaning of “partner”.

40.
The judicial review claim is granted.

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