



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: IA/27700/2013

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 15 May 2014**

**Determination**

**Promulgated**

**11 June 2014**

**Before**

**UPPER TRIBUNAL JUDGE GLEESON**

**Between**

**ANDRIY KOZHAK**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms N Braganza of Counsel instructed by Latitude Law

For the Respondent: Mr P Duffy, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant appeals with permission against the respondent's refusal to grant him leave to remain in the United Kingdom in line with that of his mother, who is now a naturalised British citizen. The respondent applied paragraphs 276ADE and Appendix FM of the Rules and also considered the

question of exceptional circumstances, but she did not address herself to paragraphs 198-199 of the Rules which deal with the position of children of persons being granted indefinite leave to remain in the United Kingdom.

2. The original grounds of appeal were amended at the First-tier Tribunal hearing, to include that question. The First-tier Tribunal determination records that amendment and it is clear that the judge was seised of the question. However, at some point during the determination it seems that those provisions slipped the mind of the judge, who failed either to make findings in relation to paragraphs 198-199 or to make the relevant findings of fact.
3. Since the respondent has not addressed the issues under paragraphs 198-199, it is of course open to her to do so now and to serve that decision on the appellant. If she proposes to do so, in the light of the overriding objective, I would encourage her to do so promptly. The appellant has made available a substantial amount of material relating to his financial position which appears in the bundle before me at pages 82 to 208 thereof.
4. It is plain that the First-tier Tribunal fell into error of law in failing to deal with the application under paragraphs 198 to 199 of the Immigration Rules, that such error is material, and I set aside the determination.
5. The appeal will be reheard and the decision remade in the First-tier Tribunal on 20 October 2014.

Signed

Upper Tribunal Judge Gleeson

Date: 10 June 2014