



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

Appeal Number: AA/10143/2015

**THE IMMIGRATION ACTS**

**Heard at Bradford**

**On 3 May 2016**

**Decision &  
Promulgated  
On 1 June 2016**

**Reasons**

**Before**

**UPPER TRIBUNAL JUDGE CLIVE LANE**

**Between**

**CHRISTIAN OKOYE  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**DECISION AND REASONS**

1. The appellant, Christian Okoye, was born on 26 April 1976 and is a male citizen of Nigeria. He entered the United Kingdom as a visitor in 2007 and was encountered by an Immigration Officer in July 2011 and served with a notice as an overstayer. On 17 August 2011, he applied for leave to remain under Article 8 ECHR. The appellant was not removed. However, on 6 October 2014 he claimed asylum. His application was refused and a

decision made to remove him was taken on 2 July 2015. The appellant appealed against that decision of the First-tier Tribunal (Judge Robson) which, in a decision promulgated on 22 January 2016, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. There are, in essence, two grounds of appeal. First, the judge is criticised for stating [50] that he intended to “take into account as a starting point Section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004”. The appellant argues that, following *SM (Section 8: Judge’s process) Iran* [2005] UKAIT, Section 8 should not be taken as a starting point in an assessment of credibility. Secondly, it is asserted the judge has not stated unequivocally that he did not believe the appellant was a homosexual. At [62], the judge found that there was “no evidence before me that the appellant was a practising homosexual and I do not find it to be the case the appellant would be treated as gay by any potential persecutors in his country of origin”. The appellant argues that the judge’s reasoning and findings are unclear.
3. I find that the appeal should be dismissed. I have reached that conclusion for the following reasons. First, it is apparent from a reading of the entire decision that the judge has not concluded his analysis of the appellant’s credibility solely on the basis of Section 8. The judge had to start somewhere in his analysis and there was no error in having started his analysis with a consideration of the appellant’s (particularly appalling) immigration history (*TP (Credibility) Zimbabwe* [2004] UKIAT 00159).
4. Secondly, it is absolutely apparent from any reading of the judge’s analysis that the judge did not believe that the appellant was, as he claimed, a homosexual. I acknowledge that it would have been helpful if the judge had stated more clearly and in terms that he did not believe the appellant was a homosexual but he has made findings to the effect that every aspect of the appellant’s account, including his claim to have been tortured and to be a homosexual, was wholly unreliable. The judge refers to the four-stage test set out in *HJ (Iran)* [2010] UKSC 31 and the first question (“when an applicant applies for asylum on the grounds of a well-founded fear of persecution because he is gay, the Tribunal must first ask itself whether it is satisfied on the evidence that he is gay or that he would be treated as gay by potential persecutors in his country of nationality”). The judge states at [63], “the first step is that which I have identified above and the appellant fails for that reason and I find that there would be no risk on return to this appellant were he to go back to Nigeria”. I understand that sentence clearly to mean that the judge does not accept that the appellant is gay or that he would be treated by potential persecutors in his country of origin as gay (the judge does categorically state that latter opinion at [62]).
5. Given that the judge did not err in his application of Section 8 of the 2014 Act for the reasons which I have given and in the light of the fact that the judge has clearly rejected the appellant’s credibility and does not accept

that he is gay and given also that the judge has found the appellant would not be perceived as gay in Nigeria, the grounds of appeal fail to persuade me that judge erred in law. Indeed, other than the challenge in respect of Section 8, the grounds of appeal are predicated on the assumption that the appellant is, as he claimed, gay.

**Notice of Decision**

6. This appeal is dismissed.
7. No anonymity direction is made.

Signed

Date 1 June 2016

Upper Tribunal Judge Clive Lane

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date 1 June 2016

Upper Tribunal Judge Clive Lane