Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/03631/2017**

THE IMMIGRATION ACTS

Heard at Bradford	**Decision & Reasons Promulgated**
On 31 October 2017	**On 24 November 2017**

Before

UPPER TRIBUNAL JUDGE LANE

Between

NZT
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Patel, instructed by Parker Rhodes Hickmotts, Solicitors
For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, NZT, was born in August 1996 and has an Ethiopian mother and an Eritrean father. The appellant asserts that she is Eritrean. The appellant claims that she is a lesbian. Her claim for asylum was refused by the Secretary of State by a decision dated 23 March 2017. The appellant appealed to the First-tier Tribunal (Judge Moxon) which, in a decision promulgated on 19 June 2017, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. Judge Moxon found that the appellant had never spoken to officials of the Ethiopian Embassy in London and did not "accept that, whether expressly

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asked or not, that she had gone into [the Ethiopian Embassy] she would have failed to give full material disclosure such as the address of her only relative in Ethiopia." The judge did not accept that a relative of the appellant living in Ethiopia would not support her upon return to that country although he may have failed to confirm her identity to the Ethiopian authorities. A witness (SA) had given evidence at the First-tier Tribunal hearing. SA claimed to have attended the Ethiopian Embassy with the appellant. He claimed that he had done so on the morning of 3 May 2017. SA is himself a refugee. The judge did not accept the account of the witness SA. The judge did not accept "as credible [SA's] account that the appellant had completed requisite forms which the embassy official refused to accept." He did so partly because this detail regarding the forms was missing from the appellant's own statement concerning the same event. In addition, the judge considered that the fact that the witness refers in his statement to "Sara" rather than the appellant by her first name indicated that "the witness has previously provided a letter for someone called Sara. He disputes this but I am satisfied his evidence is not reliable in light of the reference to the name Sara in the statement." The judge also did not accept that the appellant was a lesbian as claimed. He gave limited weight to assertions from LGBTI organisations in the United Kingdom to the effect that the appellant is homosexual and gave at [67] reasons for not accepting the appellant's account of having been present during a police raid. Moreover at [73], the judge found it "damaging to her credibility" that the appellant claimed that her girlfriend in Ethiopia had received a prison sentence of 18-25 years. The judge found that it was clear from the objective evidence" (*sic*) that the penalty for "homosexual acts is not anywhere near so long." The judge found that he was not satisfied "to the low standard that [the appellant] is, or is believed by anyone in Ethiopia to be, homosexual. I do not accept that she has had a homosexual relationship in Ethiopia or that she has ever or would ever wish to do so."

3. The judge's decision is challenged on a number of grounds. Whilst I have considered these carefully, save for the those grounds with which I address in detail, I find that the grounds of appeal amount to no more than a disagreement with findings on the evidence which were available to the judge. I shall address the grounds which have some merit below.

4. First, it was acknowledged by the Presenting Officer at the Upper Tribunal hearing (Mr Diwnycz) that the appellant is referred to on the Home Office file not only by her Christian name (N) but also by the name "Sara". I am grateful to Mr Diwnycz for bringing this fact to my attention. Interestingly, the grounds of appeal do not make the same point but attempt to excuse the witness's reference to "Sara" as a typographical error. It is not clear where Mr Diwnycz's revelation leaves us. It is significant, in my opinion, that the witness himself, when questioned by the judge, did not indicate that he knew the appellant by the name Sara. It was also clear that the judge himself was not aware of the use of the appellant of the name Sara. I find that the judge's findings in relation to the witness's evidence remains sound.

5. I also find that nothing turns on the fact that the witness speaks Amharic, as does the appellant. I am aware that Amharic is a language of Eritrea but I am aware also that it is used both by Eritreans and Ethiopians. Having considered the decision of the judge as a whole, I am satisfied that it was open to him to make findings in relation to the evidence of the witness to the effect that that evidence was unreliable and that the appellant had not attended the Ethiopian Embassy as she had claimed. The appellant's failure to approach the embassy indicated that she had not "made good her claim to international protection" as provided for in the Upper Tribunal decision of *ST (Ethnic Eritrean – nationality – return) Ethiopia CG* [2011] UKUT 00252 (IAC) in particular [105].

6. The other limb of the appellant's claim for international protection lies in her claimed lesbian sexuality. The appellant challenges the judge's finding regarding the appellant's evidence that her girlfriend had "received a prison sentence of between 18-25 years" for being a lesbian. The appellant claims that she was asked by the judge about the sentence and that she said that her cousin had told her that the prison sentence of 18-25 years might be given for lesbianism but that she did not know the actual sentence that her girlfriend had received. The question remains whether or not the judge has misunderstood the evidence and has wrongly held this point against the appellant. I find that the judge did not misunderstand the evidence. It is clear from [73] that the judge was aware that the appellant was not relying upon her own knowledge but that she was relying upon "erroneous information given to her by her cousin." The judge wrote, "I do not accept that [the appellant] relying upon erroneous information given to her from her cousin as I find as a fact that having sought to assist the appellant to flee Ethiopia he would not then seek to mislead or fail to ensure that he was giving accurate information about the prison sentence." In addition, the judge observed that the "appellant claims to love this lady" and that, in consequence, he had no doubt that she would have "sought confirmation of the likely prison sentences, which she could have done by liaising with her legal representatives who were in possession of the relevant information of the Ethiopian penal system as demonstrated by the objective evidence adduced within the appellant's bundle." I acknowledge that the reasoning here is not entirely clear, certainly in relation to what the cousin may or may not have said, but the judge's second point is undoubtedly a good one. It was quite feasible for the appellant in the United Kingdom to find out what the likely prison sentences would have been, given that she claimed to have a close relationship with the imprisoned woman concerned, it was open to the judge as it was damaging to the appellant's credibility that she had taken no steps to ascertain what the actual prison sentence had been. I find no error in the judge's analysis on this matter.

7. The appellant also complains that the judge has unreasonably criticised the appellant for failing to produce corroborative evidence of her claimed lesbian sexuality. The appellant said that she has had no partners whilst living in the United Kingdom so it would be impossible to produce such evidence. However, I observe that the judge [69] was aware of the fact that the appellant had no partners in the United Kingdom and that he has

not unreasonably pointed out that she could have obtained witness evidence from those with whom she claims to have attended LGBT events. The appellant said that that evidence was not available to her because of "language difficulties, her recent attendance at LGBT events and her mental health issues and more importantly her lack of current partner." (See grounds at [9]). Other than, possibly, 'language difficulties', the other reasons given by the appellant for not obtaining the evidence indicated by the judge do not stand up to scrutiny. It is not clear why she could not obtain evidence from others at events simply because she was only a recent attendee at such events whilst no indication is given as to why the appellant's mental health issues should have prevented her obtaining such evidence given that her condition had not prevented her attending the events in the first instance. Furthermore, the "lack of a current partner" does not assist the appellant at all. The corroborative evidence which the judge refers to here is in no way similar to the corroborative evidence which an asylum seeker cannot reasonably be expected to bring with him or her from her country of origin. The evidence referred to by the judge could easily have been obtained by the appellant whilst in the United Kingdom. As it happened, all the First-tier Tribunal had before it were photographs of the appellant at an event or events; these photographs are silent as to the capacity in which the appellant had attended the events in particular whether she was an active participant or merely an observer. Consequently, I find that the ground has no merit.

8. In the light of my findings and observations, I see no reason to interfere with the decision of the First-tier Tribunal. The appeal is dismissed.

Notice of Decision

This appeal is dismissed.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed Date 20 November 2017

Upper Tribunal Judge Lane

TO THE RESPONDENT
FEE AWARD

Because it is dismissed there is no fee order repayable.

Signed Date 20 November 2017

Upper Tribunal Judge Lane