



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

Appeal Number: AA/01762/2015

**THE IMMIGRATION ACTS**

**Heard at Birmingham Employment  
Centre  
On 9 February 2016**

**Decision Promulgated  
On 19 February 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE McCARTHY**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant/Respondent

**and**

**A T**

**(NO ANONYMITY ORDER MADE)**

Respondent/Appellant

**Representation:**

For the SSHD: Mr G Harrison, Senior Home Office Presenting Officer  
For [AT]: Mr J Howard, Fountains Solicitors

**DECISION AND REASONS**

1. Neither party is content with the decision and reasons statement of First-tier Tribunal Judge Raikes that was promulgated on 24 July 2015.
2. Each party applied and was granted permission to appeal to the Upper Tribunal. The SSHD was granted such permission on 18 August 2015 by First-tier Tribunal Judge Davidge. [AT] was granted permission by Upper Tribunal Judge Kebede on 10 September 2015.

3. Both sets of grounds of appeal challenge Judge Raikes's decision regarding humanitarian protection. In summary, the SSHD argues that the judge could not have found that the appellant faced a real risk of serious harm if returned to Iraq and that her finding that the appellant benefited from article 15(c) of the Qualification Directive (2004/83/EC) was not open to her on the evidence provided because an internal flight option was available. [AT] argues that the judge should have found that he was a refugee because when making her findings she identified a nexus between the risk of harm facing him on return and a refugee convention reason.
4. I begin by considering the SSHD's argument. The SSHD accepted at paragraph 33 of the reasons for refusal letter that the appellant could not return to his home area (Mosul, the capital of the Nineveh province) because the criteria of article 15c of the Qualification Directive were met in that contested area. The judge confirmed this remained the situation at the date of hearing (see [30]). The SSHD's argument is that it was not unduly harsh to expect [AT] to relocate to Baghdad.
5. In our discussions Mr Harrison acknowledged that Judge Raikes had found that the appellant had no one to turn to in Iraq (see [17] - [18]) and that this reduced the strength of the SSHD's argument. Mr Harrison realised that the presenting officer at the First-tier Tribunal hearing had not sought to cross-examine the appellant or to make submissions relevant to the issue of internal flight. Instead, the presenting officer's submissions had focused on [AT]'s lack of credibility and the hope that ISIS would fall and he would be able to return to Mosul. The references in the submissions to the ability of [AT] to relocate to Baghdad were general and did not address the evidence he had given.
6. Mr Harrison focused his submissions on the judge's findings relating to internal flight ([35] and [36]). He argued that Judge Raikes had made no clear finding that [AT] could not rely on financial support from relatives and this "loose end" undermined the conclusion.
7. As I indicated at the hearing, I disagree. The decision and reasons statement is sufficiently clear to show that Judge Raikes found [AT] would be without support in Baghdad or any other part of Iraq where he might be able to avoid the serious harm he faced in Mosul. This position has been clarified in the country guideline case, AA (Article 15(c)) Iraq CG [2015] UKUT 544 (IAC) (see paragraph 204, which contains the head note, of which paragraphs 14 to 16 are relevant). As such, not only was the decision open to Judge Raikes but her findings can be seen to be consistent with binding country guidance even though that was not available to her when she heard the appeal.
8. Turning to [AT]'s arguments, Mr Howard took me to [28] and [29] and identified that Judge Raikes found that [AT] faced persecution in Mosul because of his Kurdish ethnicity. Judge Raikes found that he was a Kurd and that Kurds were at increased risk of harm in the contested areas. It has long been held that persecution on the basis of ethnicity falls within

the convention reason “race”. Mr Howard submitted that as there was no internal flight alternative, the fact the appellant might be at increased risk because of his ethnicity meant that he had a well-founded fear of persecution in Iraq and not merely a real risk of serious harm in relation to article 15c.

9. In response, Mr Harrison argued (although not strongly) that the threshold in relation to article 15c was different to that in relation to persecution. It is well established in a variety of cases that this is not a viable argument. The Court of Justice of the European Union, the European Court of Human Rights and the House of Lords/Supreme Court have all found that the thresholds in relation to refugee protection, serious harm and article 3 ECHR are coterminous. It is certainly more difficult for a person to show that there is a real risk of serious harm within the meaning of article 15c than other provisions of the Qualification Directive because of the number of criteria that need to be met but the actual threshold is the same.
10. I am satisfied that Mr Howard has identified that Judge Raikes found a nexus between the serious harm facing the appellant and his ethnicity. As such, [AT] must be entitled to protection as a refugee and for this reason his appeal to the Upper Tribunal is allowed. I find that Judge Raikes erred in law in relation to finding that [AT] was not a refugee and I remake the decision to find that he is a refugee.
11. Before concluding, I mention that although the appeal was subject to an anonymity direction below, there has been no request for it to be renewed in the Upper Tribunal and I find no reason for it to be continued.

## **Decision**

The Secretary of State’s appeal to the Upper Tribunal is dismissed.

[AT]’s appeal to the Upper Tribunal is allowed. The decision and reasons statement of Judge Raikes contains an error of law and is set aside. I remake the decision and find that [AT] is a refugee.

Signed

Date

Judge McCarthy  
Deputy Judge of the Upper Tribunal