

K2

NOTE

Following a hearing on 8 October 2014 the parties were permitted to make further written submissions on a specific point of evidence, namely in relation to an email of 16 June 2010, sent from the Home Office to the FCO. The relevant text reads:

“My reason for writing to you was to gauge whether you think it appropriate to pass this on to the Sudanese immigration authorities in the hope they will prevent [the Appellant] from leaving [the Sudan] on departure? I appreciate that there may be sensitivities given his Sudanese origin”.

The full email had been disclosed as part of the CLOSED material in the case. There had been no submission from the Special Advocates that the document should form part of the OPEN evidence.

Between the end of the hearing and the handing down of the judgment, the text quoted above from the email was revealed to the Appellant’s open representative as a result of a request under the Data Protection Act. In a letter of 6 June 2014, the Appellant’s solicitors brought the disclosure to the attention of the Commission and the Respondent.

On 9 June the Commission noted the letter from Birnberg Peirce, and invited comment from the Secretary of State, and continued:

“It is not clear if (and to that extent) the Appellant submits the material referred to should be admitted into the proceedings. At the moment, this material is not in the evidence before the Commission”

The last sentence was inaccurate: the email was in the CLOSED evidence, but not in the OPEN evidence.

On 10 June 2014, the Appellant’s Solicitors replied to the Commission stating:

“we ask that the material referred enclosed (sic) our letter of 6 June is taken into account as evidence in the appeal for the following reasons.

1. It is evidence showing that the UK authorities had taken steps to prevent K2 from travelling outside Sudan.
2. It supports K2’s ... that if he tries to travel he may be arrested and detained with a concomitant risk of ill treatment”.

The Appellant did not seek to re-open the hearing, or to make further submissions. The Secretary of State responded to the Commission’s letter by way of a CLOSED note dated 20 August 2014.

The Secretary of State's case was all along that the Sudanese authorities "are clearly aware of K2's presence in Sudan.": see the judgment, para 83.

Neither in OPEN or CLOSED did the Secretary of State suggest that the Sudanese had not been made aware of K2's presence, or suggest it was not the Secretary of State's object to prevent K2's return to the UK.

The judgment does not refer to the email of 16 June 2010. We do not consider it capable of altering our conclusions, which include acceptance of the probability that K2 is known to the Sudanese authorities, as is his father's political history and the allegations against him. We also conclude (paragraphs 92, 97 and 98) that he would be at some risk if he sought to leave the country in order to communicate elsewhere by video link.

The Appellant makes no application now. His submissions suggest that this sequence of events mean that our conclusions on the Preliminary Issues are flawed. We do not agree.