

1981 July 11

[DEMETRIADES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

NICOS ZEMBYLAS,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH THE
MINISTER OF INTERIOR,

Respondent.

(Case No. 22/80).

*Citizenship—Citizen of the Republic of Cyprus—Illegitimate child—
Legitimated by his parents subsequent marriage—His father a
citizen of the United Kingdom and Colonies, born after the 5th
November, 1914, ordinarily residing in Cyprus at some time
in the period of five years before Independence and who on the
day of the Treaty of Establishment of the Republic of Cyprus
became a citizen of the Republic—Said child residing in Cyprus
on day of said Treaty—Automatically became a citizen of the
Republic by virtue of section 2(c) of Annex D to the said Treaty—
Fact that he was illegitimate at the material time does not change
the position—Moreover said child a citizen of the Republic by
virtue of the combined effect of section 4 of the Illegitimate
Children Law, Cap. 278 and of sections 9(1) and 3 of the Repu-
blic of Cyprus Citizenship Law, 1967 (Law 43/67).*

The applicant was born in Stockholm, Sweden, on the 22nd
September, 1959 and was the holder of a Swedish passport.
He came to Cyprus with his mother on the 24th January, 1960,
as a visitor. At the material time his parents were not married
but they were married together on the 30th December, 1961.
Applicant's father was born on the 2nd April, 1937 at Myrtou,
Kyrenia and on May 30, 1962, a Cyprus Passport was issued

to him. Attached to the application for the issue of this passport there was a certificate from the mukhtar of Ayios Andreas Quarter, Nicosia, to the effect that during the five years period immediately prior to the 16th August, 1960, which is the date of the Proclamation of the Republic, he resided, ordinarily, in the said quarter. On August 30, 1972, another Cyprus Passport was issued to applicant's father ; and on his application for this passport he again stated that his place of residence during the period 16th August, 1955 to 16th August, 1960 was Cyprus.

On December 27, 1979 applicant applied, through his counsel, to the Chief Immigration Officer for a certificate that he was not a citizen of the Republic on the ground that his parents were permanently residing in Sweden during the period 16th August, 1955 to 16th August, 1960. The Acting Chief Immigration Officer informed Applicant's counsel that both the applicant and his father, were citizens of the Republic of Cyprus by virtue of section 2* of Annex D to the Treaty of Establishment of the Republic of Cyprus.

Hence this recourse.

Held, (after finding that applicant's father was, at the material time, a citizen of the United Kingdom and Colonies, that he was born after the 5th November, 1914, that he was ordinarily residing in Cyprus at some time in the period of five years immediately before Independence and that he did, on the day of the Treaty, automatically become a citizen of the Republic) that the applicant, though at the time an illegitimate child of his father, was, on the day of the Treaty, residing in Cyprus and he, too automatically became a citizen of the Republic since he possessed qualification (c) of Annex D to the Treaty of Establishment in that he was a person descended in the male line from a person who was born in the Island on or after the 5th November, 1914 ; that the applicant was, at the material time, an illegitimate child, does not change the position, as qualification (c) only provides that a person possesses the qualification to become a citizen of the Republic if he descends in the male line from a person possessing qualifications (a) and (b) of section 2 of Annex D ; that further, the applicant is a

* Quoted at p. 264 *post*.

citizen of the Republic by the combined effect of section 4* of the Illegitimate Children Law, Cap. 278, and of sections 9(1)** and 3*** of the Republic of Cyprus Citizenship Law, 1967 (Law 43/67) ; and that, therefore, the Chief Immigration Officer was right in his decision not to grant the applicant a certificate to the effect that he is not a citizen of the Republic of Cyprus ; accordingly the recourse must be dismissed.

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Application dismissed.

Recourse.

Recourse against the decision of the respondent whereby it was decided that applicant is a citizen of the Republic.

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A. Indianos with N. L. Clerides, for the applicant.

A. Papasavvas, Counsel of the Republic, for the respondent.

Cur. adv. vult.

DEMETRIADES J. read the following judgment.

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The applicant in this recourse prays for—

“1. A declaration of the Court that the act and/or decision of the respondent communicated to applicant’s counsel by or on behalf of the Chief Immigration Officer on the 14.1.1980 to the effect that applicant is a citizen of the Republic of Cyprus should be declared null and void and of no effect whatsoever.

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2. A declaration of the Court that the omission of the respondent to supply applicant with a certificate to the effect that he is not a citizen of the Republic ought not to have been made and that applicant should have been supplied with such a certificate”.

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and bases his application on the following grounds of law: That he is not a citizen of the Republic because he does not fall within section 2 of Annex D to the Treaty of Establishment in that—

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“(a) he was born in Sweden (Stockholm) on the 22.9.59 and he is the holder of Swedish passport No. UR 043645, and

* Section 4 is quoted at p. 265 *post*.

** Section 9(1) is quoted at p. 265 *post*.

*** Section 3 is quoted at p. 265 *post*.

(b) his father did not have his ordinary residence in the Republic of Cyprus at any period within the period of 5 years before the Proclamation of the Cyprus Republic”.

5 The facts relied upon by the applicant in support of his application are that he was born in Sweden (Stockholm) on the 22.9. 1959 and is the holder of Swedish passport No. UR 043645; that his parents were permanently established in Sweden when he was born; that his father was never ordinarily in Cyprus
10 at any time during the five years preceding the Proclamation of the Republic of Cyprus, but during the said period he was permanently residing in Sweden; that his counsel did, on the 27.12.1979, apply for a certificate from the Chief Immigration Officer that applicant is not a citizen of the Republic for the
15 reasons therein stated; and that the Chief Immigration Officer, by his letter of the 14.1.1980 replied to applicant’s counsel that applicant was a citizen of the Republic of Cyprus.

The respondent opposes the application and alleges that the applicant is a citizen of the Republic of Cyprus by virtue of
20 sections 2(1) and 2(2)(c) of Annex D to the Treaty of Establishment. The facts on which the respondent bases his opposition are in brief the following:

The applicant, who is the child of Michael Nicolaou Zembylas and Ulla-Margarethe Dymling, was both in Stockholm, Sweden,
25 on the 22nd September, 1959. At the material time his parents were not married. He is the holder of Swedish Passport No. UR 043645. The father of the applicant, Michael Zembylas, was born on the 2nd April, 1937, at Myrtou, Kyrenia. After an application made by him on the 8th September, 1955, Passport
30 No. 64306 was issued to him in order to travel abroad for pleasure. In his application Mr. Zembylas stated that he resided in Cyprus as from his birth. On the 30th December, 1961, Mr. Zembylas (the father) married, at the Nicosia Civil Registry, Ulla-Margarethe Dymling, the mother of the applicant, and
35 on the 5th February, 1962, the Chief Immigration Officer issued a certificate stating that Ulla-Margarethe Zembyla was a native of Cyprus in accordance with the provisions of the Aliens and Immigration Law, Cap. 105. According to information given by the Chief of the Police to the Immigration Authorities,

the applicant came to Cyprus with his mother on the 24th January, 1960, as a visitor.

On the 30th May, 1962, Cyprus Passport No. 44309 was issued to Mr. Zembylas. Attached to the application for the issue of this passport to Mr. Zembylas (the father) is a certificate from the mukhtar of Ayios Andreas Quarter, Nicosia, to the effect that during the five years period immediately prior to the 16th August, 1960, he resided, ordinarily, in the said quarter.

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As a result of another application by Michael Zembylas, dated 3rd May, 1967, Cyprus Passport No. C27316 was issued to him. In his said application, Mr. Zembylas reports that during the period 1955 to 1960 he resided in the following places:-

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(a) From 1956 to 1957 in Athens.

(b) From 1957 to 1960 in Sweden, and

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(c) From 1960 to 1962 in Nicosia.

On the 11th December, 1970, a Travelling Document was issued to Mr. Zembylas, so that he could travel to Israel.

By an application dated 9th October, 1979, which was countersigned by his father, the applicant applied that a certificate to the effect that he is not a citizen of the Republic of Cyprus be issued to him. In the application it is stated that his permanent residence as from 1960 is Cyprus and that his father left Cyprus for the first time in February, 1956.

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On the 27th December, 1979, Mr. L. Clerides, an advocate, of Nicosia, wrote, on behalf of the applicant, to the Chief Immigration Officer and applied that a certificate that he is not a citizen of the Republic be issued to him on the ground that the parents of his client were permanently residing in Sweden during the period 16th August, 1955 to 16th August, 1960. By a letter dated the 14th January, 1980, the Acting Immigration Officer replied to Mr. Clerides' said letter and informed him that the applicant, as well as his father, are citizens of the Republic of Cyprus by virtue of section 2 of Annex D to the Treaty of Establishment of the Republic of Cyprus.

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On the 30th August, 1972, another Cyprus Passport was issued to Mr. Michael Zembylas, No. AO85954. On the application

he submitted in order to get this passport, it is again stated that his place of residence during the period 16th August, 1955 to 16th August, 1960, was Cyprus.

5 Counsel for the applicant in his address admitted that applicant's father left Cyprus for Athens in 1956, but alleged that as from 1955 to 1956 he was under persecution for his involvement in the EOKA strife, that because of this he could not leave Cyprus legally, and that he finally managed to leave Cyprus secretly in 1956. Counsel again admitted that the father of
10 the applicant returned to Cyprus in 1959 but that due to unforeseen events, his stay in Cyprus was prolonged beyond his powers and against his will as he was arrested by the British Authorities and his passport was destroyed. Counsel further alleged that the intention of the father, from 1959 to 1962, was all along to
15 leave Cyprus and re-unite with his family in Sweden where he was working. He, however, does not deny the fact that the applicant and his mother came to Cyprus in 1960 and remained here until now.

As it appears from the passport file of Mr. Zembylas, which
20 was produced and is an *exhibit* before me, none of the above allegations made by counsel in his written address are correct, in that when Mr. Zembylas in August, 1955, applied for a passport, he attached to his application a certificate by his then employers in which it is stated that he was permanently employed
25 by them and that he had been given a month's vacation leave for a trip abroad; that as a result of his said application United Kingdom and Colonies Passport No. 64306 was issued and delivered to him on the 9th September, 1955; that this passport was later, after the Independence of Cyprus, attached to another
30 application made by Mr. Zembylas sometime in May, 1962, for the issue to him of a passport of the Republic of Cyprus and that Passport No. 64306 was returned to him on the 30th May, 1962, together with the new passport. It is pertinent to mention here that in all his applications for the issue to him
35 of a passport or a travelling document, Mr. Zembylas stated, and his statements were supported by certificates given to him by the Police or the Chairman of the quarter where he resided, that for the period of 16th August, 1955 to the 16th August, 1960, Cyprus was his country of residence.

40 When Cyprus was declared an independent State in August,

1960, Annex D to the Treaty of Establishment was signed where there are made provisions determining the nationality of the persons affected by the agreement reached for its independence. The persons who, by reason of their connection and residence in Cyprus, automatically became citizens of the Republic from its establishment are defined in section 2 of the said Annex. The relevant paragraphs of this section read as follows:-

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“1. Any citizen of the United Kingdom and Colonies who on the date of this Treaty possesses any of the qualifications specified in paragraph 2 of this Section shall on that date become a citizen of the Republic of Cyprus if he was ordinarily resident in the Island of Cyprus at any time in the period of five years immediately before the date of this Treaty.

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2. The qualifications referred to in paragraph 1 of this Section are that the person concerned is—

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(a) a person who became a British subject under the provisions of the Cyprus (Annexation) Orders in Council, 1914 to 1943; or

(b) a person who was born in the Island of Cyprus on or after the 5th of November, 1914; or

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(c) a person descended in the male line from such a person as is referred to in sub-paragraph (a) or (b) of this paragraph.

3.”

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In the light of the facts which were placed before me by counsel in their written addresses, I find that applicant’s father was, at the material time, a citizen of the United Kingdom and Colonies, that he was born after the 5th November, 1914, that he was ordinarily residing in Cyprus at some time in the period of five years immediately before Independence and that he did, on the day of the Treaty, automatically become a citizen of the Republic.

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The applicant, though at the time an illegitimate child of his father, was, on the day of the Treaty, residing in Cyprus and he, too, automatically became a citizen of the Republic since he possessed qualification (c) of Annex D to the Treaty

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of Establishment, in that he was a person descended in the male line from a person who was born in the Island on or after the 5th November, 1914. That the applicant was, at the material time, an illegitimate child, does not, in my view, change the position, as qualification (c) only provides that a person possesses the qualification to become a citizen of the Republic if he descends in the male line from a person possessing qualifications (a) and (b) of section 2 of Annex D. Further, the applicant is a citizen of the Republic by the combined effect of section 4 of the Illegitimate Children Law, Cap. 278, and of sections 9(1) and 3 of the Republic of Cyprus Citizenship Law, 1967 (Law 43/67). The afore-mentioned sections read as follows:-

“4. Where the parents of an illegitimate child marry one another such child shall acquire, as from the date of his birth, the legal status of a legitimate child in respect of both his father and mother and their relatives by blood”.

“9(1) An illegitimate child legitimated in accordance with the law of personal status pertaining to him shall, as from the date of such legitimation or the date of the coming into operation of this Law, whichever is later, be treated, for the purposes of this Law, as if he had been born legitimate”.

“3. Citizens of the Republic are the persons who, on the date of the coming into operation of this Law, either have acquired or are entitled to acquire citizenship of the Republic under the provisions of Annex D or who acquire thereafter such citizenship under the provisions of this Law”.

Having in mind all the above, I find that the Chief Immigration Officer was right in his decision not to grant the applicant a certificate to the effect that he is not a citizen of the Republic of Cyprus.

In the result, the application is dismissed but, in the circumstances, I make no order as to its costs.

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*Application dismissed.
No order as to costs.*