

1985 November 26

[Pikis, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

AMANDA MARGA LTD.,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
1. THE MINISTER OF INTERIOR
2. THE MIGRATION OFFICER,

Respondents.

(Case No. 405/84).

5 *The Aliens and Immigration Law, Cap. 105 as amended by Law 2/72—The Aliens and Immigration Regulations, 1972—Said law and regulations do not confer on citizens of the Republic any right to employ aliens—The only right conferred is to an alien to apply for entry—The discretion of the Immigration Authorities is as broad as it can be in law—Their only obligation is to examine the application for entry in good faith.*

10 *Legitimate interest—Article 146.2 of the Constitution—Applicant's interest should be "direct"—Refusal to allow an entry of an alien in Cyprus—The application for entry made by a Cyprus Company, i.e. the applicant company on the ground of an agreement of employment between the Company and the alien—As Cap. 105 as amended by*
15 *Law 2/72 and the Regulation made thereunder do not confer on citizens a right to employ aliens the interest of the applicant company is not "direct" but indirect.*

20 The teaching and training in Yoga was among the objects of the applicant company. Seemingly for the promotion of Yoga the applicant applied for permission to be given to Donald Osmond Dacosta, an alien, to enter the Republic

and assume employment in accordance with an agreement between him and the applicant company.

2. The application was refused on grounds of public interest. As a result the present recourse was filed. The file of the administration revealed that the authorities were apprehensive about applicant's connection with an organisation going by the name of "Amanda Marga" allegedly pursuing seditious activities in India. Applicant questioned the soundness of this information. 5

Held, dismissing the recourse: 10

(1) Neither the Aliens and Immigration Law nor the Regulations made thereunder confer upon citizens of the Republic the right to employ aliens. The only right conferred by law is a right of aliens to apply for entry in the Republic coupled with a corresponding obligation on the part of the authorities to consider their application. The fact that such an application for entry is made by a third person does not transfer any right to such a person whether he is a stranger or a prospective employer. The interest of the applicant in this case is not "direct". It is only indirect. Therefore the applicant company does not possess a legitimate interest to challenge the sub judice decision. 15 20

(2) A decision excluding an alien is an administrative act liable to review by this Court under Article 146 of the Constitution. The discretion, however, of the State Authorities under Cap. 105 is very wide, as broad as it can be in law, consistent with the supremacy and territorial integrity of the State. An alien, subject to any convention or bilateral agreement, has no right to enter the State. His only right is that his application for entry should be considered in good faith. In the present case there is nothing to show lack of good faith on the part of the Immigration Authorities. 25 30

Recourse dismissed. 35
No order as to costs.

Cases referred to:

Pitsillos v. C.B.C (1982) 3 C.L.R. 208.

Recourse.

5 Recourse against the refusal of the respondents to allow an alien to enter Cyprus and assume employment with the applicants in accordance with an agreement between them.

C. Melissas with *Z. Katsouris*, for the applicants.

10 *M. Florentzos*, Senior Counsel of the Republic, for the respondents.

Cur. adv. vult.

15 ΠΙΚΙΣ J. read the following judgment. The applicants are a Cypriot company with varied and diverse objects ranging from dealing in land to the teaching and training in yoga, the "Hindu system of philosophic meditation and asceticism designed to effect reunion with universal spirit"⁽¹⁾. Seemingly for the promotion of the latter object, they applied for permission to employ Donald Osmond Dacosta, to instruct students at their Yoga Centre. Being an alien, they applied for permission to be given to Mr. Dacosta to enter the country and assume employment in accordance with an agreement between them (2).

25 The application was refused (3) on grounds of public interest. Examination of the file of the case reveals the authorities were apprehensive about the connection applicants had with an Indian organization going by the name Amanda Marga, an organization allegedly pursuing seditious objectives in India. Previous experience with teachers coming to Cyprus to teach Yoga were negative and the authorities had to deport a number of them. Applicants questioned the soundness of the information of the authorities, protesting their aims to be exclusively confined to the promotion of Yoga. For this reason they sought the annul-

(1) Concise Oxford Dictionary, 7th Ed., p. 1250.

(2) Application of 19th April, 1984.

(3) See letters of 24th May and 16th June, 1984.

ment of the decision for lack of due inquiry and misconception of facts.

A question untouched by the parties but one I cannot overlook in the exercise of my powers under Article 146 of the Constitution, concerns the legitimacy of the interest of the applicants to prosecute the present recourse. Neither the Aliens and Immigration Law(1) nor the Regulations made thereunder(2) confer upon citizens of the Republic a right to employ aliens. The only right conferred by law is to aliens wishing to enter the country, a right to apply for entry coupled with a corresponding obligation on the part of the authorities to consider their application. Of course nothing prohibits the making of an application as in this case on behalf of an alien for entry. The fact that the application is made by a third person on behalf of the alien does not transfer any right in the representative, whoever he may be, whether a stranger or a prospective employer. Under Article 146.2 a direct personal interest is necessary in order to legitimize a party applying for the review of administrative action(3). The interest of the applicants in this case is indirect; it emanates from alleged violation of the right or interest of a third person, namely, Mr. Dacosta. Only he had a sufficient interest to seek the review of the decision of the Immigration Authorities denying him entry to the country.

Nevertheless, I shall deal with the substance of the application in the interest of finality. This course is also dictated by the absence of precedent definitive of the interest of an employer to seek the review of administrative action affecting a prospective alien employee. Counsel for the Republic referred in his address to the inherent right of every State to exclude aliens from the country, a right associated with territorial supremacy(4). A distinguished jurist of international law depicts the right of the State to

(1) Cap. 105—Amended by Law 2/72.

(2) Aliens and Immigration Regulations 1972—Official Gazette, Supplement III(1)—242/72.

(3) Pitsillos v. C.B.C. (1982) 3 C.L.R. 208.

(4) Oppenheim—«International Law» edited by M. Lauterpacht, 8th Ed., Vol. 1, pages 675-676.

5 exclude aliens as absolute⁽¹⁾. In Cyprus a decision excluding
an alien qualifies as an administrative act under Article
146 and as such is liable to review. The right to review
conferred by Article 146 is not confined to nationals or
10 citizens of the country but extends to everyone, provided
administrative action affects a legitimate interest of his
in the sense of para. 2 of Art. 146. The discretion
of the authorities, on the other hand, to exclude an alien
is not abridged by the fact that its exercise is subject to
15 judicial review. By the terms of the Aliens and Immigration
Law, Cap. 105, the discretion of the State to exclude aliens
is very wide, as broad as it can be in law, consistent with
the supremacy and territorial integrity of the State; but
not absolute. It is subject to the bona fide exercise of the
20 discretion. So long as the discretion is exercised in good
faith, the Court will query the decision no further. An
alien, subject to any rights that may be conferred by con-
vention or bilateral treaty, has no right to enter the coun-
try. His only right is that an application to enter the country
should be considered in good faith. Acknowledgment of
any further obligation on the part of the State would be
inconsistent with the sovereign right of the State to exclude
aliens. There is nothing before me to suggest that the
Immigration authorities acted except in good faith. So
25 long as they act in good faith the State is the sole arbiter
of the evaluation of the material bearing on an application
for entry in exercise of its sovereign right to exclude aliens.

The recourse is dismissed. Let there be no order as
to costs.

30

Recourse dismissed.
No order as to costs.

¹⁾ Schwarzenberger on International Law, Vol. 1, 3rd Ed., p. 360