

1986 July 9

[PIKIS. J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

CHARALAMBOS IOANNOU,

Applicant,

v.

- THE REPUBLIC OF CYPRUS, THROUGH
1. THE MINISTRY OF FINANCE,
 2. THE DIRECTOR OF CUSTOMS AUTHORITY.

Respondents.

(Case No. 415/85).

*Customs and Excise—Duty free importation of motor-cars—
Order 183/82 made by the Council of Ministers under
s. 11(2) of the Customs and Excise Duties Law—“Per-
manent settlement” abroad—Meaning of—The necessary
prerequisites for the enjoyment of the benefit under the
said order.*

*Words and Phrases: “Permanent settlement” in Order 183/82
made by the Council of Ministers.*

10 The applicant stayed in Saudi Arabia from 1968 to
1982. He went there pursuant to a contract of employment
with a Greek construction company. The understanding be-
tween applicant and his employers was that he would
remain in their service until retirement at the age of 60.
15 For a foreigner to stay in Saudi Arabia prior employment
is an indispensable prerequisite. Non-Moslems have no
right to settle at that country and thus, upon retirement
at the age of sixty, the applicant came back to Cyprus.
Only two members of his family had joined him in Saudi
20 Arabia, his two eldest sons, and then only after they at-
tained majority and obtained employment there. While

still in Saudi Arabia the applicant applied for and obtained a permit to build a house in Cyprus.

Applicant's application of a duty free importation of a motor car, submitted after his return to Cyprus under Order 183/82, was turned down on the ground that the applicant had not been permanently settled in Saudi Arabia. Hence the present recourse. 5

Held, dismissing the recourse: (1) Order 183/82 imposed three conditions for enjoyment of the benefit granted therein, namely: (a) Permanent settlement abroad. (b) Continuous stay abroad for not less than 10 years, and (c) Repatriation. 10

(2) "Permanent settlement" imports the notion of a real or permanent home and should be distinguished from the notion of ordinary residence (*Matsas v. The Republic* (1985) 3 C.L.R. 54 adopted). A continuous stay of 10 years abroad does not immediately qualify the stayee as a permanent settler. The concept of permanent settlement is not tied to the length of stay, but to the element of permanence associated with physical stay. 20

(3) In the light of the above legal framework the sub-judice decision was reasonably open to the respondent.

*Recourse dismissed.
No order as to costs.*

Cases referred to: 25

Matsas v. The Republic (1985) 3 C.L.R. 54.

Recourse.

Recourse against the refusal of the respondent to allow applicant to import duty-free a motor vehicle on his return from Saudi Arabia. 30

P. Demetriou, for the applicant.

E. Papadopoulou (Mrs.), for the respondents.

Cur. adv. vult.

PIKIS J. read the following judgment. Charalambos Ioannou stayed in Saudi Arabia from 1968 to 1982. He went there pursuant to a contract of employment with Archirodon, a Greek construction company that bound him to work as foreman in their works at Saudi Arabia. A year or two later his employers made available for his residence a flat large enough to accommodate his family. The facility had been granted after an understanding that applicant would remain in the employment of Archirodon in Saudi Arabia until his retirement. For a foreigner to stay in Saudi Arabia prior employment is an indispensable prerequisite. Non-Moslems, as applicant explained in evidence, have no right to settle in that country. Thus, when he retired at the age of 60 he came back to Cyprus. During his stay abroad he kept visiting Cyprus intermittently for a reunion with his family that stayed behind.

On his return to Cyprus he applied for exemption from duty respecting a car he imported, under the provisions of an Order made under s. 11(2) of the Customs and Excise Duties Law(1). The Order exempts from duty the importation of motor vehicles by Cypriots who return to Cyprus from countries whereto they had settled permanently for a continuous period of 10 years. Applicant maintained in his application that he had settled permanently in Saudi Arabia as well as stayed there for a continuous period of at least 10 years. He had decided to leave Cyprus and settle abroad after the break down of his relations with his wife; his assertion that he intended to take his children with him is hardly consistent with the facts put forward before the Authorities. None of his children followed him and I fail to see how they could have done so in the first years of his stay in Saudi Arabia in the absence of appropriate schools for their education. Only two members of his family joined him in Saudi Arabia, his eldest sons, and then only after they attained majority. Like their father they went to Saudi Arabia pursuant to contracts of employment that required them to work there, in 1976 and 1979 respectively, after their demobilization from the National Guard. Applicant was aware, all along as can be gathered from his evidence, that his stay in Saudi Ara-

(1) Published on 11th June, 1982—No. 17/83 RAA 183/82.

bia would be co-extensive with the tenure of his employment; else he had no right to stay in that country. That it was in his contemplation to return to Cyprus while still in Saudi Arabia is evident from the fact that he applied for and obtained a building permit to build a house in Cyprus before his actual return to the country. 5

The respondents rejected his application on the ground that he had not been permanently settled in Saudi Arabia before his return to Cyprus. The decision is challenged as founded on a misconception of facts. In evidence before the Court he gave further explanation of the circumstances surrounding his stay in Saudi Arabia and his intentions that adds little, if anything, to the facts earlier placed before the respondents. The pertinent question is whether upon those facts it was reasonably open to the respondents to conclude that applicant was ineligible for exemption. 10 15

The interpretation of the pertinent provision of the Order, notably "permanent settlement", was the subject of extensive discussion by A. Loizou, J., in *Matsas v. The Republic*(¹). I am in agreement with the learned Judge that the term "permanent settlement" imports "... the notion of a real or permanent home and should be distinguished from the notion of ordinary residence." 20

The only aspect of the Order that merits further examination is the 10-year stay qualification, in particular its implications, if any, on the requirement of permanent settlement abroad. The question that must be answered is whether 10 years stay in a foreign country immediately qualifies the stayer as a permanent settler in that country for the purposes of the Order. I think not. The concept of permanent settlement is not tied to the length of stay but to the element of permanence associated with physical stay. If the legislature intended to make length of stay the sole criterion for exemption, it was wholly unnecessary to make any reference to permanent settlement. It would have merely provided that return to Cyprus after 10 years continuous stay abroad confers a right to exemption. The interpretation above favoured is reinforced by reference in 25 30 35

(¹) (1985) 3 C.L.R. 54.

the proviso to the Order to "repatriation" that implies discontinuance of permanent ties with a foreign country and return to the native land. In my judgment the Order imposed three separate conditions for enjoyment of the benefit granted therein: (a) permanent settlement abroad, (b) continuous stay abroad for no less than 10 years, and (c) repatriation i.e. resettlement in Cyprus.

This being the legal framework within which the decision had to be taken, it was at the least reasonably open to the respondents to arrive at the sub judice decision. Hence the recourse is dismissed. The sub judice decision is confirmed pursuant to the provision of Article 146.4(a) of the Constitution. No order as to costs.

Recourse dismissed.

No order as to costs.