

1987 December 19

{A LOIZOU J }

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

- 1 AHMED JAMMOUL
- 2 Wafa TAKEYEDDIN,

*Applicants,*

v

THE REPUBLIC OF CYPRUS, THROUGH

- 1 THE MINISTRY OF INTERIOR,
- 2 THE MIGRATION OFFICER

*Respondents*

*(Case No 364/86)*

*Aliens — Refusal to renew an alien s working and residence permit — The breadth of the discretion of the Administration -- Review of case law — The Aliens and Immigration Law, Cap 105*

Applicant 1, came to Cyprus for the first time on the 15th October 1983 as a visitor under the name «Shaheen Ahmed Mohamed» and by using a Yemen passport which was issued at Beirut on the 20th May 1982, and was expiring on the 19th May, 1985 The place of birth of applicant 1 in the said passport was stated to be Aden Yemen

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In April 1985 applicant 1, submitted an application for the renewal of his temporary resident's and employment permit by producing a Syrian passport which was issued in Cyprus on 22 January 1985 in the name of Jammoul Ahmed Mohamed In this passport it was stated that he was born at Salmia, Syria in 1945

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On the 28th December 1984, applicant 2 applied for extension of her residence permit, and declared that she is an employee of the Ministry of Local Administration in Syria and she came to Cyprus in order to learn English She, also, declared that her husband is a journalist and is employed in Syria and that she would stay in Cyprus with her cousin Shabeen Ahmed Mohamed

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In September 1985 when she sought renewal of her residence permit, she declared that she would stay with her husband Jammoul Ahmed, who is applicant 1 and who had previously been described by her as her cousin

5 In view of all the above, namely the production of false particulars and the concealment of the true facts, the Immigration Officer, in the exercise of his discretion by his letter dated the 8th May 1986 informed the applicants that their application for residence and employment in Cyprus could not be approved

11 Counsel for the applicants contended that the use of two passports and two different names by applicant 1 is due to the destruction of his passport during the Israel invasion of Beirut in 1982, and that the contradictions are due to the fact that she cannot speak English well and she did not understand the questions or her answers were not understood

15 Held dismissing the recourse (1) Having regard to the reasons that gave rise to the sub judge decision and to the very wide discretionary powers vested in the respondents in matters affecting entry and stay of aliens in Cyprus and to the legal position as enunciated in the Case Law, the Court has come to the conclusion on the material before it that the sub judge decision was reasonably open to the respondents

20 (2) The Court is satisfied that the respondents acted throughout in good faith and their decision cannot be faulted on any ground Also as held in the *Voulpiotis v The Republic* (1974) 3 C L R 313 the making of false statements in the application for the permit constitutes an offence contrary to section 19(10)(a) of Cap 105 and this reason alone constitutes a further ground on  
25 which respondents were justified in reaching the sub judge decision

*Recourse dismissed*  
*No order as to costs*

Cases referred to

- Goulelis v The Republic (1970) 3 C L R 81,
- 30 *Voulpiotis v The Republic* (1974) 3 C L R 313,
- Karaliotas v The Republic* (1986) 3 C L R 501, and on appeal (1987) 3 C L R 1701,
- Amanda Marga Ltd v Republic* (1985) 3 C L R 2583,

**Recourse.**

35 Recourse against the refusal the respondents to renew the permit of applicant 1 to stay and work in Cyprus and to renew the permit of applicant 2 to stay in Cyprus as a visitor

*D. Zavallis*, for applicants.

*D Papadopoullou (Mrs )*, for respondents

*Cur adv vult*

A. LOIZOU J. read the following judgment The applicants in this recourse pray for

«(A) A declaration of the Court that the act and/or decision of the respondents dated 8th May, 1986, by means of which on the one hand they refused to renew the permit of applicant 1, to stay and work in Cyprus as a Director of the Offshore Company Manar Press and Publishing Agency Ltd and, on the other hand, they refused to renew the permit of applicant 2, to stay in Cyprus as a visitor and by means of which they call upon the applicants to leave Cyprus, is null and void and of no legal effect whatsoever and/or contrary to law

(B) A declaration of the Court declaring null and void and contrary to law and of no legal effect the above act and/or decision of the respondents

(C) A declaration of the Court not affirming the above act and/or decision of the respondents and acknowledging to the applicants the right of renewal of their permit to stay in Cyprus »

According to the opposition applicant 1, came to Cyprus for the first time on the 15th October 1983, as a visitor under the name «Shaheen Ahmed Mohamed» and by using a Yemen passport which was issued at Beirut on the 20th May 1982, and was expiring on the 19th May, 1985 The place of birth of applicant 1, in the said passport was stated to be Aden-Yemen Upon his arrival in Cyprus applicant 1, was granted a temporary visitor's permit until the 14th January 1984. On the 16th January 1984, applicant 1, submitted an application for the renewal of the temporary visitor's permit and on the 28th January 1984, he applied for an employment permit as a Director of the Offshore Company Manar Press and Publication Agency Ltd On the 4th February 1984, the respondents granted to applicant 1 a «temporary permit» valid until the 1st August 1984 to stay and work in Cyprus as Director of the above offshore Company In April 1985 applicant 1, submitted an application for the renewal of this temporary resident's and employment permit by producing a Syrian passport, which was issued in Cyprus on the 22nd January 1985, in the name of

Jammoul Ahmed Mohamed. In this passport it was stated that he was born at Salmia, Syria in 1945. On the 9th December 1985, applicant 1, submitted an application for renewal of his temporary resident's and employment in Cyprus permit.

- 5 Applicant 2, is a Syrian national and she came to Cyprus for the first time on the 29th September 1984 as a visitor together with her daughter Lina aged 8, and on arrival she was granted a temporary visitor's permit until the 28th December 1984. When on the 28th December 1984, she applied for extension of her residence permit, she declared that she is an employee of the Ministry of Local Administration in Syria and she came to Cyprus in order to learn English. She, also, declared that her husband is a journalist and is employed in Syria and that she would stay in Cyprus with her cousin Shaheen Ahmed Mohamed.
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- 15 In September 1985, when she sought renewal of her residence permit, she declared that she would stay with her husband Jammoul Ahmed, who is applicant 1, and who had previously been described by her as her cousin.

20 It is the contention of the respondents that in view of all the above, namely the production of false particulars and the concealment of the true facts, the Immigration Officer, in the exercise of his discretion, by his letter dated the 8th May, 1986, informed the applicants that their application for residence and employment in Cyprus could not be approved.

- 25 In reply to the above factual contention of the respondents learned counsel for the applicants in his written address contended, that the use of two passports and two different names by applicant 1, is due to the destruction of his passport during the Israeli invasion of Beirut in 1982. As he could not secure a new passport because the road to Syria was blocked by Israeli troops, he was issued a passport by the South Yemen Embassy in Beirut where Aden is stated to be his place of birth and his name is stated to be Ahmed Shaheen which is his journalist name by which he is known in Beirut. When he came to Cyprus he applied to the
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- 35 Syrian Embassy for the issue of a new passport because of the destruction of his previous one.

Regarding applicant 2, her contradictions are due to the fact that she cannot speak English well and she did not understand the questions or her answers were not understood. Regarding her

statement that she came to Cyprus to stay with her cousin, it is usual in the Arabic language to call the husband a cousin.

In *Goulelis v. The Republic* (1970) 3 C.L.R. 81, which inter alia, deals with the refusal of a further employment permit to the applicant, Triantafyllides J., as he then was, held that the respondent has wide discretionary powers under the relevant legislation - The Aliens and Immigration Law, Cap. 105. 5

In *Voulpioti v. The Republic* (1974) 3 C.L.R. 313, Malachtos J., after holding that a false statement in an application of an alien to remain in the Republic constitutes an offence contrary to section 19(1)(a) of the Aliens and Immigration Law, Cap. 105, proceeded to state that «it goes without saying that an application of an alien for a licence to remain in the Republic should always be rejected if the said alien makes a false statement or declaration in connection with the said application as in the present case.» 10 15

In *Karaliotas v. The Republic* (1986) 3 C.L.R. 501, (affirmed on appeal - vide R.A. 564, judgment delivered on the 23rd November 1987, still unreported)\*, - Triantafyllides P. reviewed the Law regarding the entry of aliens in Cyprus and said the following at p. 505. 20

«Article 14 of the Constitution provides that only citizens of the Republic cannot, under any circumstances, be banished or excluded from it; and Article 32 of the Constitution provides that the Republic is not precluded from regulating by law any matter relating to aliens in accordance with International Law. 25

In my opinion, section 10 of Cap. 105 is a statutory provision which is fully consistent with Articles 14 and 32 of the Constitution.

According to the relevant principles of International Law, 30 the reception of aliens by a State is a matter of discretion; and every State is by reason of its territorial supremacy competent to exclude aliens from its territory (see *Oppenheim's International Law, 8th ed., vol. 1, pp. 675, 676, para. 314 and Murgrove v. Chum Teong Toy* [1891] A.C. 272).» 35

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\* Reported in (1987) 3 C.L.R. 1701

In *Amanda Marga Ltd, v The Republic* (1985) 3 C L R 2583, which was a recourse against the refusal of the respondents to allow an alien to enter Cyprus and assume employment, Pikiş J, said the following at pp 2586-2587

5 «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. A distinguished jurist of international law depicts the right of the State to exclude aliens as absolute. In Cyprus a decision  
10 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 most confined to nationals or 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  
15 on the other hand to exclude an alien is not abridged by the fact that its exercise is subject to 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 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  
20 convention or bilateral treaty, has no right to enter the country. His only right is that an application to enter the country should be considered in good faith. Acknowledgement 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 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.»

35 See also the separate judgment of Pikiş J, on the *Karaliotas* case (supra), R A 564

Anastououlos Manesis in his text book *Constitutional Rights - Personal Liberties - 4th Edition* in dealing with the freedom of movement says at pp 134-135 that «the entry of Greek citizens  
40 cannot be prohibited because it is a right connected with

nationality. Regarding aliens, however, entry, movement, stay and settlement, in Greece there are in force various restrictions and increased control (Law 4310/1929) which are justified for reasons of public safety or order or health or more general national interest and which may even reach deportation».

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As it appears from the contents of the relevant file of the administration, which is an exhibit before me - see note 26- and such contents fully supplement the reasoning of the sub judge decision, the reasons that led to the sub judge decision are:

(a) The existence of two passports one of Yemen and one of Syria giving each a different place of birth. 10

(b) The change of name from Shaheen to Jammoul.

(c) The original statement of applicant 2, - who is the wife of applicant 1 - that in Cyprus she was staying with her cousin Shaheen Ahmed Mohamed and that her husband resides in Syria, whilst subsequently she declared that this cousin of hers was and is her husband. 15

(d) The employment of applicant 1, by a company which publishes a magazine which follows a policy on the Palestinian problem different than the one followed by Syria ... (and) the disputes between the Arabs have raised suspicion for his indulging in suspicious activities. 20

Having regard to the reasons that gave rise to the sub judge decision and to the very wide discretionary powers vested in the respondents in matters affecting entry and stay of aliens in Cyprus, and to the legal position as enunciated in the above Case Law, I have come to the conclusion on the material before me that the sub judge decision was reasonably open to the respondents. 25

I am further satisfied that the respondents acted throughout in good faith and their decision cannot be faulted on any ground. Also as held in the *Voulpiotis* case (supra), the making of false statements in the application for the permit constitutes an offence contrary to section 19(10)(a) of Cap. 105 and this reason alone constitutes a further ground on which respondents were justified in reaching the sub judge decision. 30 35

*Recourse dismissed.*