

1987 February 7

(KOURRIS, J)

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

AGLAIA HADJIGEORGIOU DEMETRIOU,

v

*Applicant,*

THE REPUBLIC OF CYPRUS, THROUGH  
THE DIRECTOR OF CUSTOMS AUTHORITIES AND/OR  
THROUGH THE MINISTRY OF FINANCE,

*Respondent*

(Case No 1070/85)

*Customs and Excise—Motor vehicles importation of, by Cypriots—Exemption from import duty—The Customs and Excise Duties Law, 18/78, s 11—Heading 19 of Item 01 of the Fourth Schedule of the said Law—Order 188/82 of the Council of Ministers—The necessary prerequisites for the enjoyment of the benefit thereunder—The notion of permanent settlement abroad*

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By means of this recourse the applicant challenges the validity of the decision, whereby her application for the duty free importation of a motor car was turned down on the ground that her stay abroad was not of a permanent, but of a temporary nature

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Counsel for the applicant contended that the relevant requirement of permanent settlement abroad was satisfied as the applicant stayed in Thessaloniki for 11 years, i.e. from April, 1973 till 23.6.84, when she returned to Cyprus, working in Thessaloniki as a travelling agent, whereas counsel for the respondent contended that her stay in Thessaloniki was of a temporary nature, as she stayed in Thessaloniki waiting for her husband to complete his studies

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Held, dismissing the recourse (1) Order 188/82 imposed three conditions for enjoyment of the benefit granted therein, namely permanent settlement abroad, continuous stay abroad for no less than 10 years and repatriation, i.e. re-settlement in Cyprus (*Ioannou v The Republic* (1986) 3 C.L.R. 1263 adopted)

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(2) In the light of the authorities relating to the notion of permanent settlement and on the facts of this case it was reasonably open for the respondent Director to reach the sub-judice decision

*Recourse dismissed with costs*

*Cases referred to*

*Razis v The Republic* (1979) 3 C L R 127,

*Rossides v The Republic* (1984) 3 C L R 1482,

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

*Mavronichis v The Republic* (1985) 3 C L R 2301, 5

*Constantinides v The Republic* (1986) 3 C L R 822,

*Ioannou v The Republic* (1986) 3 C L R 1263

**Recourse.**

Recourse against the refusal of the respondent to allow the applicant to import a motor vehicle free of duty as a repatriated Cypriot. 10

*M. Tsangarides for E. Efstathiou*, for the applicant.

*S. Georghiades, Senior Counsel of the Republic*, for the respondent.

*Cur. adv. vult.* 15

KOURRIS J. read the following judgment. By the present recourse the applicant seeks a declaration of the Court that the act and/or decision of the respondents to refuse to her to import a motor vehicle free of duty, in accordance with the provisions of sub-heading 19 of Item 0.1 of the Fourth Schedule to the Customs and Excise Duties Law (Law 18/78) is null and void and of no legal effect whatsoever. 20

On 22/12/1984 the applicant submitted an application to the Customs and Excise Department seeking relief under sub-heading 19 of Item 0.1 of the Fourth Schedule of Law 18/78, on the ground that having been a Cypriot, who, after permanent settlement abroad for a continuous period of at least ten years, returned to Cyprus in order to settle permanently. 25

The appropriate Authority, after examining all the material before it in relation to the applicant's application, decided that her case does not fall within the provisions of the Law and relevant regulations on the ground that her absence from Cyprus was of a temporary nature and did not constitute permanent settlement abroad and rejected the application of the applicant for the importation of her motor-car free of duty (See Appendix 6). 30 35

Hence the present recourse.

The matter is governed by the Excise Duties Law 18/78, s.11 and Order 188/82 published in the Third Supplement, Part II to the Official Gazette of the Republic of 11th June, 1982, under  
5 Not.17/83. The said Order, in so far as relevant, reads as follows:-

«Vehicles ..... imported by Cypriots who after permanent settlement abroad for a continuous period of at least 10 years, return and settle permanently in the Republic, provided that the importation is made within a reasonable time since their  
10 arrival according to the judgment of the Director.

The relief from import duty covers only one vehicle for every family.»

The point in issue is whether the applicant settled abroad permanently for a continuous period of at least 10 years before she  
15 returned to settle permanently in Cyprus.

The notion of permanent settlement abroad has been explained, inter alia, in the cases of *Razis v. The Republic* (1979) 3 C.L.R. 127 at p.135, *Rossides v. The Republic* (1984) 3 C.L.R. 1482 at p. 1486, *Matsas v. The Republic* (1985) 3 C.L.R. 54 at pp.  
20 58-62, *Mavronichis v. The Republic* (1985) 3 C.L.R. 2301, *Constantinides v. The Republic* (1986) 3 C.L.R. 822 and *Ioannou v. The Republic*, Recourse No.415/85, dated 9/7/86, yet unreported\*.

I adopt, with due respect what Pikis, J., said in the *Ioannou* case  
25 (supra) at p.4 which reads as follows:

«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
- 30 c) Repatriation i.e. re-settlement in Cyprus.»

Having dealt with the legal aspect of the case, I now propose to state in brief the salient facts of the case which are as follows:

The applicant went to Thessaloniki, in 1969 for studies and she graduated as a dental technician (οδοντοτεχνίτης) on 10th April,  
35 1973. On 26/5/73 she went to Philadelphia, U.S.A., who having stayed for six months working as a dental technician for purposes

\*Reported in (1986) 3 C.L.R. 1263.

of obtaining experience, she returned to Thessaloniki on 20/1/1974.

It appears that she got engaged to be married and in the summer of 1974 she visited Cyprus together with her fiance for holidays and she returned to Thessaloniki. She again returned to Cyprus on 4/3/80 because she became pregnant and had a problematic pregnancy and she wanted to be near her parents. On 10/8/80 she gave birth to a male child which she christened in Cyprus in the beginning of February, 1981 whereupon she went back to Thessaloniki where her husband was studying to become a doctor at the University of Thessaloniki. Her husband graduated from the university in 1980 and he stayed for another period of three years—from 1981 to 1984—to specialize in a branch of medicine.

The applicant returned to Cyprus together with her husband on 23/6/84 to settle permanently and it is her allegation that from April, 1973 till her return to Cyprus on 23/6/84 she was working as a travelling agent in Thessaloniki.

Counsel for the applicant contended that the applicant has satisfied the requirements of the law because she stayed in Thessaloniki for 11 years working as a travelling agent i.e. from April, 1973 till 23/6/84 whereas counsel for the respondent contended that the applicant failed to satisfy the provisions of the Order in question because her stay abroad was not of permanent but of a temporary nature, because she stayed in Thessaloniki waiting for her husband to complete his studies and when her husband completed his studies and his specialization they returned to Cyprus.

The question which poses for determination is whether in the light of the aforesaid cases and on the facts hereinbefore set out it was reasonably open for the Director of the Customs and Excise Department to reach the sub judice decision.

In my judgment the answer is affirmative because the proper inference to be drawn from the facts is that the stay of the applicant in Thessaloniki was not in the sense of permanent settlement but of a temporary nature because she was waiting for her husband to complete his studies in the University of Thessaloniki and his specialization in a hospital and then to return to Cyprus.

In the premises the sub judice decision is affirmed and the recourse is hereby dismissed. In exercising my discretion I order the

applicant to pay costs. Costs to be assessed by the Registrar.

*Recourse dismissed with  
costs against the applicant.*