1988 July 27

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

DEMETRIS LAKATAMITIS,

Applicant,

v.

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

Respondents.

(Case No. 301/87).

Customs and Excise Duties—Motor vehicles, duty free importation of by Cypriots—Order 188/82 of the Council of Ministers—"Permanent settlement"—Visa of foreign state allowing applicant's permanent settlement therein for an indefinite period—For a certain period applicant was studying and working at the same time—Sub judice decision rejecting application for duty free importation of a car on ground that the settlement abroad included a period of studies annulled.

Words and phrases: "Permanent settlement" in Order 188/82 of the Council of Ministers.

The facts of this case sufficiently appear in the judgment of the Court. The Court distinguished this case from the decisions in *Matsas v. The Republic* (1985) 3 C.L.R. 54 and Rossides v. The Republic (1984) 3 C.L.R. 1482 on the ground that in Matsas and Rossides the visa granted to the respective applicant was as a visitor for purposes of studies.

Sub judice annulled.
No order as to costs.

Cases referred to:

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

Rossides v. The Republic (1984) 3 C.L.R. 1482;

Michael v. The Republic (1986) 3 C.L.R. 2067;

Kourtellas v. The Minister of Finance (1986) 3 C.L.R. 2079.

Recourse.

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

A.S. Angelides, for the applicant.

A. Vassiliades, for the respondent.

Cur. adv. vult.

SAVVIDES J. read the following judgment. The applicant by the present recourse challenges the decision of the respondent Director of Customs and Excise not to accede to applicant's application to import a motor-vehicle free of duty under the provisions of sub-heading 19 of item 0.1 of the Fourth Schedule to the Customs and Excise Duties Law, 1978 which was communicated to applicant by letters dated 16th February, 1987 and 6th March, 1987.

Applicant comes from Famagusta, Cyprus and on 4th July , 1976 he left with his family for England for permanent settlement abroad. His mother is a British subject and holder of a British passport. In June, 1976 he obtained a visa for settlement in England, accompanying his mother as it appears on the visa issued by the British High Commission in Cyprus and when he arrived in England on 4th July, 1976 he was given leave to enter U.K. for an indefinite period.

According to the affidavit of the applicant the object of his immigration to England was his permanent settlement there. He took employment in England and with a study grant which was given

to him he was at the same time studying. He was paying his national insurance during the period of his employment and he acquired the British nationality.

The respondent by their opposition admitted that the applicant during the period of his studies was working periodically in England and after he completed his studies and became an architect he was working on a permanent basis. He returned to Cyprus on the 21st August, 1986 and on the 15th October, 1986 he submitted an application for the importation of a Mercedes 250D car duty-free which he had already ordered on the 22nd May, 1986.

On the 16th February, 1987 the respondents informed the applicant that it was not found possible to accede to his application. The contents of such letter read as follows:

"I refer to the above subject and regret to inform you that it was not found possible to accede to your request on the grounds that your last ten years' stay in the U.K. include a period of studies which is not accepted as permanent settlement abroad."

Applicant through his advocate addressed a request to the respondents for re-examination of the case after setting out the facts of the case and all relevant documents and also a certificate from the Minister of Defence dated 22nd December, 1976 to the effect that the applicant was exempted from military service on the ground of permanent residence abroad. On the 6th March, 1987, respondents replied that the decision and grounds already communicated in the letter dated 16th February, 1987 could not be reconsidered.

The question which poses for consideration is whether the applicant in the present case satisfied the provisions of the relevant order and particularly ten years continuous permanent residence abroad and repatriation with intention to permanently settle in Cyprus.

Cousel for respondents in his address sought to rely on the decisions of *Matsas* v. *The Republic* (1985) 3 C.L.R. 54 and *Rossides v.The Republic* (1984) 3 C.L.R. 1482 to the effect that residence in a certain country as a student for educational purposes however long does not amount to permanent settlement abroad.

Counsel for applicant, on the other hand, submitted that *Matsas* and *Rossides* (supra) should be distinguished from the present case in that in both the aforesaid cases the permit granted to the applicants was of a temporary nature for studies and not as in the present case for permanent settlement as it appears from the visa of entry on the passport of the applicant. That in all the circumstances the respondens misinterpreted and misconceived the dicta in the two cases and misapplied them to the facts of the present case.

It is an undisputed fact in the present case that the applicant left Cyprus in July, 1976 with intention of permanently settling in the U.K. This fact is supported by the entry in his passport in which accordig to the visa issued to him by the British Comissioner his entry in England was for permanent settlement and that he was allowed to reside in England indefinitely. This appears also in the affidavit of the Applicant on the contents of which he was not asked to be cross-examined. Whilst in England for a certain period he was both partly employed and studying at the same time under a grant from the British Government. When he completed his studies he remained in England and was regularly employed there till the time of his return to Cyprus in 1986.

What amounts to permanent settlement abroad has been decided in the cases of *Matsas v. The Republic* (supra), *Michael v. The Republic* (1986) 3 C.L.R. 2067 and *Kourtellas v. The Minister of Finance* (1986) 3 C.L.R. 2079. In *Matsas* (supra) A. Loizou, J., as he then was, had this to say at p.61:

> "To my mind permanent settlement carries with it the notion of a real or permanent home and should be distinguished from the notion of ordinary residence".

In *Michael* (supra) Stylianides, J. said the following at p. 2075:

"'Permanent establishment' is not synonymous to 'residence'. Residence alone is not sufficient. Permanent establishment indicates a quality of residence rather than its length. The duration of the residence, i.e. regular physical presence in a place, is only one of a number of relevant factors. An element of intention to reside and establish is required. Evidence of intention may be important where the period or periods of residence are such as to point to both directions. It is not possible for a person to be permanently settled in the Republic and in another country. The intention of permanently settling may be gathered from the conduct and action consistent with such settlement. Though permanent settlement cannot be assimilated to domicile, it is akin to it and pronouncemets on domicile are very relevant and helpful."

The conclusion of intention to reside and establish in the present case appears both in the relevant entries in applicant's passport as already mentioned and also in the facts stated by hin in his affidavit. The present case is distinguishable from the cases in which it was found that residence abroad for the purposes of studies does not amount to permanent settlement abroad because in all other cases the entry of the persons concerned in the foreign country was made on visa mentioning that the object of the entry was as a visitor for purposes of studies and not for permanent settlement as in the present case.

In the present case having given due consideration to all material before me I have come to the conclusion that the decision of the respondents was wrong and was based on a misinterpretation of other cases on the matter in which the entry of the applicants was of a temporary nature for purposes of studies and not for permanent settlement as in the present case.

For the aforesaid reasons the sub judice decision has to be an-

nulled and is hereby annulled but in the circumstances I make no order as to costs.

Sub judice decision annulled.
No order as to costs.