

1981 April 7

[TRIANTAFYLLIDES, P., MALACHTOS, SAVVIDES, JJ.]

IOANNIS SERAPHIM,

Appellant,

v.

THE POLICE,

Respondents.

(*Criminal Appeal No. 4193*).

5 *Aliens and Immigration Regulations, 1972—Employing an alien without
informing the Migration Officer—Regulation 38—Employment
may be inferred from facts proved at the trial—Whether offence
committed only when there exists a contract of employment on
remuneration—Regulation 14(3) not relevant to the construction
of regulation 38.*

10 This was an appeal against the conviction of the appellant
of the offence of having taken into his employment at his restau-
rant in Larnaca an alien, namely a German Lady, without infor-
15 ming the Migration Officer, contrary to regulation 38 of the Aliens
and Immigration Regulations, 1972. Two Police Constables,
whose testimony was believed by the trial Judge, saw the German
lady, on October 27, 1980, sitting at the cash register in the
restaurant of appellant and keeping notes and, also, on one
occasion serving food to clients of the restaurant.

Counsel for the appellant contended:

- 20 (a) That the conviction was unreasonable having regard
to the evidence adduced.
- (b) That the offence under regulation 38 is committed
only when there exists a contract providing for employ-
ment on remuneration and that no such contract
was proved to exist in the present case.

25 *Held*, (1) that the taking by someone into his employment
of another person may be inferred from facts which are proved
at the trial; that in this case it was reasonably open to the trial

Judge to find beyond reasonable doubt that the lady concerned had been taken by the appellant into his employment; accordingly contention (a) should fail.

(2) That there is nothing in regulation 38 which could lead to its interpretation as contended by counsel for the appellant; that this regulation is framed in such a way as to render an offence the taking into employment of an alien without proper notification to the appropriate authority even if the employment is without a contract for this purpose and, even, also, without remuneration; accordingly contention (b) should, also, fail.

Held, further, that reference to regulation 14(3) of the same Regulations, in which there is found the expression "on remuneration or not", is really irrelevant to the construction of regulation 38, both because regulation 14(3) relates to an altogether different matter and because regulation 38 is quite clearly worded.

Appeal dismissed.

Appeal against conviction.

Appeal against conviction and sentence by Ioannis Seraphim who was convicted on the 9th December, 1980 at the District Court of Larnaca (Criminal Case No. 5874/80) on one count of the offence of having taken in his employment an alien without informing the Migration Officer, contrary to regulation 38 of the Aliens and Immigration Regulations, 1972 and was sentenced by Eliades, Ag. D.J. to pay a fine of £20.

G. Nicolaidis with *M. Nicolatos*, for the appellant.

A. M. Angelides, Senior Counsel of the Republic, for the respondents.

TRIANAFYLLIDES P. gave the following judgment of the Court. The appellant was convicted, by the District Court of Larnaca, under regulation 38 of the Aliens and Immigration Regulations, 1972 (see No. 242 in the Third Supplement, Part I, to the Official Gazette of the Republic of December 22, 1972) of the offence of having taken into his employment at his restaurant in Larnaca an alien, namely a German lady, without informing accordingly the Migration Officer. He was sentenced to pay a fine of £20.

He has appealed against his conviction.

The first ground on which his appeal was argued is that,

having regard to the evidence adduced, the conviction is unreasonable.

Two police constables, whose testimony was believed by the trial Judge, said that on October 27, 1980, they saw the said
5 German lady sitting at the cash register in the restaurant of the appellant and keeping notes and that, also, on one occasion she was serving food to clients of the restaurant.

The appellant, when he was charged with the commission of the offence in question, denied completely that this lady
10 had been ever taken into his employment and said that on the aforesaid date she was at his restaurant but she was not working. He went on to say, however, that previously she had voluntarily worked there with her fiancé, without any remuneration.

The trial Judge did not believe the appellant and a witness
15 who was called by him, and who testified that the said lady was not employed or working at the material time in the restaurant of the appellant.

The taking by someone into his employment of another person may be inferred from facts which are proved at the trial and in
20 this case we are of the view that it was reasonably open to the trial Judge to find beyond reasonable doubt that the lady concerned had been taken by the appellant into his employment.

The second ground of appeal is that the offence under the aforesaid regulation 38 is committed only when there
25 exists a contract providing for employment on remuneration and that no such contract was proved to exist in the present case.

We cannot find anything in regulation 38 which could lead to its interpretation as contended by counsel for the appellant.
30 This regulation is framed in such a way as to render an offence the taking into employment of an alien without proper notification to the appropriate authority, even if the employment is without a contract for this purpose and, even, also, without remuneration. We think that reference to regulation 14(3)
35 of the same Regulations, in which there is found the expression "on remuneration or not", is really irrelevant to the construction

of regulation 38, both because regulation 14(3) relates to an altogether different matter and because regulation 38 is quite clearly worded that we cannot read into it the provision that an offence under it is committed only if there exists a contract of employment and if such employment is on remuneration. 5

For all the foregoing reasons this appeal is dismissed.

Appeal dismissed.