

1985 December 21

[KOURRIS, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

ABDOU DABAS,

Applicant.

v.

- THE REPUBLIC OF CYPRUS, THROUGH
- 1. THE MINISTER OF INTERIOR.
- 2. THE DIRECTOR OF THE DEPARTMENT
OF IMMIGRATION,

Respondents.

(Case No. 866/85).

The Aliens and Immigration Law, Cap. 105 as amended—Ss. 14 and 14A—S. 14A applicable when the alien is lawfully residing in Cyprus.

*Administrative Law—Administrative Act—Reasoning of—Sub
judice decision totally unreasoned—Annulled.*

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*Recourse—Practice—Failure of respondents to file opposition
and appear before the Court—Course to be followed.*

The applicant, who is of a Palestinian origin and a stateless person, impugns by this recourse the refusal of the respondents to renew the applicant's residence and employment permits in Cyprus and also the order for his deportation from Cyprus.

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The applicant's last residence and employment permits were issued by the respondents on 24.8.84 and were valid till the 24.8.1985. The applicant applied for the renewal of his said permits long before their expiration.

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The respondents took an unusual course to inform the applicant of their decision. Instead of notifying him in writing, they sent a police officer of the Immigration Branch

who informed the applicant of the respondents' refusal to renew his permits and of their decision to deport him. The respondents did not give any reasons for their said decisions. In point of fact no deportation order has been served on the applicant until the present day.

The respondents although duly served with the recourse failed to appear and the Court proceeded and heard the recourse in their absence.

Held, annulling the sub judice decisions:

(1) The provisions of s. 14A* of the Aliens and Immigration Law, Cap. 105, invoked by applicant's counsel, are not applicable to the present case. The provisions of the section apply when the alien is lawfully residing in Cyprus, whereas in the present case and since the appropriate authorities refused to renew the residence and working permits of the applicant, the applicant stayed in Cyprus unlawfully. In refusing to renew the said permits the authorities acted under s. 14 of the Law (Cap. 105).

(2) The sub judice decisions are totally unreasoned and as such liable to be set aside.

*Sub judice decisions annulled.
Costs in favour of applicant.*

Cases referred to:

Lambrou v. The Republic (1970) 3 C.L.R. 75;

Neophytou v. The Republic (1977) 3 C.L.R. 140.

Recourse.

Recourse against the refusal of the respondents to grant applicant a residence and employment permit in Cyprus and against an order for applicant's deportation from Cyprus.

E. Lemonaris, for the applicant.

No appearance for the respondents.

Cur. adv. vult.

* This section is quoted at p 2353 post

KOURRIS J. read the following judgment. This is a recourse against the refusal of the respondents to grant to the applicant a residence and employment permit in Cyprus after the 24th August, 1985 and against an order for his deportation from Cyprus.

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The applicant in this case complains against the refusal of the respondents by means of which they refused to renew the residence and working permit of the applicant and also against an order for his deportation from Cyprus pursuant to the Aliens and Immigration Law, Cap. 105.

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The legal grounds on which this recourse is based are the following:-

a) The decisions of the respondents are contrary to the provisions of s. 10 and 14A of the Aliens and Immigration Law, Cap. 105 (as amended by s. 2 of Law 54/76) and in abuse of powers,

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b) Respondents exercised their discretion in a defective and/or wrong manner and have acted contrary to the provisions of ss. 10 and 14A of Law, Cap. 105 and in abuse of powers,

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c) The decisions of the respondents are based on misconception of material facts,

d) The decisions of the respondents are not duly reasoned and

e) The decisions of the respondents are contrary to the provisions of the Aliens and Immigration Regulations 1972.

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The facts of this case, as they appear from the evidence of Duhia Al Zuhbi and the evidence of the applicant Abdou Dabas, shortly, are as follows:-

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The applicant is of Palestinian origin and a stateless person, married with two children aged seven and six respectively who now attend an Arabic school in Nicosia. He came to Cyprus with his family in February, 1983 and was employed as the Manager and Chief Executive Officer of Al Zuhbi Trading Limited which is an off-shore com-

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pany registered in Cyprus under the relevant laws. The last residence and employment permit authorising his stay in Cyprus, was issued by the respondents on 24.8.1984 and was valid till the 24th August, 1985. He applied to the respondents for the renewal of his permits long before their expiration.

The respondents took an unusual course to inform the applicant of their decision. Instead of notifying him in writing, they sent a police officer of the Immigration Branch on 30th September, 1985 to the house of the applicant and informed him that the respondents turned down his application for the renewal of his residence and employment permits. The said police officer also informed the applicant that the respondents decided his deportation and instructed him to make preparations to leave the country at the first available opportunity. The respondents have not given any reasons for their decisions and further, declined to give him reasons for their decision to order his deportation from the Republic. In point of fact no deportation order has been served on him in writing until the present day.

Duhia Al Zuhbi who is the main shareholder and Managing Director of Al Zuhbi Trading Limited, stated that the employment of the applicant is necessary for the company and his services are indispensable because he speaks Arabic and English and he runs the company.

The applicant filed an application by summons on 8th October, 1985 praying for an order suspending the decision of the respondents to deport the applicant from the Republic pending the hearing and final determination of the recourse which was fixed on the 12th October, 1985. On that day a certain Charalambos Pavlides, in charge of the Aliens and Immigration Office of the Immigration Department, appeared and opposed the application and applied for ten days' time to file the opposition and the hearing of the application was fixed on 26.10.85 but on that date there has been no appearance by the respondents and no opposition has been filed whereupon the Court adjourned the hearing of the application to 15.11.85 with directions the Registrar to notify the respondents of the new date of the hearing.

Although the respondents have been duly notified, they failed to appear and the provisional order became absolute until the determination of the recourse. Likewise, the respondents although duly served with the recourse, they failed to appear for reasons best known to them and the Court proceeded and heard the recourse in their absence. 5

I take the view that it was the duty of the respondents to appear and place before the Court all the material in their possession to enable the Court to reach a decision. I do not know if they flouted the Court intentionally or not. 10

I proceeded to hear this recourse in the absence of the respondents in view of the decision in the case of *Andreas Lambrou v. The Republic* (1970) 3 C.L.R. 75 where Triantafyllides, J., as he then was, said the following at p. 79:-

“A recourse under a jurisdiction such as that provided for under Article 146 of the Constitution is made, in effect, against the act or decision which is its subject-matter; it is not made as against any party, as such (see, also, *Cyprus Transport Co. Ltd., and Another (No. 1) and The Republic* (1969) 3 C.L.R. 501). It follows from this premise that absence of any party need not prevent the Court from examining the validity of the subject-matter of a recourse (see Tsatsos on the Recourse for Annulment, 2nd edition, p. 238)”. 15 20

Again, Triantafyllides, J., as he then was, said at p. 80 as follows:- 25

“As a matter of fact the whole conduct of the respondent in this matter, and especially the failure to file an Opposition and defend this case so as to put before the Court all relevant material, is an element which I can duly take into account in annulling the sub judice decision; this view is, I think in accordance with the spirit of the decisions of the French Council of State in the cases of *Barel* (on the 28th May, 1954) and *Coulon* (on the 11th March 1955)”. 30 35

This course was followed in the case of *Costakis Neophytou v. The Republic* (1977) 3 C.L.R. 140, decided by the same Judge.

Counsel for the applicant relied mainly on the provisions of s. 14A of Cap. 105 which reads as follows:-

5 «Ανεξαρτήτως παντός διαλαμβανομένου εν τω άρθρω 14 δεν διατάσσεται η απέλασις αλλοδαπών εργαζομένων, οίτινες διαμένουν νομίμως επί του εδάφους της Δημοκρατίας, ειμή μόνον εάν καταστούν επικίνδυνοι δια την ασφάλειαν του κράτους ή παραβλάπτουν το δημόσιον συμφέρον ή παραβαίνουν τα χρηστά ήθη».

In English this section reads as follows:-

10 "S. 14A. Irrespective of everything set out in s. 14, the deportation of aliens working in Cyprus lawfully residing in the territory of the Republic, is not ordered unless they became dangerous for the security of the State or injure public interest or public morals".

15 Counsel argued that on the material before the Court, the applicant did not contravene s. 14A of the said law and consequently the decision of the respondents is contrary to the provisions of the Aliens and Immigration Law, Cap. 20 105 and more particularly, contrary to the provisions of s. 14A and in doing so they acted in abuse of their powers.

I do not think that the provisions of s. 14A are applicable in the present case. I hold the view that the provisions of s. 14A apply where the alien is lawfully residing in Cyprus. In the present case since the appropriate authorities 25 refused to renew the working and residence permits of the applicant, the applicant stayed in Cyprus unlawfully and consequently the provisions of s. 14A do not apply. It is apparent from the facts of this case that the applicant's working and residence permits had expired on 30 24.8.1985 and the authorities refused a further employment and working permit to the applicant.

To my mind the authorities in refusing to renew the residence and working permits of the applicant acted under the provisions of s. 14 of the law.

35 Bearing in mind the principles laid down by the aforesaid cases and the facts of the present case and not having before me even an opposition to the present recourse and in the absence of the records of the Immigration Authorities

I cannot but treat the decision as totally unreasoned and as such liable to be set aside.

The decision of the respondent, challenged by this recourse, is therefore, declared to be null and void and of no effect whatsoever. 5

In exercising my discretion I order the respondents to pay to the applicant costs. Costs to be assessed by the Registrar.

*Sub judice decision annulled.
Respondents to pay applicant's costs.* 10