

1986 November 28

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

PHOTIS LEONIDHA,

Applicant,

v.

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

Respondents.

(Case No. 422/85).

*Customs and Excise Duties—Motor vehicles, importation of
by Cypriots—Exemption from import duty—The Customs
and Excise Duties Laws 1978-1984 (Laws 18/78 - 15/84),
sub heading 19 of item 01 of the Fourth Schedule and
the Order of the Council of Ministers 188/82—“Perma- 5
nent settlement abroad”—Notion of—It excludes residence
abroad for purposes of studies.*

The applicant left Cyprus in autumn 1969 for studies in
Greece. According to his version, as from autumn 1973,
due to his repeated failures in the examinations, he de- 10
cided to settle permanently in Athens and secured a job
at the Organisation for Telecommunications of Greece,
where he was employed regularly till 1977 and, there-
after, he was working with various employers until 1984.
On 21.4.84 he returned to Cyprus with the intention of 15
permanently settling here.

On 12.9.84 the applicant submitted an application for
the duty free importation of a motor car. The application
was turned down on the ground that applicant's stay
abroad before 1975 was of a temporary nature for studies 20

and, therefore, applicant had not completed 10 years' permanent settlement abroad

The refusal was based on the following facts, emanating from documents produced by the applicant, namely that the applicant in 1973-1974 was registered as a third year student and in 1975 a student's allowance was granted to him by the Social Insurance Services of Greece. The applicant did not adduce any evidence in support of his aforesaid contentions

Held, dismissing the recourse. (1) The years spent abroad for studies do not satisfy the requirement of "permanent settlement abroad" in Order 188/82 of the Council of Ministers

(2) The burden was on the applicant to satisfy the respondents that for a continuous period of ten years he had his permanent settlement abroad to the exclusion of any period during which he was a student

(3) In the light of the material before the Court the conclusion is that the applicant did not satisfy the aforesaid requirement

Recourse dismissed
No order as to costs

Cases referred to

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

Recourse

Recourse against the refusal of the respondents to authorise the importation of a car duty-free as a repatriated Cyprus.

E. Efsthathiou, for the applicant

D. Papadopoulou (Mrs) for the respondents

Cur adv vult

SAVVIDES J. read the following judgment. The applicant, by the present recourse, challenges the refusal of the respondents to authorise the importation of a car, duty-free, under sub-heading 19 of Item 01 of the Fourth Schedule to the Customs and Excise Duties Laws, 1978 - 1984, (Laws 18/78 - 15/84). It is the contention of the applicant that he was entitled to the importation of a duty-free car, as he had been permanently residing abroad for a continuous period of more than 10 years.

The applicant who was the holder of a Cyprus passport left Cyprus in autumn 1969 for the purpose of studies and, in particular, law studies, at the University of Athens, where he was registered as a student on the 6th of December, 1969. He continued to be a regular student till 1973 when, according to his version, as from autumn 1973, due to his repeated failures in the examinations, he decided to settle permanently in Athens, and, for such purpose, he tried to secure a job. According to the facts set out in the written address of his counsel, as from November, 1973, he gave up studies and decided to reside permanently in Greece and work there. For this purpose he secured a job at the Organisation for Telecommunications of Greece, where he was employed regularly till 1977 and, thereafter he was working with various employers until 1984. On the 21st April, 1984, the applicant returned to Cyprus with the intention of permanently settling here.

On the 12th September, 1984 he submitted an application for permission to import a car free of duty under the provisions of sub-heading 19 of Item 01 of the Fourth Schedule to the Customs and Excise Duties Laws. The respondent Director of the Department of Customs and Excise, by letter dated the 28th January, 1985, informed the applicant that his application had been rejected. 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 because your stay abroad before 1975 was of a temporary nature for studies and, therefore,

your permanent settlement abroad was not for a period of at least 10 years since you have returned on the 21st April, 1984.”

5 The applicant by letter dated the 5th February, 1985 requested the Director of Customs and Excise to reconsider his position to which the Director replied by letter dated the 14th February, 1985, as follows:

10 “I refer to your letter dated the 5th February, 1985 and I regret to inform you that it has not become possible for me to change my decision which was communicated to you by my letter No. C. R.01. 19/2269 dated 28 January, 1985.

15 I would advise you to produce a certificate from the University of Athens indicating the years during which you attended as a student and the periodical examinations which you attended in the whole duration of your studies in order to be able to re-examine your application.”

20 As a result, the applicant filed the present recourse, challenging the decision of the Director of Customs which was communicated to him on the 28th January, 1985.

25 The facts, as contended by the respondents, and on which the refusal of the Director of Customs was based, were that from the documents produced by the applicant at the request of the respondents, the applicant in 1973-1974 was registered as a third-year student and in 1975 a student's allowance was granted to him by the Social Insurance Services of Greece. Also, that although 30 he has been requested to produce a certificate from the University of Athens that his studies were discontinued and that he did not participate in any examinations during the years 1974 - 1975, he failed to produce it.

35 Counsel for the applicant by his written address expounded on the facts of the case and submitted that since the 1st of November, 1973 the applicant was permanently residing in Greece, not for the purposes of studies, but for the purposes of employment and the fact that on the

22nd November, 1975 a special grant was given to him as a student by the Social Insurance Services of Greece, is not a matter which the Director should have taken into consideration as interrupting his permanent residence in Greece.

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It was his final submission that the applicant had been permanently residing abroad for over 11 years and, therefore, under the provisions of the Fourth Schedule to the Customs and Excise Duties Laws, and, in particular, sub-heading 19 of Item 01, he was entitled to a duty-free car and that the Director in refusing to allow his application, has wrongly exercised his discretion and has acted in violation of the law.

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Counsel for the respondents by her written address expounded on the facts of the case and in particular on various documents submitted by the applicant. One of such documents was a photocopy of the social insurance contributions of the applicant which indicate that for a period as from the 1st November, 1973 till 31st October, 1975 he was casually employed by the Telecommunications Organisation of Greece.

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It also appears from the said document that on the 22nd November, 1975, he was granted, out of the Social Insurance Fund, a student's allowance for working during the summer months of 1975. Moreover, from the particulars given by him in his application form for the importation of the sub judice car, it seems that the applicant had worked during the period from 1.11.73 - 15.10. 1983 for an average of two to three months a year.

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Another document to which reference was made by counsel for the respondents is a certificate from the University of Athens dated the 3rd April, 1974. The contents of which read as follows:

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"From what emanates from an inquiry carried out in the relevant books and on the affirmation of the secretary of the school of Law who carried out the inquiry Mr. Leonidou Pandeli Photios of Limassol was registered in the first year students of the

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School of Law (Law Section), on the 6th December, 1969, under Serial No. 7234 for the University year 1969 - 1970 and he is now a third year student for the University year 1973 - 1974. The cost of his maintenance in Greece amounts to 5,000 Drachmas monthly.”

The applicant did not give evidence in person nor did he adduce any other evidence in support of his contentions that he was permanently employed in Greece and that in fact he discontinued his studies in 1973, as alleged by him.

Before proceeding to deal with the substance of the case, I shall make a brief reference to the relevant orders relating to the importation of duty-free cars by repatriated Cypriots after a permanent settlement abroad for a period of at least ten years.

The order of the Council of Ministers which was published in the official Gazette of the Republic of the 10th July, 1981 under Notification 151, provides under Item 01 sub-heading 19, that motor-vehicles of Tariff Headings 87.02.19 imported by Cypriots who, after permanent settlement abroad (κατόνιν μόνιμου ἐγκαταστάσεως εἰς τὸ ἐξωτερικόν) for a continuous period of at least 10 years, return to take up permanent residence in Cyprus, are exempted from import duty, provided that -

(a) such motor vehicles were in their possession for a period of not less than one year, and

(b) only one motor vehicle for each family could be allowed duty-free.

The above order was repealed and substituted by a new order of the Council of Ministers published in the official Gazette of the Republic, Supplement No. III of the 11th June, 1982, under Notification No. 188. Its scope was enlarged by obliterating the first condition of the previous order and extending its application to new cases and, also, by the addition of the words “provided the importation takes place within a reasonable period of time from their arrival to the discretion of the Director”. The following proviso was also included in the new order:

"It is further provided that the Minister of Finance is empowered to grant relief from import duty to Cypriots repatriated before 1.1.1982 who do not satisfy the above conditions."

The question which poses for consideration in the present case, is whether the applicant at the material time when he returned to take permanent residence in Cyprus, had satisfied the condition of a continuous permanent settlement abroad for a period of at least ten years, as provided under Notification 188.

The question as to whether the years spent by a Cypriot as a student abroad satisfy the requirement of permanent settlement abroad has been considered in a number of cases of this Court where it was held that the years spent abroad for studies do not satisfy the requirement of "permanent settlement abroad" which is a prerequisite for relief from import duty of motor vehicles. (See, *Rossides v. Republic* (1984) 3 C.L.R. 1482, *Matsas v. The Republic* (1985) 3 C.L.R. 54, *Mavronichis v. Republic* (1985) 3 C.L.R. 2301).

Counsel for the applicant, very rightly, did not seek to rely on the period during which the applicant was, according to his allegation, a student, but tried to base his case on the contention that the applicant had completed 10 years of permanent settlement abroad before he returned to take permanent residence in Cyprus.

The contention of the applicant that he permanently discontinued his studies in November, 1973 and took up permanent employment in Greece with the intention to settle there, has not been substantiated by any evidence to that effect. On the contrary, at it emanates from the various documents which were submitted by him to the appropriate authorities, the following facts have been established:

(a) For the academic year 1973 - 1974, which normally ends in June, he was a third-year student of the University of Athens. Such certificate is an official document issued by the secretariat of the University, duly stamped and authenticated by the secretary of the Law

School of the University after an inquiry carried out by him from the records of the University.

5 I cannot accept the allegation of counsel on behalf of the applicant that such certificate was applied for by the applicant for the purpose of exchange facilities to which he would not have otherwise been entitled. The least I should say about such contention is that it is unfounded and unacceptable.

10 (b) The other document is again an official document issued by the Social Insurance Services of Greece to the effect that the applicant in the 22nd November, 1975 collected a sum of money as a student's allowance for work during the summer months.

15 The burden in this case was upon the applicant to satisfy the respondents that for a continuous period of ten years he had his permanent settlement abroad to the exclusion of any period during which he was a student.

20 In the light of the material before me and my findings as above, I have come to the conclusion that the applicant does not satisfy the requirement under the order of "a continuous period of at least 10 years" abroad. It was, therefore, reasonably open for the Director of the Department of Customs and Excise, to reject the applicant's application on this ground.

25 In the result, this recourse is hereby dismissed and it is with great reluctance that I make no order for costs against the applicant.

*Recourse dismissed.
No order as to costs.*