

1986 April 4

[DEMETRIADES, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

1. AFNI ZAKARIA NAVIGATION CO. LTD.
2. MARWAN ZAKARIA,
3. ISAK AL-AFNI,

Applicants.

v.

- THE REPUBLIC OF CYPRUS, THROUGH
1. THE MINISTRY OF INTERIOR,
 2. THE MIGRATION OFFICER,

Respondents.

(Case No. 672/84).

Aliens—Refusal to grant permit for temporary stay and employment in Cyprus—Warning, but no deportation order, that applicants 2 and 3 should leave Cyprus—Application for provisional order restraining respondents from deporting applicant 2—It cannot be granted, for, if it does, it could amount to granting extension of applicant's temporary stay in Cyprus.

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Provisional order: See under Aliens.

Offshore companies—The Circular dated 10.3.83 made by the Central Bank.

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Applicant 1 is an offshore company. Applicants 2 and 3 are of Syrian Origin, hold Syrian passports and are directors of the Company. By letter dated 17.11.84 the respondents informed the applicants that their application for temporary stay and employment in Cyprus had not been approved and that they had to make the necessary arrangements to leave Cyprus at once.

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As a result the present recourse was filed. In addition

applicants 2 and 3 filed an application for a provisional order restraining the respondents from deporting them from Cyprus, pending the determination of the recourse. As applicant 3 left Cyprus before the hearing of the application, the hearing of the application was limited to applicant 2. 5

Held, dismissing the application, that, as the letter dated 17.11.84 contained only a warning that applicant 2 should leave Cyprus and as the deportation of the applicant has not been as yet decided administratively by the respondents, the Court cannot grant the order applied for, because, if it grants such order, it would in effect be granting applicant 2 an extension of his temporary stay in Cyprus, thus acting as an organ of the Administration. If, of course, a deportation order is issued the applicant may apply for a provisional order suspending its effect. 10 15

Application dismissed.
No order as to costs.

Cases referred to:

Goulelis v. The Republic (1969) 3 C.L.R. 583. 20

Application for a provisional order.

Application by applicant No. 2 for a provisional order restraining the respondents from deporting him or from implementing their decision that he should leave Cyprus, pending the determination of the recourse against the above decision. 25

L. Papaphilippou, for the applicants.

D. Papadopoulou (Mrs.), for the respondents.

Cur. adv. vult.

DEMETRIADES J. read the following ruling. The applicants by this recourse pray for - 30

- (a) A declaration of the Court that the act or decision of the respondents, dated 17th November, 1984, by which they refused to extend the temporary stay/employment in Cyprus of applicants 2 and 3 with Afni 35

Zakaria Navigation Co. Ltd. (applicant No. 1) is null and void and whatever has been omitted should have been performed.

- 5 (b) A declaration of the Court that the act or decision of the respondents dated 17th November, 1984, by which they decided that applicants 2 and 3 should leave Cyprus at once, is null and void and of no effect whatsoever.

10 Applicant No. 1, to be referred to hereinafter as the "company", is an offshore company registered in Cyprus. Applicants 2 and 3 are of Syrian origin. They hold Syrian passports and are directors of the company. Each of them owns in the company 1,000 ordinary shares of £1.- each. These shares were issued to them after permis-
15 sion was obtained from the Central Bank of Cyprus, on the 9th August, 1984.

20 Since its formation and registration, the company has been operating from Cyprus. Applicants 2 and 3 have foreign accounts with a Cyprus Bank and they use these accounts for their personal and the company's purposes. The company operates from premises rented by it which are situated in Larnaca. Both applicants reside with their families in rented flats situated in Larnaca.

25 In August 1984 applicants 2 and 3 applied, in their capacity as directors of the company, to the Migration Department for residence and employment permit. On the 28th September, 1984, a residence and employment permit, valid until the 27th March, 1985, was granted to applicant No. 3 but applicant No. 2 had not, until the 17th No-
30 vember, 1984, received a reply to his application, although prior to the filing of such application he was the holder of a temporary residence permit.

35 On or about the 17th November, 1984, the respondents addressed to applicants 2 and 3 a letter by which they informed them that their application for temporary stay and employment in Cyprus had not been approved and that they had to make the necessary arrangements to leave Cyprus at once. As a result of this decision of the res-

pondents applicants 2 and 3 filed this recourse and in addition they filed an application for a provisional order by which they pray for an order restraining the respondents from deporting them from Cyprus or from implementing their decision that applicants 2 and 3 should leave Cyprus, pending the determination of this recourse or until further order. 5

Before the hearing of this application applicant No. 3 left Cyprus and the hearing on the issues raised by means of the application for a provisional order was limited to the case of applicant No. 2. 10

The application for the provisional order is based on rule 13 of the Supreme Constitutional Court Rules of Court and the facts relied upon in support of this application are set out in an affidavit sworn by applicant No. 2 who, after verifying the facts and accepting the points of Law set out in the recourse as correct, proceeds to state that if he is deported his company and himself will be ruined because his presence as director of the company is indispensable in that he had to make contracts and, also, arrange for letters of credit and payments from a Bank at Larnaca. 15 20

The application of applicant No. 2 was opposed by the respondents and in support of it an affidavit was sworn by Mr. Chr. Christoudias, a principal clerk attached to the Migration Office, in which he states that applicant No. 2 was given consecutive temporary permits to stay in Cyprus till the 30th September, 1984, and that his last application for a further stay and employment was turned down. The application of applicant No. 2 to the respondents is not before me but the relevant decision of the respondents is contained in their letter dated the 17th November, 1984, which reads: 25 30

"I am directed to refer to your application dated the requesting extension of your temporary stay/employment in Cyprus under the Aliens and Immigration Laws of 1952 - 1976 and its relevant Regulations of 1972 to enable you to reside 35

and work in Cyprus as Director of Afni Zakaria Navigation Ltd an Offshore Co. at Larnaca and to inform you that your request has been very carefully considered but it has not been found possible to approve it.

2. In view of the above you are hereby requested to make the necessary arrangements to leave Cyprus at once."

Before the hearing of this application started, that is when the Republic appeared by counsel and opposed the application, counsel for the respondents stated that no steps for the deportation of the applicant were to be taken until the trial of the application for the provisional order.

One of the several grounds of law on which the applicant bases his recourse, which is the most relevant to these proceedings, is that the respondents acted arbitrarily and/or contrary to the general policy of the Government of Cyprus in that their decision to refuse temporary stay and employment in Cyprus to applicant No. 2 was inconsistent with a circular/regulations dated the 10th March, 1983, made by the Central Bank of Cyprus. This circular/regulations is headed "Arrangements for the issue of Temporary Residence (Employment) Permits to the First Directors and Chief Executives of Offshore Companies" and its relevant paragraphs to the case, namely paragraphs 4, 6 and 8 read:

"4. *PERMITS*

Upon approval of the registration of the new offshore company by the Central Bank of Cyprus the Migration Officer shall issue to the applicants temporary residence (employment) permits valid for six months. These will be mailed either to their address in Cyprus or, if none, to the office through which the applications were submitted."

35 "6. *RENEWAL*

One month before the expiration of the initial six month period the directors and executives shall apply

to the Migration Officer for renewal of their temporary residence (employment) permits through the Aliens Section of the Police in their District of residence on the following forms:

(M61) Application for (granting or renewal of) temporary resident's permit; and 5

(M64) Application for permission to take up employment (or change employment) in Cyprus.

The Migration Officer renews the temporary residence (employment) permits for further periods of twelve months if there is no impediment." 10

"8. REVOCATION

Any temporary residence (employment) permit may be revoked if the Chief Migration Officer deems this to be in the public interest." 15

On the other hand, counsel for the respondents submitted that, in the present case, there was only issued an interim order regarding applicant No. 2 and there is no decision for deporting him and, therefore, on the strength of the stand adopted by this Court in the case of *Goulelis v. The Republic*, (1969) 3 C.L.R. 583, the order applied for by counsel for the applicant could not be granted. 20

It is a fact that the deportation of the applicant has not been as yet decided administratively by the respondents but there is to be found in the letter dated 17th November, 1984, only a warning, after their refusal to extend the temporary stay of applicant No. 2 in Cyprus, that he has to leave Cyprus at once. 25

Of course it may easily be assumed that if applicant No. 2 fails to comply with the aforesaid warning, steps will be taken in future for his deportation. But, at this stage, if I grant the order applied for by applicant No. 2, I would, in effect, be granting him an extension of his temporary stay in Cyprus and I would, thus, be acting as an organ of administration. The facts of the present case are closely similar with the facts of the *Goulelis* case, su- 30 35

pra, and I have decided to follow the same course and, as at present advised, dismiss the application for a provisional order.

5 It is, of course, to be understood that if and when a decision is reached by the respondents for the deportation of applicant No. 2, then he might apply for the issue of a provisional order suspending the effect of such decision.

10 As by the present application the applicant has, also, applied for an early date of hearing, I fix his recourse for directions on this issue on the 11th April 1986.

There will be no order as to costs.