

1986 March 21

[KOURRIS. 1]

IN THE MATTER OF ARTICLE 145
OF THE CONSTITUTION

DR CHRISTOPHOROS CONSTANTINIDES,

Applicant.

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

Respondents.

(Case No. 473/85).

*The Customs and Excise Duties Law 18/78, s. 11—Fourth
Schedule, item 0.1, sub-heading 19—Order 188/82—
Duty free importation of motor vehicle—“Permanent settle-
ment abroad for a continuous period of 10 years” in the
said Order—Notion of “permanent settlement”—It excludes
residence abroad for purposes of studies.* 5

On 21.10.67 the applicant left Cyprus and went to West
Germany on a visitor's visa. On 8.5.68 he was first issued
with a visa as a student and, thereafter, until 1973 the
Authorities in Germany stamped his passport with a stu- 10
dent's visa, imposing at the same time restriction regarding
the carrying out of any work by him. Permission, how-
ever, was granted to him to work during vacation time
On 19.12.74 the applicant succeeded in his final examina- 15
tions in Medicine and as from January 1975 he began to
work in Germany as a doctor until 31.3.84. The applicant
married in Germany and has a daughter.

In giving evidence before the Court the applicant stated
that as from the summer of 1973 till the end of 1974 he
was working in a hospital in Germany as a nurse. 20

5 The applicant returned for permanent settlement in Cyprus on 7.4.84. On 14.9.84 he submitted an application to import a motor vehicle duty free under sub-heading 19 of item 0.1 of the Fourth Schedule to Law 18/78. The application was turned down on the ground that applicant's permanent settlement abroad was not of a period of at least ten years.

10 *Held*, dismissing the recourse: (1) The matter is governed by section 11 of Law 18/78 and Order 188/82 published on 11.6.82. The point is whether the applicant was permanently settled abroad for a continuous period of 10 years as provided in the said order.

15 (2) The words "permanent settlement abroad" have the notion of immigration for the purpose of working and exclude travel abroad for the purpose of studies. It follows that the period of studies of the applicant in Germany cannot be taken into consideration in computing the period of the permanent settlement.

20 (3) Since during the period between the summer of 1973 and December 1974 the applicant was also studying, such period cannot be calculated for the purposes of Order 188/82. The period that can be taken into consideration is the period from the time the applicant began working as a doctor after passing his final examinations until his return to Cyprus.

25

(4) As far as the period October 1967 till 8.5.68 when the applicant got his first visa as student, such period cannot be taken into consideration because Order 188/82 speaks of "a continuous period of at least ten years."

30

*Recourse dismissed.**No Order as to costs.*

Cases referred to:

Rossides v. The Republic (1984) 3 C.L.R. 1482;*Mavronichis v. The Republic* (1985) 3 C.L.R. 2301.35 **Recourse.**

Recourse against the refusal of the respondents to allow

applicant to import duty free a motor vehicle on his return, after ten years' permanent residence abroad, in order to settle permanently in Cyprus.

A. S. Angelides, for the applicant.

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

5

Cur. adv. vult.

KOURRIS J. read the following judgment. By the present recourse the applicant seeks a declaration of the Court that the act and/or decision of the respondents to refuse to him to import a motor vehicle free of duty, in accordance with the provisions of sub-heading 19 of item 0.1 of the Fourth Schedule to the Customs and Excise Duties Law (Law 18/78) is null and void and of no legal effect whatsoever.

10

On 14/9/1984 the applicant submitted an application to the Customs and Excise Department seeking relief under sub-heading 19 of item 0.1 of the Fourth Schedule of Law 18/78, on the ground that having been a Cypriot, who, after ten years of permanent residence abroad returned to Cyprus in order to settle permanently (Annex 1).

15

According to the details inserted by applicant in his aforesaid application, he was born in Aradippou village, Larnaca District, on 5/1/1949, and on 21/10/1967 he left Cyprus and went to West Germany. In January, 1975 he began to work in Germany as a doctor until 31/3/1984. He was married in Germany and he has a daughter and he has finally returned to permanently settle in Cyprus on 7/4/1984.

20

25

The appropriate authority after examining applicant's application ascertained that the Authorities in Germany stamped his passport with a student's visa until 1973 (Appendices 2 and 3). Also the Authorities in Germany imposed restrictions on applicant regarding the carrying out of any work by him. Permission was granted to him to work only during vacation time. Furthermore, according to a certificate produced from the University of Heidelberg it was stated therein that applicant has on 19/12/1974 been examined by the States Examining Board and has succeeded to his final examinations of Medicine (Annex 4).

30

35

The appropriate Authority after examining the material before it in relation to the applicant's application decided that his case does not fall within the provisions of the law and relevant regulations and addressed a letter
5 to him dated 7/2/1985 which reads:-

"Your stay abroad upto 19/12/1974 was of a temporary nature for studies and therefore your permanent settlement abroad was not of a period of at least 10 years since you have returned for settlement
10 on 7/4/1984 (Annex 5)".

Hence, the present recourse.

The matter is governed by the Customs and Excise Law 18/78, s.11 and Order 188/82 published in the Third Supplement, Part II to the official Gazette of the Republic of 11th
15 June, 1982, under Not. 17/83. The said Order, in so far as relevant, reads as follows:

"Vehicles imported by Cypriots who after permanent settlement abroad for a continuous period of at least 10 years, return and settle permanently in the Republic provided that the importation is made
20 within a reasonable time since their arrival according to the judgment of the director.

The relief from import duty covers only one vehicle for every family."

25 The point in issue is whether the applicant settled abroad permanently for a continuous period of at least 10 years before he returned to settle permanently in Cyprus.

The applicant in his evidence said that he went to Germany in October, 1967 as visitor to explore the possibilities whether he could work and study at the same time.
30 In the first few months he tried to learn the German language and in March, 1968 he passed the entrance examinations for a University and on 8/5/1968 he was issued, for the first time, with a student's visa. He said
35 that he studied Medicine and the course consisted of 11 semesters and then one has to sit for the examinations for a diploma. He said that he was working only during

vacation time until the summer of 1973 and that thereafter till the end of 1974 when he sat for his diploma examinations, he was working in a hospital as a nurse and was studying at the same time.

Counsel for the applicant contended that the applicant has satisfied the requirements of the law because he resided in Germany for 17 years, i.e. from October, 1967 till his arrival in Cyprus on 7/4/1984. Alternatively, that the 10 years residence abroad has been satisfied, even if the period of his studies is excluded, which is calculated from October, 1973 till his return to Cyprus on 7/4/1984 without adding to that the period from the moment he went to Germany up to the time he was issued with a student's visa which was in May, 1968.

Counsel for the respondent contended that the applicant failed to satisfy the provisions of the Order in question and she relied on the decisions of the Supreme Court in the cases of *Rossides v. The Republic* (1984) 3 C.L.R. 1482 and *Mavronichis v. The Republic*, Case No. 271/83, dated 30/12/85 (not yet reported)* and she submitted that the residence abroad of the applicant whilst there for studies, could not be considered as amounting to permanent settlement abroad.

With due respect, I adopt the construction given by the Judges in the two cases above, to the effect that the words "permanent settlement abroad" have the notion of immigration for the purpose of working and they exclude travel abroad for the purpose of studies.

In view of the above, the period of studies of the applicant cannot be taken into consideration in computing the 10 years. In the present case there is a dispute as to when the capacity of the applicant as a student ceased in the summer of 1973 when is the last entry of a student's visa in his passport (exhibit 1) and that the period thereafter till he passed his diploma examinations it should be counted as working period because he was working and studying at the same time and that adding this period from

* Now reported in (1985) 3 C.L.R. 2301.

the summer of 1973 till 12/12/1974 when he passed his diploma examinations. to the period he worked as a doctor the 10 years residence abroad is completed and the Order in question is satisfied.

5 In view of the above, the question that poses for determination is this: If the period from the summer of 1973 till December, 1974 when the applicant has successfully passed his final or diploma examinations is calculated as a period for working purposes and is added to the period
10 he worked in Germany as a doctor from January, 1975 till 31.3.1984, then, he satisfies the requirement under the Order of "a continuous period of at least 10 years". If, however, this period is considered as part of his studies then the applicant does not satisfy the Order.

15 I am of the view that since the applicant was also studying during this period that this period should not be calculated for the purposes of the said Order. To my mind, this period forms part of his studies and that for the purposes of this Order only the period from 1.1.75 till 31.3.84
20 can be taken into consideration. that is, from the time he began working as a doctor after he had successfully passed his final examinations.

Before concluding, I would like to consider the period
25 from the time the applicant went to Germany in October, 1967 till 8.5.1968 when he was first issued with a visa as a student. In my opinion this period cannot be taken into consideration for the purposes of the said Order because the Order speaks of "a continuous period of at least 10 years." Since there is a break of at least six years till he
30 got his diploma, this period cannot be counted. Furthermore, the applicant during this period entered Germany as a visitor and he was not issued with a working permit. Therefore, if he worked he did so contrary to the laws of the Country and it cannot be said that during this period
35 he was there for working purposes. Besides, he was trying to learn the German language in order to take the University entrance examinations which he did so in March, 1968.

In the light of all the material before me and my findings as above, I have come to the conclusion that it was reasonably open for the Director of the Department of Customs and Excise to reject applicant's application.

In the result the recourse is dismissed but in the circumstances there will be no order as to costs. 5

Recourse dismissed.
No order as to costs.