Republic of the Philippines
Department of Finance
Securities and Exchange Commission
SEC Building, EDSA, Greenhills, Mandaluyong City
Office of the General Counsel

COMPLIANCE AND ENFORCEMENT DEPARTMENT, now the ENFORCEMENT AND INVESTOR PROTECTION DEPARTMENT,
Petitioner,

SEC Admin Case No. 06-04-07
CED Case No. 04-2796
FOR: Revocation of Primary Franchise

UK IMMIGRANT FACILITATOR AND INVESTOR CONSULTANCY, INC.
Respondent Corporation,
x----------x

DECISION

Before us is a Petition for Revocation of Primary Franchise ("Petition") dated 03 June 2004, filed by the then Compliance and Enforcement Department ("Petitioner"), now the Enforcement and Investor Protection Department, on 07 June 2004 against UK Immigrant Facilitator and Investor Consultancy, Inc. ("Respondent Corporation"). Petitioner prays that the Certificate of Registration of Respondent Corporation be revoked for serious misrepresentation as to what the corporation can do or is doing to the great prejudice of or damage to the general public.[1]

ANTECEDENT FACTS AND PROCEEDINGS

As borne out by the evidence on record, the following are the antecedent facts and proceedings:

Respondent Corporation was registered with the Securities and Exchange Commission ("Commission") on 21 October 2003, with Company Registration No.

[1] Section 6(i), paragraph 2, Presidential Decree 902-A, 11 March 1976.

CS200323149.[2] As provided for in its Articles of Incorporation, Respondent Corporation's primary purpose is:

> (a) To facilitate Immigrant to United Kingdom of London (sic).
> (b) To cater Immigrant applicants to UK and facilitates documents required for immigrants (sic).[3]

On 06 April 2004, Petitioner received a letter-complaint[4] from a certain Melanie Biñas regarding the alleged illegal recruitment activities of Respondent Corporation. Consequently, Petitioner made representations with the Philippine Overseas Employment Administration ("POEA") on the status of Respondent Corporation. As certified by the POEA, Respondent Corporation was not licensed to recruit workers for overseas employment.[5] Further, a Closure Order[6] was already issued by the POEA on 02 April 2004 against Respondent Corporation for committing illegal recruitment which constitutes danger to national security and public order or will lead to further exploitation of job seekers. Thus, Petitioner contends that the operation of Respondent Corporation is not merely *ultra vires* but, worst, illegal, as it is not authorized to do so by the POEA.[7]

On 28 June 2004, the Commission issued an Order directing Respondent Corporation to file its Answer to the Petition and to show cause within fifteen (15) days from receipt of said Order why Respondent Corporation's certificate of registration should not be revoked.[8] The aforementioned Order was served via registered mail on 20 July 2004 to the principal office of the Respondent Corporation as stated in its Articles of Incorporation, but was returned unserved for the reason that its address was insufficient.[9]

Hence, on 29 July 2004, the Commission issued Summons by Publication requiring Respondent Corporation to file, within 40 days from the date of publication of the Summons, its Answer to the Petition.

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[2] Petition, Annex "A" (Respondent Corporation's Certificate of Incorporation), Records, p.13.
[3] *Ibid*, Annex "B" (Respondent Corporation's Articles of Incorporation), Records, p.12.
[4] *Ibid*, Annex "C" (Letter of Melanie Biñas addressed to the CED dated 02 April 2, 2004), Records, pp. 3-5.
[5] *Ibid*, Annex "D" (Certification from the POEA dated 06 May 2004), Records, p.2.
[6] *Ibid*, Annex "E", (POEA's Closure Order No. 21, Series of 2004), Records, p.01.
[7] *Ibid*, Records, p.15.
[8] Order dated 09 November 2006, paragraph 3, Records, p.23.
[9] *Ibid*, paragraph 4, Records, p.22.

Despite notice, however, records disclose that Respondent Corporation failed to file the required Answer. Accordingly, on 09 November 2006, the Commission issued an Order declaring Respondent Corporation in default and allowing the receipt of Petitioner's evidence.[10]

ISSUE:

Whether or not the Certificate of Registration of Respondent Corporation should be revoked for serious misrepresentation as to what the corporation can do or is doing to the great prejudice of or damage to the general public.

RULING:

In the present case, Respondent Corporation's Articles of Incorporation states that its primary purpose as a consultancy corporation is:

(a) To facilitate Immigrants to United Kingdom of London *[sic].*
(b) To cater Immigrant applicants to UK and facilitates *[sic]* documents required for immigrants.

On the other hand, Respondent Corporation's secondary purpose is:

* Consultation for foreign investor.

However, in the letter-complaint of Melanie Biñas, she alerted the Petitioner that Respondent Corporation is accepting applicants for caregiver and is likewise processing the necessary documents for employment to the United Kingdom on behalf of the applicants. Melanie Biñas further averred that Respondent Corporation is not operating as a consultant; instead, it is engaged in the business of hiring and asking thousands of money from numerous applicants who are seeking employment in the United Kingdom.

From the letter-complaint abovementioned, it is apparent that Respondent Corporation is performing activities constituting *"recruitment and placement"* as defined under Article 13, paragraph (b) of the Labor Code of the Philippines, *to wit*:

> "Recruitment and placement" refers to any act of canvassing, enlisting, contracting, transporting, utilizing, hiring or procuring workers, and

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[10] *Ibid.*

includes referrals, contract services, promising or advertising for employment, locally or abroad, whether for profit or not. xxx

Notably, engaging in the business of "recruitment and placement" as defined above is not among the purposes stated in the Articles of Incorporation of Respondent Corporation. Therefore, these acts are *ultra vires* or beyond the Respondent Corporation's authority to perform or engage in.

Moreover, it must be emphasized that before an entity may engage in recruitment and placement activities, it is a condition *sine qua non* that a valid license/authority must be secured from the Department of Labor and Employment through the POEA. Consequently, in the absence of such license/authority, the violator shall be liable for Illegal Recruitment as defined in Section 6[11] of Republic Act No. 8042, otherwise known as the "Migrant Workers and Overseas Filipino Act of 1995." Thus, to this extent, Respondent Corporation's acts are not merely *ultra vires* but, worst, illegal *per se*.

That Respondent Corporation was indeed engaged in illegal recruitment is confirmed by the Closure Order issued by then POEA Administrator Rosalinda Dimapilis-Baldoz on 02 April 2004, to wit:

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I hereby order the CLOSURE of UK IMMIGRATION FACILITATOR and INVESTOR CONSULTANCY located at Unit 3B 3rd Floor, Carmen Building, 342 Buendia Avenue, Pasay City, having verified that said establishment/entity:

(1) **Committed Illegal Recruitment** defined under Sec. 6 of RA 8042, specifically, by performing activities constituting recruitment and placement as defined under Article 13, Par. (b), Title I of P.D. 442 as amended, without a valid license/authority from the DOLE;

(2) **The activities of such non-licensee/non-holder of authority, constitute a danger to national security and public order or**

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[11] "Illegal recruitment shall mean any act of canvassing, enlisting, contracting, transporting, utilizing, hiring, procuring workers and includes referring, contact services, promising or advertising for employment abroad, whether for profit or not, when undertaken by a non-license or non-holder of authority contemplated under Article 13(f) of Presidential Decree No. 442, as amended, otherwise known as the Labor Code of the Philippines. xxx"

> **will lead to further exploitation of job seekers.** xxx[12] (Emphases ours.)

Based from the foregoing, it is obvious that Respondent Corporation, by committing illegal recruitment activities, is liable for serious misrepresentation as to what the corporation can do or is doing to the great prejudice of or damage to the general public which warrants the revocation of its Certificate of Registration pursuant to Section 6 (i) (2) of PD 902-A as amended.[13]

However, records will show that Respondent Corporation's Certificate of Registration had been effectively revoked[14] on 19 January 2012 for non-compliance with the following reportorial requirements[15]:

(a) General Information Sheets – 2005-2011
(b) Financial statements – 2004-2010

Conversely, pursuant to SEC Memorandum Circular No. 22, Series of 2013, the Commission En Banc resolved to grant corporations with revoked certificates of incorporation which were registered from 2001-2006 and covered by Mass Revocation Orders issued from 2001-2013, which includes Respondent Corporation, a non-extendible period of two (2) years from 31 December 2013, or until 31 December 2015, within which to file their Petitions to Set Aside the Order of Revocation with the Commission. Records indicate that Respondent Corporation has not yet availed of such remedy. Nonetheless, Respondent Corporation should be disqualified from filing the said Petition to Set Aside the Order of Revocation on the ground that it unlawfully and illegally engaged in recruitment activities.

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[12] *Supra*, note 6.
[13] "Sec. 6. In order to effectively exercise such jurisdiction, the Commission shall possess the following powers: xxx (i) To suspend, or revoke, after proper notice and hearing, the franchise or certificate of registration of corporations, partnerships or associations, upon any of the grounds provided by law, including the following: xxx [2] Serious misrepresentation as to what the corporation can do or is doing to the great prejudice of or damage to the general public; xxx."
[14] Certification of Corporate Filing/Information issued by the Company Registration and Monitoring Department dated 22 November 2013, Records, p. 45.
[15] SEC Resolution No. 359, series of 2010, *"RESOLVED, To Authorize the Company Registration and Monitoring Department to revoke, after complying with due process, Certificates of Incorporation of registered partnerships or corporations on the following grounds: xxx 4. If companies fail to file/register for a period of at least five (5) years any of the following: i. Financial Statements; ii. General Information Sheets; and iii. Stock and Transfer Book/Membership Book. xxx"*

WHEREFORE, premises considered, the Petition for Revocation of Primary Franchise of UK IMMIGRANT FACILITATOR AND INVESTOR CONSULTANCY, INC. is hereby **GRANTED** on the ground of "serious misrepresentation as to what the corporation can do or is doing to the great prejudice of or damage to the general public", in violation of Section 6(i)(2) of PD 902-A, as amended. However, considering that the Company Registration and Monitoring Department had already revoked the Certificate of Registration of Respondent Corporation for non-compliance with the reportorial requirements, the prayer for revocation is hereby declared **MOOT and ACADEMIC.**

Nonetheless, Respondent Corporation is hereby **DISQUALIFIED** from exercising its remedy to file a Petition to Set Aside the Order of Revocation for having been found liable for "serious misrepresentation as to what the corporation can do or is doing to the great prejudice of or damage to the general public".

Let a copy of this Order be furnished to the Enforcement and Investor Prosecution Department and the Company Registration and Monitoring Department for their information.

SO ORDERED.

Mandaluyong City, 20 February 2014.

TERESITA J. HERBOSA
Chairperson

MA. JUANITA E. CUETO
Commissioner

ELADIO M. JALA
Commissioner

MANUEL HUBERTO B. GAITE
Commissioner

ANTONIETA F. IBE
Commissioner

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