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

In the Matter of:

ANSELMO CANDADO,
Appellant,

- versus - **SEC En Banc Case No. 08-12-268**
(SEC EPD Case No. 12-2994)

INTERNATIONAL JUSTICE MISSION, INC.,
Appellee.
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DECISION

Before the Commission is the assailed Order of the Enforcement and Prosecution Department ("EPD", for brevity) of the Commission dated 6 August 2012, the dispositive portion of which states as follows:

> "**IN VIEW OF THE FOREGOING**, an Order is hereby rendered:
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> 1. DISMISSING the complaints filed by Anselmo Candado against International Justice Mission, Inc. for violations of R.A. 3019 viz Articles 210, 211, 211-A and 212 of the Revised Penal Code and Batas Pambansa Blg. 39 FOR LACK OF JURISDICTION. Complainant Anselmo Candado is urged to bring the said complaints before proper courts of law.
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> 2. DISMISSING the complaints filed by Anselmo Candado against International Justice Mission, Inc. for violations of Section 6 (L) (2) of P.D. No. 902-A, as amended and paragraphs 7 and 9 of Section 134 of the Corporation Code FOR LACK OF MERIT."

International Justice Mission ("IJM", for brevity) is a foreign corporation and was issued a License to Transact Business in the Philippines ("License", for brevity) by the Commission on 22 June 2001 with a specific purpose "*to provide Christian ministry that advances the scriptural mandate to help people suffering injustice and oppression.*"[1]

Its primary purpose as stated under its Articles of Incorporation issued by the Commonwealth of Virginia provides that IJM is a nonprofit corporation and shall be operated exclusively for charitable, religious or educational purposes. Its mission is to

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[1] SEC Registration No. A200108166.

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provide a Christian ministry that advances the Scriptural mandate to help people suffering injustice and oppression who cannot rely on local authorities for relief. IJM shall accomplish these purposes by documenting human rights violation through the following: (1) by providing a mechanism, expert investigation and verification services, and independent evaluation and monitoring services; (2) by preparing reports and evidentiary records of reported injustice and oppression; and (3) by developing and maintaining an information network.[2]

Appellant Anselmo Candado filed its Memorandum of Appeal dated 29 August 2012 assailing the Order issued by EPD. The Commission issued an Order dated 17 September 2012 requiring IJM to file its Reply-Memorandum to which it complied on 1 October 2012.

THE FACTS

By way of a brief background, the appellant's business Los Angeles Café ("LA CAFÉ", for brevity) was raided by the Officials of the City of Manila and the Philippine National Police based on a report by the IJM that it was engaging in human trafficking and sex slavery of minors. The next day the City of Manila issued a Closure Order of LA CAFÉ.[3]

On 21 March 2011, the appellant filed an unverified and undated *Letter-Complaint* with the EPD claiming that IJM should be shut down and be charged criminally for defrauding the government of taxes, sabotaging "legal businesses" such as appellant's business, "shutting down" appellant's business by making false statements to the Mayor of Manila and falsifying the signature of former U.S. Secretary of State Colin Powell in its application for the License.[4]

In response to the *Letter-Complaint*, IJM in a *Letter* dated 2 March 2012 received by EPD on even date denied it conducted a raid and rescue operations which resulted in the issuance of the Closure Order of LA CAFÉ. IJM, however, stated that it "provides Christian 'ministry' in the sense that [it provides] a service mandated by Christian Scripture, namely, 'to help people suffering injustice and oppression' (as stated in the SEC License)." Furthermore, it achieves this purpose by: (i) informing the authorities about possible crimes so that they can verify facts and take proper action; (ii) educating the public; (iii) training public justice workers (e.g. Department of Justice ["DOJ", for brevity], Department of Social Welfare and Development ["DSWD", for brevity], National Bureau of Investigation ["NBI", for brevity] and Philippine National Police ["PNP", for brevity]); and (iv) mobilizing intervention for victims by supporting

2 Article 3 of the Articles of Incorporation of IJM; p. 134, Records.
3 *Memorandum on Appeal*, (Affidavit of Complaint of the appellant) Annex "A"; p. 91-98, Records.
4 p. 1-2, *Order* of EPD; p. 15-16, Records.

government agencies, when requested, with rescue operations, legal work, psycho-social counseling, and other rehabilitation and reintegration services.[5]

On 9 March 2012, the appellant filed an *Affidavit of Complaint* claiming that IJM concocted false information regarding the human trafficking and sex slavery of minors, and relayed the same to police authorities. The appellant prayed that the Commission revoke or suspend the franchise or registration of IJM upon any ground of law, for serious misrepresentation of what a corporation can do and for violation of Foreign Agents Act[6] for not registering as a foreign agent.[7]

A *Supplemental Complaint* dated 27 March 2012 was filed by the appellant on 28 March 2012 praying that the EPD finds probable cause to file a Petition for Revocation of License to Do Business against the IJM for transacting business outside the purpose for which it is authorized under the License and being unfit to transact business in the Philippines,[8] through the following acts:

1) by projecting to the public as a legal organization that handles the prosecution of cases through the filing of a "Request to Prosecute" with the Office of City Prosecutor of Manila, which is outside the purpose stated under its Articles of Incorporation which provides that is operating for "charitable, religious or educational purposes".

2) by conducting itself as a "human rights agency" without mention of its Christian ministry or Scriptural mandate in the official website of IJM;

3) violating Section 6 of Article II, 1987 *Constitution* which provides for the inviolability of the separation of church and state by providing and conducting seminars and training programs to the DOJ and NBI with respect to IJM's trafficking of persons mission and conducting an investigation for lawful authorities, which includes surveillance and evidence gathering as well as prosecution of criminal cases in court;

4) violation of *Anti-Graft and Corrupt Practices Act*[9] in relation to Articles 210, 211, 211-A and 212 of the *Revised Penal Code* for bribing government officials by conducting seminars and training programs to the above-mentioned government agencies, their officials and employees regarding trafficking of persons mission; and

5) Violation of Foreign Agents Act for not registering as a foreign agent.

In its *Answer* to the Supplemental Complaint, IJM claims that the purpose in the License is "*to provide Christian ministry that advances the scriptural mandate to help*

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[5] *Memorandum on Appeal*, (Letter of IJM) Annex "B"; p. 89-90, Records.
[6] Batas Pambansa Blg. 39 (1979).
[7] *Memorandum on Appeal*, (Letter-Complaint of the appellant) Annex "A"; p. 91-98, Records.
[8] Pars. 7 and 9 of Sec. 134 of the *Corporation Code*, respectively.
[9] Republic Act 3019 (1960).

people suffering injustice and oppression." IJM denies that this statement delimits the purpose of the business since Section 45 of the Corporation Code includes all powers conferred by the said Code, the Articles of Incorporation and such powers as are necessary or incidental to the exercise of the powers so conferred. As such, IJM conducts these trainings to fulfill its mission. Furthermore, IJM states that the Rules and Regulations Implementing the Anti-Trafficking in Persons Act[10] ("IRR", for brevity) requires IJM, a NGO member of Philippine Inter-Agency Council against Trafficking ("IACAT", for brevity), to assist government agencies to give training programs, obtain and deliver to appropriate authorities' evidence of suspected human trafficking and assist victims.[11]

In its *Reply* to the Answer to the Supplemental Complaint ("Reply", for brevity), the appellant reiterates its Prayer mentioned in the Supplemental Complaint. However, the appellant amplifies its argument that IJM violated the *Foreign Agents Act* by claiming that the appellant, as a foreign agent, did not register with DOJ.

Moreover, the appellant likewise amplifies its argument that IJM violated the *Anti-Graft and Corrupt Practices Act* and Articles 210, 211, 211-A and 212 of the *Revised Penal Code* through the bribery of government officials. The appellant claims that the seminars, trainings and materials provided by IJM to authorities, judges, prosecutors and other government officials are considered "benefits". In return, the government did the following: (i) recognized and aided IJM in its pursuit human trafficking cases; (ii) made the IJM a part of the IACAT; and (iii) entered into Memorandum of Agreements with IJM. IJM also appears before judges and prosecutors in pursuing human trafficking cases. Lastly, when IJM pursues human trafficking cases with the aid of the government, the former is able to collect donations and grants.[12]

In its response to the Reply, IJM filed the *Sur-Reply* dated 4 June 2012 denying the allegations of the appellant and praying for the dismissal of the Supplemental Complaint.

An *Order* dated 6 August 2012 was issued by the EPD, as above stated, dismissing the complaint that IJM violated the Anti-Graft and Corrupt Practices Act in relation Articles 210, 211, 211-A and 212 of the Revised Penal Code and the Foreign Agents Act for lack of jurisdiction. EPD also dismissed the complaint for violations of Section 6 (L) (2) of P.D. No. 902-A, as amended and paragraphs 7 and 9 of Section 134 of the Corporation Code for lack of merit.

Hence this appeal.

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[10] Republic Act 9208 (2003).
[11] *Memorandum on Appeal*, (Answer of IJM) Annex "D"; p. 38-50, Records.
[12] *Id.*, (p. 7-8, Reply of the Appellant) Annex "E"; p. 30-37, Records.

On appeal, the appellant claims the citation of the alleged acts committed by IJM which amount to violations of Sec. 6, Art. II of the Constitution, Anti-Graft and Corrupt Practices Act in relation to Articles 210, 211, 211-A and 212 of the Revised Penal Code, and Foreign Agents Act were not filed with the Commission to seek adjudication of any criminal liability on the part of the latter. They were filed to show the conduct of IJM which would render it unfit to transact business in the Philippines under par. 9 of Sec. 134, Corporation Code. Moreover, EPD did not rule on whether the acts committed by IJM render it unfit to transact business. Lastly, the appellant claims that EPD did not rule whether the acts are considered undue influence and interference in the prosecution.[13]

The appellant argues that IJM is transacting business outside the purpose for which it is authorized under its License and is unfit to transact business in the Philippines for the following reasons: (i) violation of Anti-Graft and Corrupt Practices Act in relation to Articles 210, 211, 211-A and 212 of the Revised Penal Code for conducting and seminars and training programs to government agencies;[14] (ii) for not registering as a foreign agent since it does not fall under the exceptions provided under the Foreign Agents Act;[15] and (iii) interfering in the prosecution by pursuing criminal cases.[16]

In response, IJM asks that the Commission dismiss the Memorandum on Appeal filed by the Appellant since the latter did not show any ground or any serious error to justify reversal of the Order issued by the EPD. Furthermore, IJM claims that IJM made false statements and blatantly misrepresents the Order of the Commission to concoct a basis for appeal.[17]

On 30 October 2012, the appellant filed a *Motion to Set Case for Oral Arguments* requesting the said case be set for oral arguments since there was an alleged violation by the constitutional and statutory provisions which render the appellant unfit to transact business, the Commission cannot allow a foreign corporation such as the appellee to act in gross violation of the license granted by the Commission and there was an alleged violation of the rights of Filipinos. Thus, the appellant prays that the Commission *En Banc* grants the said Motion and set the case for oral arguments.[18]

THE ISSUE

The main issue to resolve is whether the above-stated alleged acts committed by IJM are transacted outside the purpose for which it is authorized under its License and renders it unfit to transact business in the Philippines, which would constitute grounds for revocation of said License under pars. 7 and 9 of Sec. 134, Corporation Code, respectively.

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[13] *Id.;* p. 112, Records.
[14] *Id*; p. 109, Records.
[15] *Id*; p. 102, Records.
[16] *Id.*; p. 102, Records.
[17] p. 1, *Reply Memorandum*; p. 165, Records.
[18] p. 1-2, *Motion to Set Case for Oral Arguments*; p. 170-172, Records.

THE RULING

Before we begin, the appellant prays in the Motion that a hearing be set for oral arguments. Sec. 11-7 of Rule XI, Rules of Procedure of the Commission provides that the Commission *En Banc* may set the case for oral arguments upon motion and for special reason. The Commission does not see any special reason to set the case for oral arguments as requested in the Motion by the appellant.

As for the main issue in this case, the license of a foreign corporation to transact business in the Philippines may be revoked or suspended by the Commission which includes the following grounds: (i) transacting business in the Philippines outside of the purpose or purposes for which such corporation is authorized under its license; and (ii) any other ground as would render it unfit to transact business in the Philippines.[19]

With respect to the second ground, it is a "catch all" provision and gives wide discretion to the Commission. If the violation committed by the foreign corporation is not too grave, the penalty of suspension may be sufficient.[20] However, it must be noted that it is axiomatic that all available remedies should be exhausted before imposing upon a corporation the harsh penalty of extinguishing its corporate existence.[21] Forfeiture of a corporation's charter will not be decreed unless no other remedy is available under law.[22]

In this case, the appellant has not sufficiently convinced the Commission that the act of IJM in allegedly providing and conducting seminars and training programs to the DOJ and the NBI with respect to IJM's trafficking of persons mission, and conducting an investigation, a surveillance and evidence gathering for lawful authorities as well as the prosecution of criminal cases in court, constitutes a grave or serious violation as to render it unfit to transact business. The same, likewise, applies in the cases of the alleged violations of the Foreign Agents Act and interference in the prosecution by pursuing criminal cases. The Commission cannot rely on the assertions of the appellant especially if unsupported with evidence. As correctly pointed out by the EPD, what the appellant provided were mere assumptions and bare allegations that even in administrative cases, such as this, should not be countenanced.[23] In fact, such alleged acts cannot be deemed to be considered a wrong or misconduct on the part IJM. IJM should be lauded and praised for their efforts in fighting human trafficking. Thus, a foreign corporation that supports government agencies in the fight against human trafficking cannot be deemed to be "unfit" to transact business in the Philippines.

With respect to the first ground, in the determination of whether or not the above-mentioned acts are transacted outside the purpose for which IJM is authorized under its

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[19] Pars. 7 and 9 of Section 134, Corporation Code.
[20] Campos and Lopez Campos, *Corporation Code, Comments, Notes and Selected Cases*, p. 1028 (1981).
[21] *Decision* dated 11 March 2010 in SEC Case No. 02-09-260 (Kabalikat Civicom Assn., Inc. v. Kabalikat Civic Communicators Network of Bicol, Inc.).
[22] *Id.*
[23] p. 15, Order of EPD; p. 3, Records.

License (ie. "*to provide Christian ministry that advances the scriptural mandate to help people suffering injustice and oppression*"), we apply the following rules and principles:

> "The rules governing the construction of charters of corporations are, for the most part, the same as those which govern the construction and interpretation of statutes, contracts and other written instruments (7A Fletcher, Sec. 3640)."[24]
>
> "In the determination of what business may be carried on by a corporation, reference must be had to its charter, and unless the power to carry on a particular business is either expressly or impliedly conferred thereby, it does not exist. (Chiwacla Line v. Disnukes, 87 Ala. 344, 650, 122, 5 LRA 100, cited in Am Jur. sec. 743)"[25]

Based on the foregoing, it appears that the above-mentioned acts of IJM are transacted within the purpose for which it is authorized under, and are covered by the scope and coverage of, its License. Moreover, the above-mentioned acts are necessary to and implied from the nature of the activity it is engaged in - ie. "*to provide Christian ministry that advances the scriptural mandate to help people suffering injustice and oppression*".

Additionally, Section 22 of the IRR of the Anti-Trafficking in Persons Act provides that any person who has knowledge of facts that give rise to a reasonable belief that a person has been trafficked shall immediately report the same to the appropriate authorities. Clearly, Section 22 expressly allows IJM to report any instance of human trafficking to the appropriate authorities. Moreover, IJM, as a NGO member of IACAT, is required under the IRR to assist government agencies by giving training programs, obtaining and delivering to appropriate authorities of evidence of suspected human trafficking, and assisting in preventing trafficking and assisting its victims.[26] In this case,

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[24] SEC Letter dated 10 September 1992, addressed to Chemical Industrials of the Philippines, Inc.

[25] SEC Letter dated 11 December 1989, addressed to Atty. Milnar T. Lammawin, Omengan Construction & Development Corporation.

[26] Sec. 20 of IRR of the Anti-Trafficking in Persons Act provides:

"Sec. 20. ***Roles and Responsibilities of Non-Government Organizations which are Members of the Council.*** The *NGO members of the Council shall have the following roles and responsibilities*:

(a) *Assist government agencies in formulating and implementing* policies, *programs* and IEC campaign *against trafficking;*
(b) Assist in capability-building activities of government personnel and share their experiences and expertise in handling trafficking cases;
(c) *Coordinate with concerned government agencies, LGUs and other NGOs in* reporting alleged perpetrators, rescuing victims of trafficking, and *conducting investigation/ surveillance*, if indicated;
(d) *Undertake programs and activities for the prevention, rescue, recovery and reintegration of the victims of trafficking and other support services for their families*;
(e) Document and/or assist in the documentation of cases of trafficking;
(f) Disseminate guidelines to all its network members, local and international, on policies and programs addressing issues on trafficking in persons;
(g) Formulate educational module to address the demand side of trafficking; and

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IJM did not act outside the purpose authorized under its License since the IRR expressly allows it to report any instance of human trafficking such as what it reported as occurring at LA CAFÉ, and provide training programs and seminars as part of capability-building activities an NGO partner contributes to the IACAT

WHEREFORE, premises considered, the instant appeal is hereby **DENIED** for lack of merit. The Motion to Set Case for Oral Arguments is likewise hereby **DENIED.**

SO ORDERED.

Mandaluyong City, Philippines; 06 June 2013.

TERESITA J. HERBOSA*
Chairperson

MA. JUANITA E. CUETO
Commissioner

ELADIO M. JALA
Commissioner

MANUEL HUBERTO B. GAITE
Commissioner

ANTONIETA F. IBE
Commissioner

* On Official Travel

(h) Perform such other tasks as may be agreed upon by the Council." (Emphasis ours)

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