

Five illegal workers jailed

Five illegal workers comprising three Vietnamese and two Indians, were jailed at Shatin and Tuen Mun Magistrates' Courts on May 25 and 26 respectively.

During a joint operation conducted by the Immigration Department (ImmD) and the Labour Department codenamed "Rainbow" on May 23, ImmD investigators raided a restaurant in Sheung Shui. One female Vietnamese illegal worker, aged 39, was arrested. When intercepted, she was found washing dishes. Upon identity checking, she produced for inspection a recognisance form issued by the ImmD, which prohibits her from taking employment. Further investigation revealed that she was a non-refoulement claimant. In addition, she was also suspected of using and being in possession of a forged identity card. One employer suspected of employing the illegal worker was arrested and the investigation is ongoing.

Moreover, during operation "Twilight" conducted on May 23, ImmD investigators raided a restaurant in Causeway Bay. A male Vietnamese illegal worker and a female Vietnamese illegal worker, aged 27 and 29 respectively, were arrested. When intercepted, they were performing kitchen work. Upon identity checking, the male produced for inspection a recognisance form issued by the ImmD, which prohibits him from taking employment. Further investigation revealed that he was a non-refoulement claimant. The female was found to be an illegal immigrant. Meanwhile, an employer suspected of employing the illegal workers was arrested and the investigation is ongoing.

In addition, ImmD investigators received a referral from the Hong Kong Police Force to further investigate an illegal employment case in May. Enforcement officers arrested two male Indian workers, aged 39 and 25 respectively, disposing construction waste in San Po Kong. Upon identity checking, they produced for inspection recognisance forms issued by the ImmD, which prohibit them from taking employment. Further investigation revealed that they were non-refoulement claimants.

The five illegal workers were charged at Shatin and Tuen Mun Magistrates' Courts on May 25 and 26 respectively with taking employment after landing in Hong Kong unlawfully and remaining in Hong Kong without the authority of the Director of Immigration or while being a person in respect of whom a removal order or deportation order was in force. They pleaded guilty to the charges and were sentenced to imprisonment ranging from 15 months to 17 months. In addition, one of them was also charged with using a forged Hong Kong identity card and was sentenced to 15 months' imprisonment. All sentences are to run concurrently, making a total of 15 months' imprisonment.

The ImmD spokesman warned that, as stipulated in section 38AA of the Immigration Ordinance, illegal immigrants or people who are the subject of a removal order or a deportation order are prohibited from taking any

employment, whether paid or unpaid, or establishing or joining in any business. Offenders are liable upon conviction to a maximum fine of \$50,000 and up to three years' imprisonment. The Court of Appeal has issued a guideline ruling that a sentence of 15 months' imprisonment should be applied in such cases.

The spokesman also warned that it is an offence to use or possess a forged Hong Kong identity card or an identity card relating to other person. Offenders are liable to prosecution and a maximum penalty of a \$100,000 fine and up to 10 years' imprisonment.

The spokesman reiterated that it is a serious offence to employ people who are not lawfully employable. The maximum penalty is imprisonment for three years and a fine of \$350,000. The High Court has laid down sentencing guidelines that the employer of an illegal worker should be given an immediate custodial sentence. According to the court sentencing, employers must take all practicable steps to determine whether a person is lawfully employable prior to employment. Apart from inspecting a prospective employee's identity card, the employer has the explicit duty to make enquiries regarding the person and ensure that the answers would not cast any reasonable doubt concerning the lawful employability of the person. The court will not accept failure to do so as a defence in proceedings. It is also an offence if an employer fails to inspect the job seeker's valid travel document if the job seeker does not have a Hong Kong permanent identity card. The maximum penalty for failing to inspect such a document is imprisonment for one year and a fine of \$150,000.

Under the existing mechanism, the ImmD will, as a standard procedure, conduct initial screening of vulnerable persons, including illegal workers, illegal immigrants, sex workers and foreign domestic helpers, who are arrested during any operation with a view to ascertaining whether they are trafficking in persons (TIP) victims. When any TIP indicator is revealed in the initial screening, the officers will conduct a full debriefing and identification by using a standardised checklist to ascertain the presence of TIP elements, such as threat and coercion in the recruitment phase, and the nature of exploitation. Identified TIP victims will be provided with various forms of support and assistance, including urgent interference, medical services, counselling, shelter, temporary accommodation and other supporting services. The ImmD calls on TIP victims to report crimes to the relevant departments.