

Five illegal workers jailed

Five Vietnamese illegal workers were jailed by Shatin Magistrates' Courts on September 27.

During operation "Twilight" conducted on September 25, Immigration Department (ImmD) investigators raided a Chinese restaurant in Sha Tin. Three male Vietnamese and two female Vietnamese persons, aged 37 to 59, were arrested. When intercepted, they were found working as dish-washing workers. An employer suspected of employing the illegal workers was also arrested and the investigation is ongoing.

The five illegal workers were charged at Shatin Magistrates' Courts on September 27 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 15 months' imprisonment. Meanwhile, one of the illegal workers was also charged with one count of breaching a deportation order. He was sentenced to 24 months' imprisonment with part of the sentence to run concurrently, making a total of 28 months' imprisonment. In addition, one of the illegal workers was charged with one count of using a forged Hong Kong identity card. He 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. Under the prevailing laws, it is an offence to use or possess a forged Hong Kong identity card or a Hong Kong identity card related to another person. Offenders are liable to prosecution and a maximum penalty of a \$100,000 fine and up to 10 years' imprisonment.

The spokesman also warned that it is an offence for any person in respect of whom a deportation order is in force in Hong Kong to contravene the order. Offenders are liable upon conviction to up to seven years' imprisonment. Furthermore, it is an offence for any person to have landed in Hong Kong unlawfully and to remain in Hong Kong without the authority of the Director. Offenders are liable upon conviction to a maximum fine of \$25,000 and up to three 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 an 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 threats and coercion in the recruitment phase, and the nature of the exploitation. Identified TIP victims will be provided with various forms of support and assistance, including urgent intervention, medical services, counselling, shelter, temporary accommodation and other supporting services. The ImmD calls on TIP victims to report crimes to the relevant departments.