

Foreign domestic helper jailed for conspiracy to defraud and illegal work

A foreign domestic helper was convicted of conspiracy to defraud and working illegally in Hong Kong, and was sentenced to imprisonment on November 19 in the Sha Tin Magistrates' Court.

The Immigration Department's Foreign Domestic Helpers Special Investigation Section conducted an anti-illegal worker operation on August 22 at a restaurant in Wan Chai district. During the operation, a 26-year-old Indian woman was arrested while she was working as a dishwasher. Investigators found that the illegal worker was a foreign domestic helper and her contractual employer was the owner of an outsourced cleaning company who contracted the restaurant's dishwashing work.

Under caution, the arrested foreign domestic helper admitted to have worked as a kitchen dishwasher at the restaurant since January this year for the purpose of earning a monthly salary of HK\$14,000. She also admitted to have conspired with her contractual employer to apply for a foreign domestic helper visa using a false contract in order to work illegally in Hong Kong, instead of performing domestic duties.

The arrested foreign domestic helper was charged at the Shatin Magistrates' Court on November 19 with conspiracy to defraud and taking employment while being a person who remains in Hong Kong without the authority of the Director of Immigration after having landed in Hong Kong unlawfully. She pleaded guilty to the charges and was sentenced to a total of 18 months' imprisonment. Her contractual employer and the person-in-charge of the restaurant were also arrested, and the investigation is still ongoing.

An ImmD spokesman warned, "As stipulated in section 38AA of the Immigration Ordinance, an illegal immigrant, a person who is the subject of a removal order or a deportation order, an overstayer or a person who was refused permission to land is 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 spokesman reiterated that it is a serious offence to employ people who are not lawfully employable. Under the Immigration Ordinance, the maximum penalty for an employer employing a person who is not lawfully employable, i.e. an illegal immigrant, a person who is the subject of a removal order or a deportation order, an overstayer or a person who was refused permission to land, has been significantly increased from a fine of \$350,000 and three years' imprisonment to a fine of \$500,000 and ten years' imprisonment to reflect the gravity of such offences. The director, manager, secretary, partner, etc, of the company concerned may also bear criminal liability. 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. Offenders are liable upon conviction to a maximum fine of \$150,000 and to imprisonment for one year. In that connection, the spokesman would like to remind all employers not to defy the law and employ illegal workers. The ImmD will continue to take resolute enforcement action to combat such offences.

The spokesman continued that conspiracy to defraud is a serious offence. Under the Crimes Ordinance, offenders are liable to prosecution and upon conviction, the maximum penalty is imprisonment for 14 years.

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 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 immediately.