

## Hong Kong resident employer and illegal worker jailed

A Hong Kong resident employer and a Pakistani illegal worker were jailed at the Shatin Magistrates' Courts today (May 21).

During an anti-illegal worker operation conducted by the Immigration Department (ImmD) on December 13 in 2023, one Pakistani male, aged 50, was arrested for working as an odd job worker in Tuen Mun. Upon identity checking, he was confirmed to be a holder of a recognisance form issued by the ImmD, which prohibits him from taking employment. Further investigation revealed that he was a non-refoulement claimant. In addition, he was also suspected of using and in possession of a Hong Kong identity card relating to another person, and making false representation to Immigration officers. The Hong Kong resident employer of the illegal workers was also arrested. The employer was a Hong Kong resident, male, aged 48. He was also suspected of transferring an identity card to another person without reasonable excuse.

The illegal worker was charged at the Shatin Magistrates' Courts today with one count of taking employment while being a person in respect of whom a removal order or deportation order was in force; one count of using and being in possession of a Hong Kong identity card relating to another person and one count of making false representation to Immigration officers. After trial, he was sentenced to a total of 26 months and 14 days' imprisonment. The Hong Kong resident employer was also charged at the Shatin Magistrates' Courts today with one count of being an employer of a person who was not lawfully employable as he did not take all practicable steps to ascertain whether the applicant was lawfully employable prior to employment and one count of transferring an identity card to another person without reasonable excuse. After trial, he was sentenced to a total of 24 months and 14 days' 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. It was also an offence to transfer an identity card to another person. Offenders were liable to prosecution and, upon conviction, the maximum penalty was a fine of \$100,000 and imprisonment for 10 years.

The ImmD spokesman also warned that, under the laws of Hong Kong, any

person who makes false representation to an Immigration Officer commits an offence. Offenders are liable to prosecution and, upon conviction, the maximum penalty will be a fine of \$150,000 and imprisonment for 14 years.

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.