

Hong Kong resident employer and two illegal workers jailed

A Hong Kong resident employer and two Vietnamese illegal workers were jailed by Shatin Magistrates' Courts on May 15.

During operation "Twilight" conducted on July 8, 2019, enforcement officers raided a restaurant in Tsuen Wan. Seven illegal workers were arrested for working as odd-job workers. Two Hong Kong resident employers of the seven illegal workers were also arrested.

The illegal workers were jailed by Shatin Magistrates' Courts earlier. One of the Hong Kong resident employers was charged at Shatin Magistrates' Courts on May 15 for four counts 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. He pleaded guilty to the charges and was sentenced to two months' imprisonment for each count with parts of the sentences to run consecutively, making a total of two months and six weeks' imprisonment.

In addition, during an anti-illegal worker operation conducted on May 13, Immigration Department (ImmD) investigators raided a restaurant in Sheung Wan. Two female Vietnamese illegal workers, aged 35 and 48, were arrested while working as an odd-job worker and a dish-washing worker respectively. An employer suspected of employing the illegal workers was also arrested and investigation is ongoing.

The two illegal workers were charged at Shatin Magistrates' Courts on May 15 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 charge and were each sentenced to 15 months' imprisonment. Meanwhile, they were also charged with one count of using a false instrument. They were sentenced to 15 months' imprisonment. All sentences are to run concurrently for 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 make, possess or use false instruments. Upon conviction, offenders are liable to a maximum penalty of 14 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 screenings on 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.