

## Hong Kong resident employer and two illegal workers jailed

A Hong Kong resident employer and two Indian illegal workers were jailed at Shatin Magistrates' Courts yesterday (November 7).

During a joint operation conducted by the Immigration Department (ImmD) and the Hong Kong Police Force codenamed "Champion" on June 20, one male Bangladeshi illegal worker was arrested in Mong Kok. The Hong Kong resident employer of the illegal worker was also arrested.

The illegal worker was jailed by Shatin Magistrates' Courts earlier. The Hong Kong resident employer was charged at Shatin Magistrates' Courts yesterday for 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. After trial, he was sentenced to four weeks' imprisonment.

In addition, during a joint operation conducted by the ImmD, the Hong Kong Police Force and the Labour Department codenamed "Sahara" on April 23, enforcement officers raided a restaurant in Tsim Sha Tsui. Two male Indian illegal workers, aged 23 and 29, were arrested. When intercepted, they were working as odd-job workers. 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. An employer suspected of employing the illegal workers was also arrested and the investigation is ongoing.

The two illegal workers were charged at Shatin Magistrates' Courts yesterday 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. After trial, they were sentenced to 22 months and two weeks' imprisonment separately.

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 ImmD spokesman stressed that any person who contravenes a condition of stay in force in respect of him shall be guilty of an offence. A foreign domestic helper should only take up employment as such and reside at the contractual address as stipulated in the contract, as approved by the

Director of Immigration. Offenders are liable to criminal prosecution and upon conviction to a maximum fine of \$50,000 and imprisonment for two years. Aiders and abettors are also liable to prosecution.

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 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 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.