

# Illegal worker jailed

An Indian illegal worker holding a recognisance form was jailed at Shatin Magistrates' Courts yesterday (January 6).

Immigration Department (ImmD) investigators received a referral from the Hong Kong Police Force to further investigate an illegal employment case in November 2016. Enforcement officers arrested a male Indian worker, aged 28, who was conveying goods in Sheung Shui. Upon identity checking, he produced for inspection a recognisance form issued by the ImmD, which prohibits him from taking employment. Further investigation revealed that he was a non-refoulement claimant. A Hong Kong resident employer suspected of employing the illegal worker was also arrested.

The illegal worker was charged at Shatin Magistrates' Courts 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. He was granted bail but absconded not until intercepted by the Hong Kong Police Force in September last year. Subsequently, he was further charged of failing to surrender to custody. After the trial, he was convicted and sentenced to 15 months' imprisonment. The Hong Kong resident employer who employed that illegal worker was also charged with being an employer of a person who is not lawfully employable and sentenced to eight weeks' imprisonment earlier.

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. Besides, a person admitted to be bail who, without reasonable cause, fails to surrender to custody as shall have been appointed by a court, commits an offence and is liable on summary conviction to a fine of \$75,000 and to imprisonment for six months, and on conviction upon indictment to a fine of any amount and to imprisonment for 12 months.

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 intervention, medical services, counselling, shelter, temporary accommodation and other supporting services. The ImmD calls on TIP victims to report crimes to the relevant departments.