

Illegal worker jailed

A Bangladeshi illegal worker holding a recognisance form was jailed by Shatin Magistrates' Courts yesterday (May 3).

During a joint operation conducted by the Immigration Department (ImmD), the Hong Kong Police Force and the Labour Department codenamed "Champion" on April 28, a male Bangladeshi illegal worker, aged 32, was arrested while working as a porter in Kwun Tong District. Upon identity checking, he produced a recognisance form issued by the ImmD for inspection, which prohibits him from taking employment. Further investigation revealed that he was a non-refoulement claimant. An employer suspected of employing the illegal worker was also arrested and an investigation is ongoing.

The illegal worker was 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. He pleaded guilty to the charge and was sentenced to 15 months' imprisonment. Meanwhile, he was also charged with one count of being in possession of a false instrument and one count of making a false representation to an ImmD staff member. He was sentenced to four months' and eight months' imprisonment respectively. All sentences are to run concurrently. Moreover, he was charged with one count of 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 in 2017. During the court hearing, he absconded after he was released on court bail. Now the case was collectively considered. He pleaded guilty to the charge and was sentenced to 15 months' imprisonment, with parts of the sentences to run consecutively, making a total of 20 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 use or possess a false instrument, or make false representation to an ImmD staff member. Offenders are liable to prosecution and a maximum penalty of \$150,000 and up to 14 years' imprisonment.

"Any person who contravenes a condition of stay in force in respect of him shall be guilty of an offence. Also, visitors are not allowed to take employment in Hong Kong, whether paid or unpaid, without the permission of the Director of Immigration. Offenders are liable to prosecution and upon conviction face a maximum fine of \$50,000 and up to two years' imprisonment. Aiders and abettors are also liable to prosecution and penalties," an ImmD

spokesman said.

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 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.