

## LCQ3: Importation of Mainland domestic helpers

Following is a question by the Hon Paul Tse and a reply by the Secretary for Labour and Welfare, Dr Law Chi-kwong, in the Legislative Council today (June 23):

Question:

The existing scheme for importation of domestic helpers does not cover Mainland domestic helpers (MDHs). However, the successive outbreaks of the Coronavirus Disease 2019 epidemic in a number of major source countries for foreign domestic helpers (FDHs) in Southeast Asia have resulted in a drastic drop in the number of FDHs coming to Hong Kong. This situation, coupled with the frequent "job-hopping" by FDHs currently in Hong Kong, has rendered more and more families in Hong Kong unable to hire FDHs. On the other hand, quite a number of families (especially those with frail elderly who cannot speak English) wish to hire MDHs who speak the same language. In this connection, will the Government inform this Council:

(1) under the circumstances that there have been outbreaks of the epidemic in various countries and the number of FDHs arriving in Hong Kong has dropped drastically as well as on the premise of guarding against job-hopping by FDHs, of the new measures in place to increase the supply of FDHs;

(2) of the "immigration control and security considerations" in respect of the Government's refusal to import MDHs; and

(3) as there are comments that currently, foreigners who have entered Hong Kong on employment visas may become Hong Kong permanent residents (HKPRs) after working in Hong Kong for seven years, whereas FDHs do not enjoy the same treatment, arousing queries that this is discrimination and unfair treatment, whether the Government will consider standardising the requirement to the effect that persons who have resided in Hong Kong for seven years after entering Hong Kong on employment visas (irrespective of whether they are Chinese, foreigners or FDHs) are all required to apply to, and obtain the approval of, the Director of Immigration before they may become HKPRs, in order to address the queries of discrimination and unfair treatment as well as create conditions for importing MDHs?

Reply:

President,

Having consulted the Security Bureau and the Immigration Department (ImmD), my consolidated response to the Member's question is set out below:

(1) In the face of the COVID-19 pandemic, the Government has been making its best effort to provide assistance and facilitation to FDHs and their employers subject to changes in and the need for prevention and control of

the pandemic. Since early 2020, the Labour Department (LD) and ImmD have put in place various measures to help FDHs and their employers cope with the COVID-19 pandemic, including allowing employers to extend the validity period of the existing contracts with their outgoing FDHs for a maximum of three months, and further extending the special arrangement for FDHs to defer their return to their place of origin. In general, FDHs may apply for a one-year deferral for returning to their place of origin, subject to agreement with their employers. During the pandemic, if an FDH is still unable to return to his/her place of origin within the first one-year deferral, he/she may apply to the ImmD again for a further extension of limit of stay until the end of the contract before returning to his/her place of origin. If newly-hired FDHs are temporarily unable to come to Hong Kong due to the pandemic, or the current FDHs are not able to return to their place of origin, employers may make use of the above special arrangements to allow their current FDHs to continue to stay in Hong Kong to take care of their families. The above special arrangements are subject to agreement between the FDH and the employer.

From January 2020 to May 2021, the ImmD approved over 300 000 applications for further employment of FDHs (including applications from FDHs for contract renewal with the same employer, and from employers for extending the validity period of existing contracts with FDHs as well as from FDHs for further deferral of return to their place of origin under the special arrangements). The aforesaid had facilitated families in need to continue to receive support from FDHs as far as possible. The ImmD also approved around 23 000 applications in the 12 months ending May 2021 for change of employers in Hong Kong after premature termination of contract owing to the special circumstances of the pandemic. As far as new applications are concerned, the ImmD has proactively deployed its manpower to expedite the processing of new applications so that FDHs could report duty in Hong Kong as soon as possible. The ImmD will continue to expedite the vetting and approval procedures.

The Government has all along strived to maintain Hong Kong as an attractive work place for FDHs and actively explores new source countries of FDHs, including relaxing the visa requirements of Cambodian nationals in March 2017 to allow Cambodian domestic helpers to come to work in Hong Kong. The LD will also continue to keep in contact with the governments of FDH source countries and their consulates general in Hong Kong to encourage their nationals to come to work as FDHs in Hong Kong to meet the long-term demand of local families.

(2) The current entry arrangement for admission of domestic helpers does not apply to Chinese residents of the Mainland, the Macao Special Administrative Region and Taiwan, as well as nationals of Afghanistan, Cuba, Laos, the Democratic People's Republic of Korea, Nepal and Vietnam. This is mainly because of immigration control and security considerations. The Government has no plan to make changes to this. Save from the above, the Government has not imposed any restrictions on, nor does it promote the employment of FDHs of, any particular nationalities. Employers may, having regard to individual needs, decide to hire FDHs from any countries and regions other than those specified above.

In regard to the immigration control and security risks concerned, the Government will conduct review from time to time to meet Hong Kong's actual circumstances. In general, one of the considerations of the Government is the risk of non-local domestic helpers breaching their conditions of stay in Hong Kong, or the issues of concern as a result of their illegal stay in Hong Kong after completion of contract. Illegal employment is one example, especially in view of the fact that the Minimum Allowable Wage currently applicable to non-local domestic helpers is substantially below the wage levels of local low-skilled workers, which may provide considerable economic incentive for the former to engage in illegal employment. From the perspective of law enforcement, for example, FDHs who engage in illegal work in shops are easier to be identified by their outlook and it is also relatively easier to manage the relevant risk. Furthermore, individual non-local domestic helpers may be abetted and arranged by criminal syndicates to contract "bogus marriages" in order to reside in Hong Kong for long term as dependants or under other legal status.

(3) The eligibility for Hong Kong permanent resident status is stipulated in the Basic Law and the Immigration Ordinance. Any person who meets the requirement of "having ordinarily resided in Hong Kong for a continuous period of not less than seven years" under the law and other relevant requirements under the Immigration Ordinance is required to submit to the ImmD an application for verification of eligibility for permanent identity card. He/she will be issued with a Hong Kong permanent identity card by the ImmD only after his/her eligibility has been verified.

Currently, section 2(4) of the Immigration Ordinance stipulates that persons of certain specified categories, including illegal immigrants, persons in contravention of conditions of stay, refugees, persons imprisoned or detained, imported workers, domestic helpers from outside Hong Kong, members of consular posts, members of the Hong Kong Garrison, and holders of a Central People's Government travel document, shall not be treated as ordinarily resident in Hong Kong during the period in which they remain in Hong Kong. Among which, section 2(4)(a)(vi) refers to "a domestic helper who is from outside Hong Kong". In other words, irrespective of where the imported domestic helpers are from, as long as they are from outside Hong Kong, they shall not be treated as ordinarily resident in Hong Kong during the period in which they remain in Hong Kong while employed as domestic helpers, and shall not be eligible to be Hong Kong permanent residents after remaining in Hong Kong for seven years.

There was in the past an application for judicial review lodged by FDHs to the Court in respect of the aforementioned provision and the different conditions of stay imposed on FDHs and other entrants for employment. The Court clearly pointed out that the immigration authority should be entitled to decide whether to approve foreigners for remaining in Hong Kong and for that purpose, impose different conditions of stay, and that there is no issue of discrimination or unequal treatment. The Court also affirmed that section 2(4)(a)(vi) of the Immigration Ordinance is consistent with the relevant provision of the Basic Law.