

Three illegal workers and an illegal immigrant jailed

Three illegal workers comprising an Indian, a Nepalese and a Vietnamese and a Vietnamese illegal immigrant were jailed at Shatin and Tuen Mun Magistrates' Courts on June 22 and 23 respectively.

During an anti-illegal worker operation conducted on May 10, Immigration Department (ImmD) investigators raided a restaurant in Wan Chai. A female Indian illegal worker and a male Nepalese illegal worker, aged 27 and 33, were arrested. When intercepted they were washing dishes. 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. Meanwhile, an employer suspected of employing the illegal workers was arrested and the investigation is ongoing.

In addition, during operation "Twilight" conducted on May 23, ImmD investigators raided a restaurant in Causeway Bay. A male Vietnamese illegal worker aged 27 was arrested. When intercepted he was performing kitchen work. 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. Meanwhile, an employer suspected of employing the illegal worker was arrested and the investigation is ongoing.

Furthermore, during a joint operation conducted by the ImmD and the Hong Kong Police Force codenamed "Champion" on June 20, one male Vietnamese illegal immigrant, aged 40, was arrested in Mong Kok. Upon identity checking, he could not provide any proof of identity. Further investigation revealed that he was an illegal immigrant.

The three illegal workers were charged at Shatin Magistrates' Courts on June 22 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 the trial, they were sentenced to imprisonment ranging from 15 months to 17 months. The illegal immigrant was charged at Tuen Mun Magistrates' Courts on June 23 with remaining in Hong Kong without the authority of the Director after landing in Hong Kong unlawfully and breaching a deportation order. He pleaded guilty to the charges and was sentenced for each to 15 months' imprisonment of which part of the sentence is to run consecutively, making a total of 18 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.

The spokesman also warned that it is an offence for any person in respect of whom a deportation order is in force in Hong Kong to contravene the order. Offenders are liable upon conviction to up to seven years' imprisonment. Furthermore, it is an offence for any person to have landed in Hong Kong unlawfully, and to remain in Hong Kong without the authority of the Director. Offenders are liable upon conviction to a maximum fine of \$25,000 and up to three 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 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 interference, medical services, counselling, shelter, temporary accommodation and other supporting services. The ImmD calls on TIP victims to report crimes to the relevant departments.