

Two Hong Kong resident employers and four illegal workers jailed

Two Hong Kong resident employers and four Indonesian illegal workers were jailed at Shatin and Tuen Mun Magistrates' Courts on June 29 and 30 respectively.

During an operation conducted by the Immigration Department (ImmD) codenamed "Twilight" on November 1, 2017, and a joint operation conducted by the ImmD and the Hong Kong Police Force codenamed "Champion" on February 6, enforcement officers raided a restaurant in Tsuen Wan and a container terminal in Kwai Chung respectively. Two Vietnamese illegal workers and one Bangladeshi illegal worker were arrested. Two Hong Kong resident employers of the illegal workers were also arrested during the operations.

The illegal workers were jailed by Shatin Magistrates' Courts earlier. The two Hong Kong resident employers were charged at Shatin Magistrates' Courts on June 29 for being an employer of a person who was not lawfully employable as they did not take all practicable steps to ascertain whether the applicants were lawfully employable prior to employment. After trial, they were sentenced to three months' imprisonment and six weeks' imprisonment.

In addition, during a joint operation conducted by the ImmD and the Hong Kong Police Force codenamed "Powerplayer" on June 27, enforcement officers raided a restaurant in Jordan. Two Indonesian female illegal workers, aged 38 and 39, were arrested. When intercepted, they were performing kitchen work. 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.

Furthermore, during an anti-illegal worker operation mounted on June 27, ImmD investigators raided a restaurant in Yuen Long. Two female Indonesian illegal workers, aged 36 and 41, were arrested. When intercepted, they were serving customers and performing dish washing duty respectively. Upon identity checking, one of them produced for inspection a recognisance form issued by the ImmD, which prohibits her from taking employment. Further investigation revealed that she was a non-refoulement claimant. The other woman was an overstaying foreign domestic helper (FDH). They were also suspected of using and being in possession of Hong Kong identity cards relating to other persons. Meanwhile, a Hong Kong resident employer suspected of employing the illegal workers was also arrested and the investigation is ongoing.

The three illegal workers holding recognisance forms were charged at Shatin and Tuen Mun Magistrates' Courts on June 29 and 30 respectively 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. They pleaded guilty to the charges and were sentenced to 15 to 16 months' imprisonment. In addition, one of them was also charged with one count of using a Hong Kong identity card relating to another person and one count of possessing a Hong Kong identity card related to another person. She was sentenced to 15 months and 12 months' imprisonment respectively. All sentences are to run concurrently, making a total of 15 months' imprisonment. For the other illegal worker, she was charged at Shatin Magistrates' Courts on June 29 with one count of breaching conditions of stay by taking up unapproved employment in Hong Kong as an FDH. She pleaded guilty to the charge and was sentenced to six weeks' imprisonment. She was also charged with one count of overstaying and one count of using a Hong Kong identity card related to another person. She was sentenced to 16 days and 15 months' imprisonment respectively. All sentences are to run concurrently, making a total of 15 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 ImmD spokesman stressed that any person who contravenes a condition of stay in force in respect of him shall be guilty of an offence. An FDH 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 also warned that it is an offence to use or possess a forged Hong Kong identity card or an identity card relating to another person. Offenders are liable to prosecution and a maximum penalty of a \$100,000 fine and up to 10 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 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.