

Two illegal workers jailed

Two illegal workers, comprising one Bangladeshi and one Thai, were jailed by Shatin Magistrates' Courts on September 24.

During an anti-illegal worker operation conducted on August 5, Immigration Department (ImmD) investigators raided a restaurant in Shek O. A Bangladeshi female, aged 35, was arrested while working as a waitress and being an overstayer. Upon identity checking, she 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. An employer suspected of employing the illegal worker was also arrested and the investigation is ongoing.

In addition, during a joint operation conducted by the ImmD and the Hong Kong Police Force codenamed "Champion" on August 26, enforcement officers raided a bar in Kowloon City. A Thai female, aged 45, was arrested while working as an odd-job worker and being an overstayer. An employer suspected of employing the illegal worker was also arrested and investigation is ongoing.

The two illegal workers were charged at Shatin Magistrates' Courts on August 7 and 30 respectively with taking employment while being a person who, having been given permission to land in Hong Kong, had remained in Hong Kong in breach of her limit of stay imposed in relation to the permission. They pleaded guilty to the charge and were each sentenced to 12 months' imprisonment on September 24. Meanwhile, the Thai female was also charged with one count of overstaying in Hong Kong. She was sentenced to four months' imprisonment. All sentences are to run concurrently, making for a total of 12 months' imprisonment.

The spokesman warned that the Immigration (Amendment) Ordinance 2021 has been in effect since August. Under section 38AA of the amended Immigration Ordinance, an illegal immigrant, a person who is the subject of a removal order or a deportation order, an overstayer or a person who was refused permission to land is 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 spokesman reiterated that it is a serious offence to employ people who are not lawfully employable. Under the Immigration Ordinance, the maximum penalty for an employer employing a person who is not lawfully employable, i.e. an illegal immigrant, a person who is the subject of a removal order or a deportation order, an overstayer or a person who was refused permission to land, has been significantly increased from a fine of \$350,000 and three years' imprisonment to a fine of \$500,000 and 10 years' imprisonment to reflect the gravity of such offences. The director, manager, secretary, partner, etc of the company concerned may also bear criminal liability.

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. Offenders are liable upon conviction to a maximum fine of \$150,000 and to imprisonment for one year. In that connection, the spokesman would like to remind all employers not to defy the law and employ illegal workers. The ImmD will continue to take resolute enforcement action to combat such offences.

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 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 immediately.