

Five illegal workers jailed

Five illegal workers comprising two Indians, two Vietnamese and a Pakistani holding recognisance forms were jailed at Shatin and Tuen Mun Magistrates' Courts on May 11 and 12 respectively.

Immigration Department (ImmD) investigators received a referral from the Hong Kong Police Force to further investigate an illegal employment case in July last year. Enforcement officers arrested one male Indian worker, aged 40, disposing of construction waste in Sai Kung. 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.

During operation "Twilight" conducted on January 31, ImmD investigators raided a nail beauty shop in Tsim Sha Tsui. A female Vietnamese illegal worker, aged 19, was arrested. When intercepted, she was manicuring nails for a customer. 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.

In addition, during operation "Twilight" conducted on May 8, ImmD investigators raided two residential buildings in To Kwa Wan. One male Indian illegal worker and one male Pakistani illegal worker, aged 38 and 29, were arrested. When intercepted, they were disposing of rubbish. 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 May 10, ImmD investigators raided a restaurant in Yuen Long. A male Vietnamese illegal worker, aged 54, was arrested. When intercepted, he was washing dishes. 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. In addition, he was also suspected of using and being in possession of a false instrument.

The five illegal workers were charged at Shatin and Tuen Mun Magistrates' Courts on May 11 and 12 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 were sentenced to imprisonment ranging from 15 months to 22 months and two weeks. In addition, one of them was also charged with using a false instrument and was sentenced to 10 months' imprisonment of which part of the sentence is to run consecutively, making a total of 16 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 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.