

Two Hong Kong residents jailed for aiding and abetting an illegal worker to take employment

Two Hong Kong residents were jailed for aiding and abetting an Indian male holding a recognisance form to take employment at Shatin Magistrates' Court today (May 22).

Two Hong Kong residents were arrested earlier for aiding and abetting one Indian male who was holding a recognisance form issued by the Immigration Department (ImmD), which prohibited him from taking employment, to take employment. The Indian male was charged and sentenced earlier. The convicted Indian male accused that two Hong Kong residents had assisted and arranged the illegal work for him. The two Hong Kong residents were later arrested and charged for aiding and abetting a person who remained in Hong Kong without the authority of the Director of Immigration after having landed in Hong Kong unlawfully, to take employment. After trial, they were convicted and sentenced to eighteen months and two weeks' imprisonment and twenty-two months and two weeks' imprisonment respectively at Shatin Magistrates' Court today.

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. Aiders and abettors are also liable to prosecution and penalties.

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.