

**For Discussion
2 June 2009**

Panel on Security

Exercise of Discretion by the Immigration Department (ImmD) in the Processing of Contract Renewal Applications of Foreign Domestic Helpers (FDHs)

Purpose

This paper explains the exercise of discretion by ImmD in processing contract renewal applications of FDHs.

Processing of Contract Renewal Applications

2. FDHs may apply to ImmD to renew the contracts with their employers upon maturity of the contracts. The applications must meet the assessment criteria, including that the employer and FDH have no adverse records, the employer is financially capable, and the FDH lives in the employer's residence. Apart from the application forms and the standard employment contract, the applicant must also submit relevant supporting documents, which include the residential and financial proof of the employer, and the travel document of the FDH.

Exercise of Discretion

3. ImmD may exercise discretion in respect of a particular assessment criterion or documentary requirement having regard to the special circumstances of the employer or FDH. As the grounds meriting the exercise of discretion differ, ImmD will take into account the circumstances of individual cases.

Assessment criteria

4. In assessing the contract renewal applications, discretion is mainly exercised in the following circumstances:

(a) FDH to live in the employer's residence

The FDH must live and work in the employer's residence. In some cases, if the elderly living alone are unable to enter into contract with the FDH due to health or other reasons but their children wish to hire an FDH to take care of them, ImmD may exercise discretion to accept their children, living in separate residence, as employers.

(b) Adverse Records

FDH applying for contract renewal must have no adverse record (including criminal record). However, if the FDH only committed minor offence, such as minor traffic violation, and that the employer wishes to continue employment with the FDH, ImmD may consider exercising discretion to approve the application.

Supporting Documents

5. Discretion involving supporting documents arises mostly in the following circumstances:

(a) Residential Proof of Employer

Employers are normally required to produce utility bills such as water, telephone, electricity bills, etc. of the last three months as residential proof. ImmD may, based on the circumstances of individual cases, exercise discretion to accept other documents, such as bank statement, and correspondence to the employer from public organizations, as residential proof. If the address in the new contract is the same as the previous contract, ImmD may also consider exempting the employers from furnishing proof again.

(b) Financial Proof of Employer

Employers have to provide supporting documents to show that they are financially capable of employing the FDHs. In general, for every helper to be employed, the employer should have a household income of no less than HK\$15,000 per month or assets of comparable amount. The supporting documents may normally include notice of assessment and demand for tax, bank passbook/statement and salary statements / slips, etc. If the applicant cannot produce the said supporting documents, but ImmD is satisfied with the employer's financial capability ImmD may, based on past concluded contracts or records, waive the requirement.

(c) Relationship Proof

If the residential or financial proof does not belong to the employer (e.g. belongs to the employer's spouse or children), the employer has to furnish proof of relationship with the relevant persons, such as birth certificate, marriage certificate, etc. If the employer cannot furnish the relevant proof but has reported such relationship in the application form, ImmD may, based on past records, waive the requirement.

Monitoring Mechanism

6. ImmD encourages applicants to bring along and furnish all necessary documents when submitting the applications. This can facilitate quick processing of the applications. ImmD will also review the processing of the relevant applications from time to time. For the protection of the interest of the employers/FDHs and maintaining effective immigration control, ImmD may streamline the processing for the convenience of the employers and FDHs. In 2008, ImmD received a total of about 80 000 contract renewal applications. Around 90% of them can be processed within one day.

7. Each case involving the exercise of discretion must be properly recorded by ImmD staff handling the case. The Department also conducts random checks from time to time to ensure proper exercise of discretion. ImmD does not keep breakdowns in statistics on the specific categories or overall number of discretion cases. However, as a rough estimate, discretion is exercised in about 20% of the contract renewal cases, mostly involving requirements for a particular supporting document.

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