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Domestic Helpers and Migrant Workers Programme:
4/F Lee Kong Commercial Building, 115 Woosung Street, Kln, HK Tel: (852) 2739 6193 Fax: (852) 2724 5309

Clerk to Panel on Manpower
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central
Hong Kong

BY EMAIL (kyyeung@legco.gov.hk)

10 June 2013

Dear Sir,

Submission on “Intermediary Charges for Foreign Domestic Helpers”

Thank you for inviting views on the above subject for your meeting to be held on Tuesday, 18 June 2013.

Background

Christian Action is a Hong Kong registered charitable organization (Charity no. 161383), established in 1985. Our Mission is to serve those who are poor, disadvantaged, marginalized, displaced or abandoned, aiming to give them hope, dignity and self-reliance. Our clients include the unemployed adults and youth, new arrivals from Mainland China, ethnic minorities, refugees, asylum seekers and migrant domestic helpers, orphans and abandoned children in Qinghai. We also provide social enterprise services.

The Hong Kong based Domestic Helpers and Migrant Workers Programme provides access to justice, empowerment and educational training to disadvantaged migrant workers. These workers, the majority of whom are female foreign domestic helpers and predominantly from Indonesia, Philippines, Sri Lanka, India and Nepal, form an integral part of the labour population of Hong Kong.

The majority of our assistance is provided to nationals of Indonesia and Sri Lanka.

Current Situation

1. Presently, the governments of Indonesia and the Philippines (“sending countries”) have mandatory restrictions on the direct hiring of foreign domestic helpers (“FDH”). FDH are therefore required to use intermediaries – recruitment/ employment agencies – to work in Hong Kong.
2. The FDH and their families, many from simple village communities, are required to pay significant fees to these intermediaries in order to secure their services – over HK\$15,000 for Indonesians and up to HK\$20,000 for Sri Lankans. Even considering the provision of training, pre-departure lodging in their country of origin and travel expenses, this remains an immense burden for the FDH and their families who are required to pay the expense in their local currency.
3. When the FDH come to Hong Kong, some of the local agencies immediately ask for and retain the FDH's documents including their passport as *lien* for the fees. Some would take the FDH to a finance company to apply for a loan before confiscating the loan money for the immediate payment of the intermediary's fee. Alternatively, they may be taken to a convenience store to get a plastic card (with identification details and bar code in respect of the loan) through which every month for up to seven months, they have to transfer most part of their wages (up to HK\$3,000 out of HK\$3,920).

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4. Coming from simple village communities, the FDH often do not understand the loan facilities they are taken to nor the full consequences of the terms, conditions, nor importantly interest charges they are encouraged by the agency to agree to. As the FDH fully trust the local agency to consider their best interests this places them in a position of vulnerability which can be easily abused by unscrupulous or disreputable agencies.
5. According to the Employment Ordinance and the Employment Agencies Regulations of Hong Kong, agencies are not allowed to charge more than 10% of the first month's salary received by the worker upon successful placement. This means local agencies are only allowed to earn a commission of HK\$392 for each successful placement.
6. Although the money, described in point 3 above, is repatriated to the agency in the sending country, we have grounds to believe money is also retained by local agencies either through keeping a percentage of the payment or having the sending country agency provide them with a commission based transfer of funds. Tactics such as these leave FDH unable to provide evidence to the Hong Kong authorities on agency activity and allow agencies to evade the legal penalties associated with overcharging.
7. In order to profit from additional placements, some agencies encourage unnecessary contract terminations. There are occasions when once an FDH has started employment with the employer, the agency encouraged the dissatisfied employer to terminate the contract with their FDH on the basis of false allegations of theft, child abuse or other charges. Similarly, there have also been cases where an agency has actively encouraged a disgruntled FDH to terminate the contract prematurely and find a new employer. In both scenarios the FDH is then required to provide further payments to the agency to secure a change of employer.
8. When changing employers FDH have been charged up to HK\$9,000 by their agency for a layover in Macau or China while awaiting the new employment visa. This overcharging leaves the FDH vulnerable and requiring yet another loan to pay the agency. FDHs end up just repaying loans from their monthly wages and unable to repatriate money back to their families, which was the purpose of their coming to work in Hong Kong in the first place.
9. While FDH could change their agency once aware of overcharging they are often unable to do so. Indonesian FDH are subject to a further restriction and are not allowed to change the agency unless they have worked with the same employer for the two-year contract or there are exceptional circumstances. If the employer or their family is abusive and the agency is unhelpful, the FDH has no option but to tolerate the abuse.
10. Agencies have an important role to play in the protection of FDH from abusive employers. While we recognize the hard work and commitment of those agencies which provide this service we must also hold those that do not account to it. Many agencies operate to keep the FDH in the dark, for example, not informing the FDH of their rights and entitlements and refusing to assist with the retrieval of their belongings and documents from employers. As mentioned above, some do not even assist the FDH in obvious cases of continuing abuse or mistreatment.
11. Training at the sending country agency's training centre, for which the FDH pays, is often very basic, unhelpful or improper due to the fact that local Hong Kong agencies do not inform the sending country agency the work and language expectations of the FDH's employer or the Hong Kong city lifestyle and culture. For example, the local agent for Sri Lankan FDHs recruits them for local Chinese families and fail to inform the training centre in Sri Lanka that the FDH should be trained in the Chinese (or sometimes English) language so that she can communicate with her

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employer. Therefore, when the FDH starts working in Hong Kong, she is unable to communicate with her employer, resulting in both parties' dissatisfaction.


12. Some agencies are suspected not to be *bona fide* as they are absent from the database of the relevant consulate. In many cases no dispute arises and the agency's status is not discovered. However, when problems arise and the matter brought to the Labour Department, Immigration Department or the consulate, the agency is revealed as fraudulent and investigation is required. During this process, the FDH who has been required to pay the agency their exorbitant fees is faced with the significant difficulty of getting the Consulate to allow her to change agency and in seeking the permission of the Immigration Department to extend their stay in Hong Kong while waiting for a new employment visa. All this takes time and meanwhile, the FDH has no means of earning nor any savings from which to draw on to survive.

Recommendations

1. We believe that the role of genuine agencies is important for rendering assistance to vulnerable FDH. However, more needs to be done by the respective Consulates and related authorities in Hong Kong to find and prosecute fraudulent and disreputable agencies.
2. Investigations into fraudulent or non *bona fide* agencies should not be thwarted only because the FDH cannot obtain the prima facie evidence required to prove the claim. We understand the importance of balancing against false claims. However, more consideration should be given to how authorities could rely on trustworthy sources when considering pursuing the investigation of suspect agencies.
3. We acknowledge our appreciation here to the Indonesian Consulate who has indeed been helpful and assisted some clients in the fraudulent agency and change of agency cases; the Labour Department has also been helpful previously blacklisting an agency pursuant to our information and the Immigration Department has been reasonable in accommodating a stay of extension for one of our clients who was a victim of wrongdoing by an agency. While we are thankful for these it is important that the scope and size of this problem means there is much more that needs to be done to prevent future abuses.
4. In conclusion, for agencies which legitimately protect the FDH, inform them of their entitlements, assist them when they require assistance in obtaining these entitlements, encourage them to do their duties well and train and advise them properly. When dealing with employers, we believe an intermediary charge of a reasonable sum is worthwhile. However, with the malpractices by many agencies at present, intermediary charges, let alone the exorbitant ones are grossly inappropriate and in our opinion would violate Hong Kong law.

We trust these submissions are helpful. Should you require any clarification or further information, please do not hesitate to contact Ms. Lisa Lee Manager or Ms Leesha Khemlani, Assistant Manager of the Domestic Helpers and Migrant Workers Programme at 2739 6193.

Yours faithfully


PP
Cheung Ang Siew Mei
Executive Director
Christian Action

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