

IMMIGRATION DEPARTMENT (Imm D)

Case No. OCAC 108/95

Complaint against Imm D - refusal to disclose the reasons for rejecting the grant of entry visa for a foreign domestic helper (FDH)

In August 1994, Ms B, a Filipino, applied to Imm D through the British Embassy in Manila for a visa to enter Hong Kong to work for Mr A as a FDH. After considering the documents and information provided by both Ms B and Mr A, Imm D decided to reject the application and conveyed the decision in November 1994 to Ms B through the British Embassy.

2. When Mr A finally learnt of the outcome, he wrote to Imm D in January 1995 for the reasons for rejecting the application. He was given a reply which indicated that the application had been refused on policy ground. However, no explanation on what constituted "policy ground" was given. Feeling aggrieved, Mr A lodged a complaint to this Office against Imm D for refusal to provide the reasons for rejecting the application for entry visa.

3. According to Imm D's policy, applications for entry for employment as a FDH may be approved provided the following requirements can be met -

- (a) the applicant is not a resident of China, Macau or Taiwan;
- (b) all normal immigration requirements are met;
- (c) the employer is a bona fide resident of Hong Kong;
- (d) the employer proves that the applicant is an experienced domestic servant;
- (e) the employer gives a written guarantee of maintenance and repatriation;
- (f) the applicant enters into a standard employment contract duly notarised by the Consulate General or Commission concerned in Hong Kong;
- (g) suitable accommodation is available for the applicant; and
- (h) the salary offered is not below the range in force at time of the application.

In this connection, the reasons for refusal of an application would normally be communicated to the applicant by Imm D, save for sensitive reasons or where disclosure may affect adversely subsequent operation of the Immigration system.

4. Investigation by this Office also revealed that the application of Ms B was rejected basically for three reasons. Firstly, Ms B and Mr A had separately submitted two reference letters purportedly signed by a previous employer of Ms B in Singapore. However, the signature and address of this employer in the two letters were found to be different, and hence the authenticity of the reference letters was in doubt. Secondly, Imm D discovered a discrepancy in the information supplied by Mr A regarding his capability to provide Ms B with suitable accommodation. While

Mr A reported that he shared a flat of 700 square feet with seven family members, according to the Housing Department the size of his flat was in fact 400 square feet only. Finally, Imm D was alerted by the excessive gas consumption of Mr A's domestic unit, amounting to \$1,111.20, for the month of September 1994. As Mr A claimed he was working as a cook in the cooked food stall operated by his father, this had raised doubts as to whether Ms B would indeed be deployed as a domestic helper.

5. Imm D, in processing Ms B's application, had come to regard that disclosure of the reasons for refusal in this case was not appropriate, and hence decided to just inform Mr A that the refusal decision had been reached on "policy ground".

6. This Office has doubts over the reasonableness of Imm D's decision not to disclose the reasons for refusal in this case. In particular, the convenient and liberal use of **policy ground** by the Department as an umbrella to cover the reasons which it considered non-disclosable is a matter of serious concern. In regard to the present case, this Office considers that there is actually no policy ground involved. Doubts on the authenticity of reference letters which prove that the helper is an experienced FDH, of suitable accommodation and insufficient proof of Mr A's intention in employing a FDH are all disclosable and legitimate reasons for refusing the application. In addition, without being told of the true reasons for refusal, Mr A and Ms B would find it difficult to consider putting up an appeal against the decision.

7. This Office therefore finds the complaint **substantiated**.

8. This Office has recommended to Imm D that in future, save on grounds of truly security, criminal, operational and policy considerations, the full reasons for refusal of visa applications for employment as FDH should be given. The Department had since undertaken to conduct a review, in consultation with the Secretary for Security and the Attorney General's Chambers, with a view to complying with this Office's recommendation as far as possible.