

Soh Lip Hwa v Public Prosecutor  
[2001] SGHC 252

**Case Number** : MA 137/2001  
**Decision Date** : 03 September 2001  
**Tribunal/Court** : High Court  
**Coram** : Yong Pung How CJ  
**Counsel Name(s)** : Tomas Ho Vei Liung (Chee & Teo) for the appellant; Ravneet Kaur (Deputy Public Prosecutor) for the respondent  
**Parties** : Soh Lip Hwa — Public Prosecutor

*Criminal Procedure and Sentencing – Appeal – Motion to adduce additional evidence – When additional evidence may be adduced – Threefold test – s 257(1) Criminal Procedure Code (Cap 68)*

*Criminal Procedure and Sentencing – Sentencing – Benchmark sentences – Employment of immigration offender – Whether imprisonment of one year manifestly excessive – When statutory minimum term of imprisonment applies – Benchmark sentence where accused claims trial – s 57(1) (ii) Immigration Act (Cap 133- 1997 Ed)*

*Immigration – Employment – Employment of immigration offender – Actus reus – Whether element of employment made out – Mens rea – Whether appellant knows worker to be immigration offender – s 57(1)(e) Immigration Act (Cap 133, 1997 Ed)*

: This was an appeal against the decision of District Judge Audrey Lim when she convicted the appellant, Soh Lip Hwa (`Soh`), of an offence under s 57(1)(e) of the Immigration Act (Cap 133, 1997 Ed) for employing a China national, Zhou Xi Qiu, who had entered Singapore without a valid pass. Soh was sentenced to one year's imprisonment. He appealed against his conviction and sentence. I dismissed the appeal and now give my reasons.

### ***The charge***

The charge against the appellant read as follows:

*You, Soh Lip Hwa, Male/44 years, NRIC No. S2584327D, are charged that you, from a day in Jan 2000 till 8th day of March 2000, at various locations in Singapore, did employ one Zhou Xi Qiu [commat] Zhou Xi Qun, a China National, as general worker, whom you had reasonable grounds for believing to be a person who had acted in contravention of Section 6(1) of the Immigration Act; Chapter 133, by entering Singapore without being in possession of a Valid Pass issued by Controller of Immigration, Singapore, and you have thereby committed an offence under Section 57(1)(e) of the Immigration Act Chapter 133 and punishable under Section 57(1)(ii) of the said Act.*

### ***The undisputed facts***

On 8 March 2000, Sgt Koh Ah Seng was on patrol duty when he was despatched to Block 749, Jurong West Street 73, [num]12-143. He saw two China nationals, namely, Huang Xin Hwa (`Huang`) and Zhou Xi Qiu (`Zhou`) working in that unit which was under renovation at that time. They were unable to produce any documents when requested and were arrested. They were subsequently charged in court and convicted for being illegal immigrants.

### ***The prosecution`s case***

Soh was employed as a supervisor in a company known as Tops and Hui Design & Renovation (`Tops and Hui`), which was owned by one Ting See Sa Moi (`Ting`), since July 1999 when the company was first set up.

Soh`s job was to supervise the workers and the factory. According to Ting, every minor detail in the factory was handled by him. Soh was in charge of the workers and arranged for the workers to do their jobs at the project sites. When there was a project, drawings would be faxed to Ting. Soh would then arrange for the workers to go to the site and do all the measurements before commencing work. Every week he would advise Ting as to how much to pay the workers and she would withdraw the money from the bank for payment. If Ting was unable to do so, Soh could also withdraw the money to pay the workers, as Soh and Ting were joint signatories to the company`s bank account.

Soh was given almost complete control over the assignments given to Ting`s company. Soh had the authority to employ workers without Ting`s approval or consent and he had done so previously. Ting did not raise any objections to that as she thought he was more familiar with that line of work.

In 1999, Soh brought two China nationals, namely Zhou and Huang, to see Ting and asked her whether she wanted to employ them. Ting told him no, as her company was very small. When Ting asked the two China nationals whether they had work permits, Huang showed her a work permit. Zhou did not do so. Ting claimed that she could not understand the contents of the work permit as she did not know English. She testified that Soh had seen the work permit and told her that the work permit was genuine. Ting told Huang that she had no work for him at that time and that she would contact him if she had any work for him. She made a copy of Huang`s work permit.

Soh had informed Ting of a contract for cleaning works at Block 749, Jurong West St 73, [num]12-143. Soh was in charge of the work to be done in that unit. As Ting was not free to attend to this herself, Soh told her that he would send workers to do the job, and suggested sending Huang. Ting agreed to it and told Soh he could send the person whose work permit she had photocopied to do the work. Ting testified that she did not instruct Soh to employ Zhou.

During the course of the investigations, two handphones were seized by Investigating Officer SSgt Anan s/o Balakrishnan. One of the handphones was seized from Zhou. That handphone, bearing the number 97870275, was registered in the name of Soh and the phone bills were sent to Soh`s residential address.

Ting testified that she had never purchased handphones for the company and had never given any handphone to anyone in the company. She never requested Soh to purchase handphones for the company. She also did not pay for Soh`s handphone or his handphone bills. Neither did she pay for any handphones or handphone bills for the workers.

### ***The defence***

Soh testified that he was formally employed by Ting from May 2000. Prior to that, he was employed by Home Shape Design and Construction (`Home Shape`), which was a company owned by Ting`s husband, Ngu Ting Tieh (`Ngu`). Soh would assist Ting whenever Ngu instructed him to do so.

Soh's evidence was that, as a supervisor, he had no authority to employ any workers. His main job was to oversee the production line in the factory and he never went down to project sites. He acted on Ting's or Ngu's instructions and it was Ting, and not him, who was in charge of the day to day running of the business in Tops and Hui. According to Soh, Ting had told him of the work to be done at Block 749, Jurong West St 73, [num]12-143. He testified that he was not in charge of the work to be conducted in that unit and did not supervise the workers for the project. However, he testified later that he had instructed workers to go to the unit to do work upon Ngu's or Ting's orders.

Soh got to know Zhou and Huang at a nearby canteen. One day both of them asked him whether any general work was available. Soh told them that they could ask Ngu at Home Shape. Soh brought them to see Ting and asked her whether she would employ them. Soh said that he did not see Ting check any work permit and was not aware whether she did so. However, he later testified that Ting told him after checking the work permit that it was genuine.

Soh's defence was that it was Tops and Hui, and not he, who had employed Zhou and that Soh had acted on Ting's instructions in sending Zhou to do the work. Zhou contacted Ting in the office to ask if there was any job for him. Ting told Soh to inform Zhou that there was a job for him and to ask him to report for work. Ting also paid \$20 to him to be handed over to Zhou as Zhou's salary for the work to be done.

Ting told Soh to apply for two handphone lines for the use of the company two to three years prior to 2000. At that time, Ting was at Home Shape. The handphone bearing the number 97870275 was the handphone that Home Shape instructed him to purchase. He handed this handphone to Zhou. The handphone was purchased for Home Shape, but the bill was sent to his residential address. According to Soh, this was because he did not bring an authorisation letter from Home Shape when he bought the handphone, but produced his identity card instead. He handed the phone bills to Home Shape for reimbursement or payment. He never asked Ngu whether he would pay or had paid the bills.

### ***The decision below***

The judge accepted Ting's testimony that she had left Soh to supervise the work at the factory and on-site and to deploy and supervise workers. Ting's testimony that Soh had the authority to hire workers without Ting's consent was also accepted by the judge.

The judge found that Soh had brought Zhou and Huang to see her for employment. It was also found that Ting had asked to look at their work permits, and Huang produced one to Soh, who remarked that it was genuine and handed it to Ting. The judge believed Ting's testimony that she had agreed to Soh's suggestion in deploying Huang to do the cleaning work at the flat, as Huang had a work permit. Further, it was found by the judge that Ting never gave Soh permission to employ Zhou.

The judge found that there was clear indicia of employment by Soh. Firstly, in Soh's long statement he admitted that he had informed Zhou that there was a job for him and asked him to come to work. Soh also demonstrated the work to Zhou and told him that he could return in one or two days. When Zhou returned, Soh directed him to do the cleaning work and gave him the address. The judge preferred Soh's evidence in his long statement to his testimony in court, where he claimed that he had done all those things on Ting's orders. Secondly, Soh handed Zhou his salary of \$20 per day. Thirdly, Soh gave Zhou a handphone registered in Soh's name to contact him for work. The judge also found Soh to be an inconsistent, evasive and untruthful witness. For instance, Soh's evidence was that he did not know that Zhou and Huang produced their work permits to Ting and he did not see Ting check their work permits. However, he later testified that Ting told him that the work

permits were genuine. Under such circumstances, Soh must have known that Ting had checked their work permits. Another discrepancy noted by the trial judge was that Soh testified that he did not supervise workers or go to project sites and he only worked in the factory, but he also testified that he did instruct workers to go to the unit at Blk 749 upon Ting`s or Ngu`s instructions. Yet another inconsistency was that Soh kept referring to Ting as his boss during the trial and as his employer in the long statement, but he kept denying that he was employed by Ting at the material time. He maintained that his employer was Ngu at that time, but Ngu was never mentioned in his long statement as his employer. The judge rejected Soh`s explanation that he regarded Ting as his employer when the statement was recorded, because he was then working for Ting, and thus did not mention Ngu as his boss. The judge held that it was inconceivable how Soh could have forgotten to mention Ngu, if Ngu had been involved in any way.

Accordingly the judge was satisfied beyond reasonable doubt that Soh had employed Zhou at the material time and Soh was convicted. The judge imposed a sentence of one year`s imprisonment, taking into consideration the recent decisions of **Hameed Sultan Raffic v PP** (Unreported) , **Tan Soon Meng v PP** (Unreported) and **Ang Jwee Herng v PP** [\[2001\] 2 SLR 474](#).

### ***The motion to adduce additional evidence***

Counsel for Soh applied, by way of CrM 24/2001, for leave to adduce the following documents as additional evidence:

- (1) a faxed copy of Zhou Xi Qiu`s marriage certificate showing his marriage to one Lin Ming Qin on 6 June 1990;
- (2) a faxed copy of a letter from the Singapore Immigration & Registration (SIR) dated 12 February 2000 addressed to Ting See Sa Moi regarding an application for a one-month social visit pass for one Lin Ming Qin;
- (3) a copy of the original letter from the SIR dated 12 February 2000 to Ting See Sa Moi regarding an application for a one-month social visit pass for one Lin Ming Qin;
- (4) a notarial certificate dated 18 June 2001 certifying the marriage of Zhou Xi Qiu to Lin Ming Qin on 6 June 1990;
- (5) a notarial certificate dated 18 June 2001 certifying the identity of Zhou Xi Qiu;
- (6) a notarial certificate dated 18 June 2001 certifying the identity of Lin Ming Qin;
- (7) a copy of the DHL envelope cum shipment airway bill dated 27 May 2001;
- (8) a copy of the DHL envelope cum shipment airway bill dated 20 June 2001.

The applicable provision in the Criminal Procedure Code (Cap 68) is s 257(1) which reads as follows:

*In dealing with any appeal under this Chapter, the High Court, if it thinks additional evidence is necessary, may either take such evidence itself or direct it to be taken by a District Court or a Magistrate`s Court.*

The principles in determining whether additional evidence is 'necessary' were laid down in **Juma`at bin Samad v PP** [1993] 3 SLR 338 at 343, which adopted the test in **Ladd v Marshall** [1954] 3 All ER 745:

*[F]irst it must be shown that the evidence could not have been obtained with reasonable diligence for use at the trial; second, the evidence must be such that, if given it would probably have an important influence on the result of the case, although it need not be decisive; third, the evidence must be such as is presumably to be believed, or in other words, it must be apparently credible, although it need not be incontrovertible.*

This threefold test of non-availability, relevance and reliability has been applied in the recent cases of **Chia Kah Boon v PP** [1999] 4 SLR 72, **Lee Yuen Hong v PP** [2000] 2 SLR 339 and **Selvarajan James v PP** [2000] 3 SLR 750.

### **(1)THE EVIDENCE COULD NOT HAVE BEEN OBTAINED WITH REASONABLE DILIGENCE FOR USE AT THE TRIAL**

In my view, the first condition was satisfied. There was no evidence to suggest that Soh knew at the time of the trial that Ting had helped Zhou`s wife apply for a social visit pass. It was also reasonable for Soh not to have suspected at the time of the trial that Ting had done so, as no evidence had been adduced to show that Ting had revealed this fact to anyone prior to the trial.

Soh might have known of the application if he had managed to contact Zhou before the trial. Soh had handed Zhou a handphone so that Soh could contact him if there was any work for him. Prior to the trial, Soh had attempted to contact Zhou by calling the phone numbers in China, as reflected on the handphone bills. In my view, this amounted to the exercise of reasonable diligence, but Soh was not able to contact Zhou prior to the trial and was thus unable to obtain evidence of the application.

### **(2)THE EVIDENCE MUST BE SUCH THAT, IF GIVEN, IT WOULD PROBABLY HAVE AN IMPORTANT INFLUENCE ON THE RESULT OF THE CASE, ALTHOUGH IT NEED NOT BE DECISIVE**

Counsel for Soh submitted that the letter from the SIR addressed to Ting regarding an application for a social visit pass for Zhou`s wife indicated a closer relationship between Ting and Zhou, and their relationship was not limited to a mere acquaintanceship that was formed when Soh brought Zhou and Huang to see Ting. It was contended that this showed that Ting had been less than truthful during the trial. It was also submitted that in such circumstances it would be more likely that Zhou would have approached Ting rather than Soh for employment and it was Ting who subsequently employed Zhou.

I was of the opinion that the evidence in this case was sufficiently strong to prove that Soh employed Zhou. Ting, being the local sponsor, was required to declare her relationship with Zhou`s wife in the form for the application for a social visit pass. No evidence was adduced as to what was the relationship that Ting declared in the form. The fact that Ting had made an application for a social visit pass for Zhou`s wife might suggest that the relationship between Ting and Zhou was more than a mere acquaintanceship. Nevertheless, the possibility of a closer relationship between Ting and Zhou would not have an important influence on the result of the case, as it was not sufficient to show that Soh did not employ Zhou. Furthermore, the inference that Ting might have employed Zhou due to their relationship being possibly more than an acquaintanceship was not a strong one.

The other documents, namely, the faxed copy of Zhou`s marriage certificate showing his marriage to Lin Ming Qin, the notarial certificate certifying the marriage of Zhou to his wife, the notarial certificates certifying the identities of Zhou and his wife and the DHL envelopes cum shipment airway bills, would also not have an important influence on the result of the case.

Since the second condition was not satisfied, the motion should be dismissed.

### ***The appeal against conviction***

The main issue in this case was whether Soh had in fact employed Zhou. Before deciding on that issue, I dealt with defence counsel`s argument that the judge had erred in fact when she accepted Ting`s testimony that Soh had the authority to hire workers without her consent.

Ting testified in court that Soh had the authority to employ workers without her approval, as he was more familiar with this line. It was contended by defence counsel that as far as foreign workers were concerned, only Ting would have the authority to employ them. Counsel submitted that this was evidenced by the fact that Ting would apply for work permits for her workers through her agent and that Soh had seen it fit to bring Zhou and Huang to see Ting to ask her whether she had jobs for them and whether she wanted to employ them. It was submitted that the fact that Ting had told Huang that she had no job for him at the moment and would contact him if she had any job for him also implied that only Ting had the authority to hire foreign workers.

It is well settled that an appellate court would not readily disturb the trial judge`s finding of fact. In **Lim Ah Poh v PP** [1992] 1 SLR 713, it was held that:

*An appellate court will not disturb findings of fact unless they are clearly reached against the weight of the evidence. In examining the evidence, an appellate court has always to bear in mind that it has neither seen nor heard the witnesses and has to pay due regard to the trial judges` findings and their reasons therefor.*

This principle has been applied by the Court of Appeal in several recent cases: **Sundara Moorthy Lankatharan v PP** [1997] 3 SLR 464 ; **Abdul Ra`uf bin Abdul Rahman v PP** [2000] 1 SLR 683 .

In my view, this finding of fact was not reached against the weight of the evidence. Ting testified that she and Soh were joint signatories to the bank account of Tops and Hui from which Soh was able to withdraw money to pay the workers and other expenses. In addition, she stated that Soh was able to tell how much each worker was worth according to their craftsmanship and would advise her how much to pay the workers every week. In my view, these facts showed the trust that Ting had in Soh and the extent of Soh`s responsibility in Tops and Hui.

Counsel for Soh submitted that, in giving such testimony, Ting was trying to distance herself from the employment of Zhou and to shift all responsibility to Soh. However, it must be noted that Soh did not dispute the fact that he held a joint account with Ting, that he was able to withdraw money from the account to pay the workers and that he determined the salaries of the workers. Ting`s testimony that Soh had the authority to hire workers without her consent was consistent with the extent of trust and responsibility conferred on Soh. Accordingly there was no reason to overturn the judge`s finding of fact in the present case.

In any event, even if the judge was wrong in finding that Soh had the authority to employ workers without Ting's consent, I was of the view that Soh would still be guilty of the charge if he had in fact employed Zhou, even though he had no general authority to hire workers.

## **(1) WHETHER SOH EMPLOYED ZHOU ON THE FACTS OF THE PRESENT CASE**

Section 57(1)(e) of the Immigration Act (Cap 133, 1997 Ed) (‘the Act’) reads:

*(1) Any person who -*

*(e) employs any person who has acted in contravention of section 6 (1), 15 or 36 or the regulations;*

*shall be guilty of an offence and -*

*(ii) subject to section (1A), in the case of an offence under paragraph (b), (d) or (e), shall be punished with imprisonment for a term of not less than 6 months and not more than 2 years and shall also be liable to a fine not exceeding \$6,000.*

‘Employ’ is defined in s 2 as:

*"employ" means to engage or use the service of any person, whether under a contract of service or otherwise, with or without remuneration.*

This definition came into effect on 1 March 1996.

As I noted in [Tamilkodi s/o Pompayan v PP \[1999\] 1 SLR 702](#), under the amended definition of ‘employ’, in s 2 of the Act, there was no longer a requirement that the prosecution must prove the existence of a contract of service or any payment before the alleged employer could be charged under s 57(1)(e) of the Act. In [PP v Heng Siak Kwang \[1996\] 2 SLR 274](#) it was held that the manner of remuneration and control over the workers would often be of great significance in deciding whether there was an employment relationship between the parties. **Heng Siak Kwang** dealt with the definition of ‘employ’ before the amendment in 1996. Nevertheless the manner of remuneration and the degree of control of the workers continue to be two significant considerations in determining the existence of an employment relationship: [Ramli bin Daud v PP \[1996\] 3 SLR 225](#); [Lee Boon Leong Joseph v PP \[1997\] 1 SLR 445](#); [Tamilkodi s/o Pompayan v PP](#). However, these are not the only considerations which the court will take cognizance of when determining the existence of an employment relationship.

In the present case, there was evidence that Soh had control over Zhou. In the long statement, Soh stated as follows:

***A few days later, the male China national (Zhou) contacted me and asked me if there is any job for him. I told him that there is and asked him to come for work ... On his arrival, I demonstrated to him how to do the work. I also told him that he could come for work one or two days later ... After two days, the male China national (Zhou) came to the company. I then gave the address of a unit and told him to go there to do the cleaning works in a***

**taxi.** *I also told him that the keys to the unit would be above the meter reading box. [Emphasis is added.]*

In court, Soh admitted that he had made the above statement. However, Soh sought to qualify his statement by saying that Zhou called Ting in the office, and not him, and that Ting told him to inform Zhou that there was a job for Zhou and to ask him to come to work. When Soh was asked during cross-examination to explain why he had omitted to mention that it was Ting who had instructed him to ask Zhou to come to work, he claimed that he was very tense when he was in the police station.

The judge rejected Soh's qualification, as it was never once mentioned in his long statement. She held that it was implausible for him not to mention that he had done everything on Ting's instructions because he was very tense, since he was able to give a very detailed account of how he had met Zhou and dealt with him, and had even mentioned Ting's name. It was also held that it was inconceivable that he could have omitted such a material fact, namely, that it was Ting and not him, who had employed Zhou, if that was indeed the case.

On appeal, defence counsel submitted that the judge was wrong in accepting Ting's testimony that she never gave Soh permission to employ Zhou. It was also contended that the judge had erred in fact when she disbelieved Soh's testimony at trial that all the instructions given to Zhou were upon Ting's orders. Counsel contended that Soh's omission to mention in his long statement that he had been acting on Ting's instructions as regards Zhou ought not to be taken against him, as direct and specific questions such as 'Who employed Zhou?' or 'Did you employ Zhou? If not, who did?' were not posed to him. Counsel also submitted that Soh was very tense when the statement was taken and it was not unusual for an accused person to omit to mention certain important facts in view of the pressures faced during police investigations.

I was unable to accept this argument. As rightly held by the judge, if Ting had in fact given instructions in asking Soh to inform Zhou that there was a job for him and to ask him to come to work, it was very unlikely that Soh would omit to mention that fact, given that he had mentioned Ting earlier in the statement and given that this was an important fact. There was no need to pose specific questions to elicit this fact if Ting had indeed been involved. In my view, the judge's finding that Ting never gave permission to employ Zhou should be upheld. I was also satisfied that the judge was not wrong in rejecting Soh's qualification to his long statement at trial.

Apart from Soh having control over Zhou, there was other evidence which gave rise to the inference that Zhou was employed by Soh. Soh handed Zhou his salary of \$20 per day two to three times and had given Zhou a handphone registered under Soh's name so that it would be convenient for Soh to contact him (Zhou) if there was any work. The phone bills were sent to Soh's residential address. Soh claimed that Home Shape had instructed him to purchase the handphone and that the bills were paid by Home Shape. However, no evidence was adduced to show that this was so. If the phone was indeed purchased for Home Shape, it was unlikely that Soh would leave the billing address as his residential address for one and a half years and not subsequently change the billing address to that of the company. Furthermore, if the bills were to be paid by Home Shape, it was unlikely that Soh would be so unconcerned with whether unpaid portions of certain bills or amounts that were overdue had been paid by Home Shape. It would be in his interest to see that the bills were paid since he would be personally liable if payments were not made.

Accordingly, I was satisfied that the element of employment had been proved beyond a reasonable doubt.



## (2) MENS REA

The offence under s 57(1)(e) is not one of strict liability. The prosecution had the burden of establishing that Soh had the necessary mens rea, that is, he knew or had reasonable grounds to believe that Zhou was an immigration offender: **Assathamby s/o Karupiah v PP** [1998] 2 SLR 744 ; **Tamilkodi s/o Pompayan v PP** (supra).

In my view, Soh had the requisite mens rea for the offence. From the evidence, Soh had gotten to know Zhou at a nearby canteen and he was aware that Zhou was a China national. There was no evidence that Soh had checked Zhou's passport or work permit. Soh had not exercised any due diligence on Zhou's immigration status.

### ***The appeal against sentence***

Counsel for Soh argued that the sentence of one year imposed by the court below was manifestly excessive for the following reasons: Soh had completely no part to play in Zhou's illegal entry into Singapore; there could not have been any profit motive on the part of Soh as he was not the boss of the business; there was no evidence to suggest that Soh stood to gain or had gained any advantage in having employed Zhou; Zhou was employed only on an ad hoc basis; Soh did not give any assistance to Zhou to evade apprehension; only one immigration offender was involved; there was no ill-treatment of the person employed; Soh has no antecedents whatsoever whether of similar offences or otherwise.

Counsel for Soh also submitted that in determining the appropriate sentence to be imposed on the accused, the court ought to take into consideration the following mitigating factors: Soh was married with three children (ages 16, 14 and 12 years) and his wife was a housewife who was currently four months' pregnant. He had set up his own business and was holding the post of production manager. He was drawing a gross monthly salary of \$5,000. Since late 1992, Soh had been diagnosed with and had been treated for chronic anxiety-depressive disorder.

In the recent case of **Hameed Sultan Raffic v PP** (supra), the accused was convicted after a trial for employing an immigration offender for about two months. He was a first offender and was sentenced to seven months' imprisonment. The accused unsuccessfully appealed against conviction and sentence. His sentence was enhanced to 12 months' imprisonment on appeal. In **Tan Soon Meng v PP** (supra), the accused was convicted after a trial for employing an immigration offender for about six months. The accused, who had three previous convictions for illegal employment under the Employment of Foreign Workers Act, was sentenced to seven months' imprisonment. He initially appealed against his conviction, but subsequently applied to withdraw his appeal. Before the court acceded to his application, his sentence was enhanced to 12 months' imprisonment.

**Tan Soon Meng** was affirmed in **Ang Jwee Herng v PP** (supra) in which the court reiterated that the benchmark sentence for employing illegal immigrant workers was now one year, double that of the previously assumed tariff of six months.

In my view, the imposition of a minimum term of six months' imprisonment as prescribed by s 57(1)(ii) of the Act was confined to cases where the accused pleaded guilty to the charge. In cases where the accused was convicted after trial, the benchmark sentence for employing illegal immigrants was one year's imprisonment.

The impact of imprisonment on the offender's family members is generally not relevant in determining the appropriate sentence to be meted out. In **Ang Jwee Herng** (supra), I held at [para ]78 that:

*... the argument that an offender's family members will suffer if the offender is incarcerated for a longer term is one often put forth in vain by defence counsel. The reason, as I explained in **Lai Oei Mui Jenny v PP** [1993] 3 SLR 305 is simply because imprisonment of the sole breadwinner inevitably causes hardship to the family. If the courts were to take such hardship into account in determining the appropriate sentence, then any punishment meted out would not be accurately reflective of the gravity of the offence and circumstance of the offender himself, but tempered with considerations of the extent to which his family would be prejudiced by it. The crux of the matter is that part of the price to pay for committing a crime is the hardship that would unavoidably be caused to the offender's family. To put it bluntly, the appellant should have thought hard about these consequences before committing the offences in question. It is now too late in the day for him to regret the inescapable hardship which his own foolishness and greed will cause to his wife and children.*

Accordingly, I did not think that the sentence was manifestly excessive and the sentence ordered by the district court should be affirmed.

### **Conclusion**

For the reasons stated above, I denied the criminal motion and dismissed the appeals against conviction and sentence.

### **Outcome:**

Motion denied; appeals dismissed.