

FEB 22 2012

ASST. CLERK OF COURTS  
REPUBLIC OF MARSHALL ISLANDS

IN THE HIGH COURT  
OF THE  
REPUBLIC OF THE MARSHALL ISLANDS

REPUBLIC OF THE MARSHALL ISLANDS	)	CRIMINAL CASE NO. 2011-041
	)	
	)	
v.	)	<b>JUDGMENT OF CONVICTION AND</b>
	)	<b>SENTENCING ORDER</b>
ZHOU FANG, aka MONICA,	)	
	)	
Defendant.	)	
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APPEARANCES: Assistant Attorney-General Jack Jorbon, counsel for the Republic  
Attorney Philip A. Okney, counsel for the defendant  
Defendant Zhou Fang, aka Monica  
Interpreter Jonna Huang

JUDGE: Chief Justice Carl B. Ingram  
CLERK/  
REPORTER: Assistant Clerk of the Courts Nikki Holly

**I. Introduction: Charges and Verdicts**

This matter came before the Court on the Republic’s July 8, 2011 First Amended Criminal Information charging the defendant with the following:

1. Count 1, Promoting Prostitution [in re Dai Min], in violation of 31 MIRC 502(3) and 503(3);
2. Count 2, Promoting Prostitution [in re Lu Shuang], in violation of 31 MIRC 502(3) and 503(3);
3. Count 3, Employment of a Non-Resident Worker Without a Work Permit [in re Dai Min], in violation of 16 MIRC 132(1); and

4. Count 4, Employment of a Non-Resident Worker Without a Work Permit [in re Lu Shuang], in violation of 16 MIRC 132(1).

On July 15, 2011, at the conclusion of the preliminary hearing in this matter, the Court dismissed Count 5, Operating a Bar Without Employing a Special Policeman to Maintain Peace and Quiet, in violation of 21 MIRC 111(1).

After the preliminary hearing, the defendant pled not guilty to the remaining Counts 1, 2, 3, and 4. Pursuant to the defendant's July 15, 2011 jury trial waiver, the case was tried to the bench January 18 through 27, 2012, with closing arguments on January 30 and February 6, 2012.

On February 14, 2012, the Court in open court announced its verdict, finding the defendant guilty beyond a reasonable doubt on Counts 1 and 2, Promoting Prostitution, and Counts 3 and 4, Employment of a Non-Resident Worker Without a Work Permit. The Court's verdicts of guilty are based upon the following findings and conclusions.

## **II. Findings of Fact and Conclusions of Law**

At trial, the Court received into evidence the following:

1. the parties' January 17, 2012 Stipulation Re: Currency Rate Exchange;
2. Government Exhibits 1, 1a, 2, 2a, 3, 6, 8, 11, 11a, 11b, 12, 12a, and 14;
3. Defendant's Exhibits A, E, and E1; and
4. the testimony of witnesses, including Immigration Division Officer Burton Mckay, Majuro Atoll Local Government Chief of Taxation and Revenue John Peralta, Dai Min, Lu Shuang, Deputy Director of Immigration Division Tanga Lanwi, Deputy Chief of Labor Division Anderson Takiaha, Kimiko Nook, Maria "Beng" Villegas, and the defendant.

Having considered all the evidence and having assessed the credibility of the witnesses, the Court

makes the following findings and conclusions regarding the Counts 1 through 4.

**1. Count 3, Employment of a Non-Resident Worker Without a Work Permit [in re Dai Min], and Count 1, Promoting Prostitution [in re Dai Min]**

**a. Factual Background**

Dai Min is a 36-year-old woman, divorced, with a six-year-old child living with Dai Min's parents in the People's Republic of China. At all times relevant to this case, Dai Min was a citizen of the PRC and not a citizen of the Republic of the Marshall Islands.<sup>1</sup>

In October 2009, Dai Min met the defendant in the PRC. The defendant had returned to the PRC from Majuro for her mother's funeral. Dai Min and the defendant met at a meal with others, including Yu Qiji, Qiji's older sister, and the defendant's husband. At the meal, the defendant told Dai Min and the others about her life and restaurant business in the Marshall Islands.

Dai Min maintains that at the meal the defendant offered Dai Min a job as a waitress at her Majuro restaurant for a salary of \$750 per month plus food and housing. The defendant denies the job offer, but said she told Dai Min a person with specific skills and the ability to speak English could earn approximately \$700 per month. Dai Min was earning less than \$200 per month in the PRC selling construction supplies and bus tickets.

At any rate, the defendant told Dai Min that for 20,000 RMB, the defendant would get her a visa to enter the Marshall Islands. The 20,000 RMB, approximately \$3,000, was to cover the following: the cost of a visitor's visa, \$100; the Division of Immigration security bond, \$1,500 for aliens; the defendant's attorney's fee for a sponsor letter, \$350; and the balance for communication, express mail, and others expenses, \$1,050.

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<sup>1</sup>Government Exhibit 11.

Dai Min gave the defendant the 20,000 RMB, and after the defendant returned to the Republic, she mailed Dai Min her passport with a Marshall Islands visitor's visa stamped on page 9.<sup>2</sup> The visitor's visa was good for three months. The defendant also assisted Dai Min arrange her travel to the Marshall Islands via Fiji. The airfare to the Marshall Islands cost Dai Min about 20,000 RMB.

The defendant knew that Dai Min had neither a work visa nor a work permit and that Dai Min could not lawfully work in the Marshall Islands under the visitor's visa. The defendant knew well the requirements for getting a work permit as evidenced by her testimony and defendant's Exhibit A.

When Dai Min arrived at the Majuro airport on April 1, 2010, she was met and picked up by the defendant. The defendant took Dai Min to the defendant's apartment located in Prianga Fernando's apartment building in Uliga Village, Majuro Atoll. Dai Min lived at the defendant's apartment until late September 2010.

Dai Min's visitor's visa was due to expire on April 12, 2010. The defendant secured an extension to June 23, 2010.<sup>3</sup> The defendant told Dai Min that she need not worry about an expired visa because the defendant had a friend in the Immigration Division.

Within two to three days of Dai Min's arrival on Majuro, the defendant asked Dai Min to work at her restaurant. At the restaurant Dai Min served customers, helped with rice, cleaned and chopped vegetables, cleaned dishes, and helped pick up supplies. Dai Min claims to have worked at the defendant's restaurant for two months. The defendant claims that Dai Min only worked at the restaurant for about 3 weeks, less than one month, on a "try out" [or probationary]

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<sup>2</sup>Government Exhibit 11a, stamped on page 9 of Dai Min's passport.

<sup>3</sup>Government Exhibit 11b, stamped on page 15 of Dai Min's passport.

basis. The defendant did not pay Dai Min for her work. However, the defendant feed Dai Min and let Dai Min live with her at her apartment without charge.

The defendant went to the PRC in early July 2010 and returned September 28, 2010. The purpose of the trip was to buy equipment for a kairioki bar and to visit family and friends.

Upon returning to Majuro, the defendant opened a second-floor bar in another building owned by Prianga Fernando, one across from the Marshall Islands Social Security Building in Delap Village, Majuro Atoll. The defendant offered Dai Min, Lu Shuang, and Yu Qiji work at the bar. The defendant calls the work a “try out.” The defendant also assisted Dai Min, Lu Shuang, and Yu Qiji rent apartments from Fernando in the same building behind the bar on the second floor. At some point in time, Fernando installed a door in the bar’s back wall leading directly to the apartments.

Dai Min worked for the defendant at her bar from September 28, 2010, until mid January 2011, when they had a falling out. After, Dai Min quit, the defendant attempted to have Dai Min removed from the Marshall Islands. Subsequently, Dai Min met with the Office of the Attorney-General and gave a statement that, in part, led to this case.

Over the 3.5-month period, Dai Min’s work at the bar included cleaning, serving drinks to the customers (mostly fishermen from foreign fishing vessels), drinking with the customers, and singing with the customers. The defendant scolded Dai Min when her work was not satisfactory. For cleaning, the defendant paid Dai Min \$200 the first month and then \$300 per month thereafter. The defendant also paid Dai Min a commission on alcohol she served to bar customers: 8% for beer; \$10 for wine; and \$15 for whiskey. For Dai Min’s work at the bar, the defendant paid her about \$1,000.

During the 3.5 months, the defendant also instructed, and at times angrily demanded, that

Dai Min have sexual intercourse with the bar customers. Dai Min had not before worked in a bar, message parlor, or in the sex industry. Dai Min did not want to engage in sexual intercourse with the men, but did so at the defendant's insistence. During her testimony, Dai Min used the terms "sexual intercourse," "sleeping with," and "sexual services" interchangeably. At one time, when Dai Min resisted, the defendant said to Dai Min, "You are not a virgin, so what can you do?" Dai Min needed the money.

Dai Min had borrowed 60,000 RMB to come to the Marshall Islands, her apartment cost \$350 per month, and she needed money for food. The defendant knew this. The defendant was late in paying Dai Min the commissions she was due. The defendant also threatened to have Dai Min deported if she did not have sex with the bar customers.

At the defendant's instruction, Dai Min charged bar customers \$150 for sex. The defendant did not take a share of the money her bar customers paid for sex, but she wanted to keep her bar customers. At times, the defendant would insist Dai Min to have sex with bar customers even if they could not pay. The defendant wanted Dai Min to have sex with her bar customers so that she could keep their business.

During the time Dai Min worked for the defendant at both the restaurant and the bar, the defendant knew that Dai Min did not have a work permit. The defendant claims that at the end of November or in December 2010, she offered to help Dai Min get a work visa and work permit. According to the defendant, Dai Min was concerned that she would have to leave the country and come back under a work visa and work permit. For this reason, Dai Min did not want the work permit. The National Government's records show that no work permits were issued to Dai Min and Lu Shuang.<sup>4</sup>

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<sup>4</sup>Government Exhibit 6.

At the present, Dai Min does not have the money to pay her debts in the PRC. She is afraid to go back to the PRC, but she no longer wants to stay in the Marshall Islands. She just wants her money and to go back.

When asked what she thought of the defendant, Dai Min said, “Her heart is black.” At the end of her testimony, Dai Min was in tears.

**b. The defendant employed Dai Min, a non-resident worker without a work permit, knowing she did not have a work permit.**

Section 132(1) of the Labor (Non-Resident Workers) Act 2006, 16 MIRC Chp. 1 (Labor Act), states that any employer who employs a person knowing that the employee does not have a work permit is guilty of an offense and upon conviction is liable for a fine not exceeding \$10,000 and a term of imprisonment not exceeding 5 years, or both. Under the above facts, the Court finds beyond a reasonable doubt that the defendant is guilty of employing Dai Min, a non-resident worker<sup>5</sup> without a work permit, at both the defendant’s restaurant and bar knowing that Dai Min did not have a work permit.

The defendant’s counsel argued that because the defendant had hired Dai Min on only a “try out” or probationary basis, she had not violated the law. The defendant allegedly believes “try outs” are not covered by Section 132(1)’s prohibition.

The Court does not accept that the defendant’s employment of Dai Min at the bar over a 3.5-month period was merely a try-out or probationary employment. The defendant’s assertion is not credible. The defendant would know within a few hours if Dai Min could do the work. Even assuming that the defendant hired Dai Min on a try out or probationary basis at her restaurant and

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<sup>5</sup>Section 102(1)(v) of the Labor Act.

then at her bar, the Labor Act's definition of "employment"<sup>6</sup> is broad enough to cover Dai Min's work for the defendant at both the restaurant and bar. Under the Labor Act "employment" means any activity undertaken for gain or reward with certain exceptions that are not applicable to this case. This definition of employment includes work on a try out or probationary basis and includes Dai Min's work at the restaurant and bar. Both the defendant and Dai Min gained from Dai Min's work at the bar. The defendant received the services of a waitress and "hostess," and Dai Min received \$200 to \$300 per month plus commissions on drinks sold.

With respect to the defendant's try out interpretation, the defendant did not establish a mistake of law defense. She did not establish that she relied on an official interpretation of the Labor Act. Her misunderstanding of the law is no defense.

**c. With respect to Dai Min, the defendant promoted prostitution in violation of the law.**

Sections 502(3) and 503(3) of the Prostitution Prohibition Act, 2001, 31 MIRC Chp. 5, any person who promotes prostitution commits a crime and upon conviction is liable for a fine of up to \$10,000 or a term of imprisonment not exceeding 5 years, or both. Under Section 502(3) promoting prostitution includes the following: causing or aiding a person to commit prostitution; procuring patrons for prostitution; and providing persons or premises for prostitution.

Under the above facts, the Court finds beyond a reasonable doubt that with respect to Dai Min the defendant is guilty of promoting prostitution. Specifically, the Court finds that the defendant knowingly caused Dai Min to engage in prostitution by the following: repeatedly instructing and insisting that Dai Min do so, which Dai Min did; suggesting that Dai Min charge \$150 for sex; and threatening to have Dai Min deported if she did not have sex with bar

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<sup>6</sup>Section 102(1)(l) of the Labor Act.



customers. The defendant knowingly procured patrons for prostitution and provided a person and premises for prostitution by having Dai Min, a bar waitress, take customers from the defendant's bar back to Dai Min's apartment for sexual intercourse. It does not matter that the defendant did not share in the fee Dai Min charged for sex or that the sex acts occurred in Dai Min's apartment. The defendant caused and facilitated Dai Min's acts of prostitution with her bar customers, customers who spent money at her bar.

Counsel for the defendant argued that because Dai Min did not describe in detail the sexual contact she had with bar customers, there is not sufficient proof that Dai Min engaged in sexual contact within the meaning of 31 MIRC 502(4), i.e., that she engaged in sexual intercourse, deviate sexual intercourse, or sexual contact. To describe her sexual conduct with bar customers, Dai Min used the terms "sexual intercourse," "sleep with," and "sexual services" interchangeably. At the close of argument on January 30, 2012, the Court gave counsel a week, until February 6, 2012, to review Dai Min's testimony on this issue. On February 6, the Court and the parties reviewed the record, which confirmed Dai Min's use of the terms "sexual intercourse," etc. At the close of argument on February 6, 2012, the Court gave counsel an additional two days, until 5:00 p.m. on February 8, 2012, to file legal authority on this issue. Neither counsel filed a submission with the Court. On February 9, 2012, counsel approached the Court in chambers to apologize for not timely filing their submission and to say they had found nothing. The record on this question is closed. The Court finds that Dai Min's testimony establishes that at the defendant's direction Dai Min engaged in sexual intercourse for money with the defendant's bar customers in violation of 31 MIRC 502(3) and 503(3). The Court finds her description to be adequate. She speaks in terms one would expect to hear. She need not talk like a lawyer.

**2. Count 4, Employment of a Non-Resident Worker Without a Work Permit [in re Lu Shuang], and Count 2, Promoting Prostitution [in re Lu Shuang]**

**a. Factual Background**

Lu Shuang is a 38-year-old woman. At all times relevant to this case, Lu Shuang was a citizen of the People's Republic of China and not a citizen of the Republic of the Marshall Islands.<sup>7</sup>

Lu Shuang knew Dai Min. They had been classmates. At a class reunion, Dai Min told Lu Shuang about the defendant, that she owned two restaurants in the Marshall Islands, that she was the vice-president of a Chinese association, and that she offered Dai Min \$750 per month, plus food and lodging, for work in her restaurant. At the time, Lu Shuang was earning 800 to 900 RMB per month in the PRC selling bus tickets.

Lu Shuang asked Dai Min to help her get a visa to go to the Marshall Islands. Dai Min told the defendant that Lu Shuang wanted to work.

In March and April 2010, the defendant and Lu Shuang communicated over the telephone and the Internet. At first, the defendant told Lu Shuang that she would have to pay her 30,000 RMB for a visa. The defendant then told Lu Shuang that she needed another 15,000 RMB because the immigration officer had changed. Lu Shuang gave the defendant the 45,000 RMB through the defendant's aunt.<sup>8</sup> At the time, the defendant was in Majuro.

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<sup>7</sup>Government Exhibit 12.

<sup>8</sup>The defendant testified that the request for the additional 15,000 RMB was initiated by Dai Min, not the defendant. According to the defendant, Dai Min wanted the defendant to get the additional 15,000 RMB from Lu Shuang and give it to Dai Min's mother. The additional 15,000 RMB was not for an Immigration Officer. The defendant alleges that unknown to Lu Shuang she gave Dai Min's mother the value of 15,000 RMB in United States dollars. In short, the defendant defrauded Lu Shuang of at least 15,000 RMB. Because the business visa only cost \$150, \$50 dollars more than the visitor's visa, the defendant may well have defrauded Lu Shuang

Before Lu Shuang left the PRC, the defendant had promised her a job in the Marshall Islands: she would be working for the defendant in a kairioki bar the defendant was opening. The defendant told Lu Shuang that if she stayed one to two years, the defendant would help Lu Shuang get a visa to the United States. Lu Shuang had in the past tried to get a visa to the United States, but was unsuccessful. The defendant also told Lu Shuang that a waitress in her restaurant could make up to 500,000 RMB per year. The defendant claims she said 500,000 RMB over five years and that some earned \$8,000 to \$10,000 in a few months. At any rate, Lu Shuang was ready to come to the Marshall Islands.

On July 5, 2010, the defendant went to the PRC to buy equipment for a kairioki bar and to visit with friends and family. While in the PRC, the defendant and Lu Shuang met twice. The defendant gave Lu Shuang her passport. Stamped on page 11 of Lu Shuang's passport was the business visa (expiration date April 18, 2011),<sup>9</sup> which the defendant had obtained for her, but no authorization to work. As noted above, the defendant knew well the requirements for getting a work permit.

On July 18, 2010, Lu Shuang left the PRC for the Marshall Islands. She arrived in Majuro on July 24, 2010 with Yu Qiji. Dai Min meet Lu Shuang and Yu Qiji at the Majuro airport and took them to the defendant's apartment. Lu Shuang lived in the defendant's apartment with Dai Min and Yu Qiji until the end of September 2010, when the defendant

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out of another 10,000 RMB by charging her 30,000 RMB, not 20,000 RMB, for the business visa.

<sup>9</sup>Government Exhibit 12a. The government fee for a business visa is \$150. A business visa is for a "person who is outside the Republic and intends to enter the Republic for the purposes of establishing, seeking to establish, or conducting trade with a business in the Republic, . . ." 16 MIRC 134. Lu Shuang came to the Republic to work for the defendant at her kairioki bar, not to establish or conduct trade with a business.

opened her second-floor bar across from the Social Security building in Delap Village. At the end of September, Lu Shuang moved into an apartment in the same building behind the bar, as did Dai Min and Yu Qiji. The defendant had arranged for them to rent the apartments from Fernando.

Lu Shuang worked for the defendant at the bar as a waitress from the end of September 2010 until the end of June 2011 when they had a fight. Prior to the fight, Lu Shuang had given the Republic her statement that, in part, led to this case.

Lu Shuang's work included drinking, singing, and chatting with bar customers at the defendant's instruction. The defendant paid Lu Shuang commissions for selling alcohol to the defendant's customers: 8% for beer; \$10 for wine; and \$15 for whiskey.

The defendant also ordered Lu Shuang, Dai Min, Yu Qiji, and others to engage in sexual intercourse with bar customers after the bar closed in the evening. The sex customers would return to the bar. In Lu Shuang's testimony, the terms "sex intercourse," "sleeping with," and "sexual services" were used interchangeably. Lu Shuang charged between \$150 and \$200 for the sex intercourse she provided to bar customers. Lu Shuang testified that sometimes she would give the defendant a portion of the money she received for sex. At this point, the defendant started scolding witness Lu Shuang, disrupting the proceedings.

Lu Shuang did not want to engage in prostitution. She had not worked in the sex industry before. However, the commissions she received from the defendant, which were paid late, were not enough for her living expenses and to repay loans she had taken out to come to the Marshall Islands.

The defendant forced Lu Shuang to engage in sex with bar customers. The defendant threatened to have Lu Shuang deported if Lu Shuang did not do what the defendant told her to

do. Lu Shuang followed the defendant's orders and engaged in sexual intercourse with bar customers to earn money to repay her loans. Lu Shuang was afraid of the defendant.

Now, Lu Shuang just wants the defendant to pay her the money the defendant owes her so she can go home to the PRC. Lu Shuang supports herself from her savings and making Chinese handicrafts.

During all times Lu Shuang worked for the defendant at the bar, the defendant knew that Lu Shuang did not have a work permit. The defendant claims that at the end of November or in December 2010, she offered to help Lu Shuang get a work visa and work permit. Lu Shuang denies this. According to the defendant, Lu Shuang noted that her visa had not expired, so she would consider the matter.

The National Government's records show that no work permits were issued to Dai Min and Lu Shuang.<sup>10</sup>

**b. The defendant employed Lu Shuang, a non-resident worker without a work permit, knowing she did not have a work permit.**

Section 132(1) of the Labor (Non-Resident Workers) Act 2006, 16 MIRC Chp. 1 (Labor Act), states that any employer who employs a person knowing that the employee does not have a work permit is guilty of an offense and upon conviction is liable for a fine not exceeding \$10,000 and a term of imprisonment not exceeding 5 years, or both. Under the above facts, the Court finds beyond a reasonable doubt that the defendant is guilty of employing Lu Shuang, a non-resident worker without a work permit, at the defendant's bar knowing that Lu Shuang did not have a work permit.

The defendant's counsel argued that because the defendant had hired Lu Shuang on only

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<sup>10</sup>Government Exhibit 6.

a “try out” or probationary basis, she had not violated the law. The defendant allegedly believes “try outs” are not covered by Section 132(1)’s prohibition.

The Court does not accept that the defendant’s employment of Lu Shuang over a nine-month period (even less the two months the defendant claims Lu Shuang was sick) was a mere try-out or probationary employment. The defendant’s assertion is not credible. The defendant would know within a few hours if Lu Shuang could do the work. Even assuming that the defendant hired Lu Shuang on a try out or probationary basis, the Labor Act’s definition of “employment”<sup>11</sup> is broad enough to cover Lu Shuang’s work for the defendant at her bar. Under the Labor Act “employment” means any activity undertaken for gain or reward with certain exceptions that are not applicable to this case. This definition of employment includes work on a try out or probationary basis and includes Lu Shuang’s work at the bar. The defendant received the services of a waitress and “hostess,” and Lu Shuang received commissions on drinks sold.

And as noted above, with respect to the defendant’s try out interpretation, the defendant did not establish a mistake of law defense. She did not establish that she relied on an official interpretation of the Labor Act.

**c. With respect to Lu Shuang, the defendant promoted prostitution in violation of the law.**

Sections 502(3) and 503(3) of the Prostitution Prohibition Act, 2001, 31 MIRC Chp. 5, any person who promotes prostitution commits a crime and upon conviction is liable for a fine of up to \$10,000 or a term of imprisonment not exceeding 5 years, or both. Under Section 502(3) promoting prostitution includes the following: causing or aiding a person to commit prostitution; procuring patrons for prostitution; and providing persons or premises for prostitution.

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<sup>11</sup>Section 102(1)(l) of the Labor Act.

Under the above facts, the Court finds beyond a reasonable doubt that with respect to Lu Shuang the defendant is guilty of promoting prostitution. Specifically, the Court finds that the defendant knowingly caused Lu Shuang to engage in prostitution by repeatedly instructing and insisting that Lu Shuang do so, which Lu Shuang did, and by threatening to have Lu Shuang deported if she did not have sex with bar customers. The defendant knowingly procured patrons for prostitution and provided a person and premises for prostitution by having Lu Shuang, a bar waitress, take bar customers back to Lu Shuang's apartment from the defendant's bar for sexual intercourse. It does not matter whether the defendant did, or did not, share in the fee Lu Shuang charged for sex or that the sex acts occurred in Lu Shuang's apartment. The defendant caused and facilitated Lu Shuang's acts of prostitution with bar customers, customers who spent money at her bar.

Counsel for the defendant argued that because Lu Shuang did not describe in detail the sexual contact she had with bar customers, there is no proof that Lu Shuang engaged in sexual contact. To describe her sexual conduct with bar customers, Lu Shuang used the terms "sexual intercourse," "sleep with," and "sexual services" interchangeably. At the close of argument on January 30, 2012, the Court gave counsel a week, until February 6, 2012, to review Lu Shuang's testimony on this issue. The Court's record shows that during her testimony Lu Shuang confirmed that at the defendant's direction she, Lu Shuang, for money engaged in sexual intercourse with, slept with, and provided sexual services to the defendant's bar customers in violation of 31 MIRC 502(3) and 503(3). The Court finds her description to be adequate. She speaks in terms one would expect to hear.

### **3. Credibility of witnesses**

With respect to the credibility of Dai Min and Lu Shuang, the Court has taken into

consideration matters raised by counsel, including without limitation the following: that neither had worked in the sex industry before working for the defendant; that both committed prostitution in the Marshall Islands; that both have over stayed their visas; that both submitted statements to the Government after their visas had expired; that the Government may have granted them immunity for their cooperation in this case; that both quit work for the defendant after heated arguments with her; and that the defendant tried to get the Government to remove Dai Min from the Marshall Islands<sup>12</sup>.

Regarding the credibility of the defendant, the Court has taken into consideration matters raised by counsel, including without limitation the following: the defendant's admission that she defrauded Lu Shuang of at least 15,000 RMB; and that the defendant scolded Lu Shuang while Lu Shuang was on the witness stand giving testimony. The Court does not credit the defendant's testimony that Dai Min was involved defrauding Lu Shuang for the additional 15,000 RMB. If in fact Dai Min was involved in the fraud, defense counsel could have examined Dai Min on the matter as he did other issues. However, he did not.

Considering their testimony, their demeanor while testifying, other evidence received, and the nature of bars that cater to foreign fishermen, the Court finds Dai Min and Lu Shuang to be more credible witnesses than the defendant.

### **III. Sentencing Hearing**

On February 22, 2012, this matter came before the Court for sentencing. In sentencing the defendant, the Court considered the following:

4. the Court's file in this matter including the following:
  - a. the Defendant's February 21, 2012 Sentencing Recommendation;

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<sup>12</sup>See Government Exhibits 8 and 14 re Dai Min.



- b. the Republic's February 21, 2012 Sentencing Recommendation;
5. the evidence admitted at the trial;
6. the counsel's argument at the trial and at the sentencing hearing;
7. the defendant's statement at the sentencing hearing, to the effect
  - a. that she had been taught by her parents seek her dreams through good works,
  - b. that she seeks to live and work according to the law,
  - c. that if she did wrong, she did not intend to do so — her heart is good,
  - d. that we sought to help Dai Min and Lu Shuang,
  - e. that she is like the farmer who saved the frozen snake and received a fatal bit for her good deed,
  - f. that her greed may have led to her down fall, and
  - g. that as the Court has found her guilty according to the law, she will accept her punishment and responsibility for the wrongs done;
8. that the defendant does not have any prior criminal record;
9. that the maximum sentence for Promoting Prostitution is a fine of up to \$10,000, or a term of imprisonment not exceeding 5 years, or both; and
10. that the maximum sentence for Employment of a Non-Resident Worker Without a Work Permit is a fine not exceeding \$10,000, or a term of imprisonment not exceeding 5 years, or both.

#### **IV. Sentence**

Pursuant to Part XXIX of the Criminal Code, 31 MIRC Chp. 1, and MIRC CrP Rule 32, the Court imposes upon the defendant the following imprisonment and fines.

**1. Imprisonment**

- a. For Count 1, Promoting Prostitution [in re Dai Min], the defendant is sentenced to incarceration in the Majuro Jail (but if, as the Attorney General states, the Majuro Jail is not suitable for the incarceration of a female prisoner, then in another facility designated by the Republic or upon house arrest) for 60 months commencing February 28, 2012, serving 12 months with execution of the remaining 48 months suspended 48 months from February 27, 2013, pursuant to 31 MIRC 189 under the conditions set forth below; and
- b. For Count 3, Employment of a Non-Resident Worker Without a Work Permit [in re Dai Min], the defendant is sentenced to incarceration in the Majuro Jail (but if, as the Attorney General states, the Majuro Jail is not suitable for the incarceration of a female prisoner, then in another facility designated by the Republic or upon house arrest) for 60 months commencing February 28, 2012, serving 12 months with execution of the remaining 48 months suspended 48 months from February 27, 2013, pursuant to 31 MIRC 189 under the conditions set forth below.
- c. For Count 2, Promoting Prostitution [in re Lu Shuang], the defendant is sentenced to incarceration in the Majuro Jail (but if, as the Attorney General states, the Majuro Jail is not suitable for the incarceration of a female prisoner, then in another facility designated by the Republic or upon house arrest) for 60 months commencing February 28, 2012, serving 12 months with execution of the remaining 48 months suspended 48

months from February 27, 2013, pursuant to 31 MIRC 189 under the conditions set forth below.

- d. For Count 4, Employment of a Non-Resident Worker Without a Work Permit [in re Lu Shuang], the defendant is sentenced to incarceration in the Majuro Jail (but if, as the Attorney General states, the Majuro Jail is not suitable for the incarceration of a female prisoner, then in another facility designated by the Republic or upon house arrest) for 60 months commencing February 28, 2012, serving 12 months with execution of the remaining 48 months suspended 48 months from February 27, 2013, pursuant to 31 MIRC 189 under the conditions set forth below.
- e. The sentences of imprisonment for Counts 1 through 4 are to be served concurrently.
- f. Execution of the suspended sentences of imprisonment under Counts 1 through 4 is suspended under the following conditions:
  - i. that the defendant comply with the rules and regulations of the place of confinement;
  - ii. that the defendant timely pay to the Clerk of the Courts the fines imposed in this order;
  - iii. that the defendant appear before this Court whenever and wherever called upon to do so;
  - iv. that the defendant maintain contact and cooperate with defense counsel;
  - v. that the defendant not leave Majuro Atoll, except with the

permission of the Probation Officer and that the defendant surrender her passport to the Probation Officer; and

- vi. that the defendant keep the peace and be of good behavior (that is, the defendant obey all national laws and local government ordinances).

**2. Fines**

- a. for Count 1, Promoting Prostitution [in re Dai Min], the defendant is fined \$2,500;
- b. for Count 2, Promoting Prostitution [in re Lu Shuang], the defendant is fined \$2,500;
- c. for Count 3, Employment of a Non-Resident Worker Without a Work Permit [in re Dai Min], the defendant is fined \$2,500; and
- d. for Count 4, Employment of a Non-Resident Worker Without a Work Permit [in re Lu Shuang], the defendant is fined \$2,500.

The fines for Counts 1 through 4, totaling \$10,000, are due and payable to the Clerk of the Courts on or before 5:00 p.m. on February 27, 2013; provided, however, payment of the fines for Counts 3 and 4 are suspended subject to the conditions set for in paragraph 1.f above.

**V. Disposition of Bail**

With respect to the \$300 bail posted by the defendant, the Court orders that the bail be surrendered as part payment of the fines imposed above.

**VI. Purpose of Giving Sentence**

The Court's purpose in giving this sentence is as follows: (1) to discourage the defendant from ever again promoting prostitution and employing a non-resident worker without a work

permit; (2) to discourage other residents of the Republic from promoting prostitution and employing a non-resident worker without a work permit; (3) to confirm that promoting prostitution and employing a non-resident worker without a work permit are not acceptable in the Republic; (4) to encourage the defendant to change her behavior; and (5) to vindicate the rights of the victims, Dai Min and Lu Shuang.

#### **VII. Right to Appeal**

The defendant has the right to appeal the High Court's order to the Supreme Court. If the defendant cannot afford the costs of the appeal, she may petition the Court to appeal *in forma pauperis*. Also, the defendant has the right to have an attorney represent her during the appeal process. If the defendant cannot afford an attorney, the Court will order that one be provided to her at no cost. If the defendant wishes to appeal, she must file a notice of appeal with the Court within 30 days of the date hereof.

#### **VIII. Completion of Probation**

Upon the successful completion of the probation period, the defendant shall be discharged from probation. The defendant's failure to comply with any of the terms of probation may result in her imprisonment for the suspended portion of the imprisonment sentence and liability for payment of the suspended portion of the fines.

#### **IX. Surrender**

The defendant shall surrender herself to the Superintendent of Prisons for incarceration on or before 5:00 p.m. on February 28, 2012. If she fails to do so, she shall be subject to arrest.

#### **X. Service of Order**

The Court orders the Clerk of the Courts to serve, or have served, a copy of this Judgment of Conviction and Sentencing Order on counsel for the parties, the defendant, the Probation

Officer, and the Superintendent of Prisons.

Date: February 22, 2012.

A handwritten signature in black ink, consisting of a large, stylized 'C' followed by 'B. Ingram' in a cursive script.

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Carl B. Ingram  
Chief Justice