

Government proposes return to slavery for migrant domestic workers in the UK

On 9 June 2011 Damian Green, Immigration Minister announced a new three month consultationⁱ on employment-related settlement. In this consultation are proposals to remove fundamental safeguards designed to protect migrant domestic workers. If implemented these proposals would lead to a return to forced labour and slavery.

These proposals are short sighted and will leave hundreds of migrant domestic workers vulnerable to violence and forced labour with no escape route. They will not reduce net migration, and risk forcing workers into illegality. Costs will increase. This is totally unnecessary. At present migrant domestic workers can move on, get a new job, support themselves, remain visible in the UK and contribute through paying taxes.

The migrant domestic worker visa and the associated protections are vital and must be retained, particularly the right to change employer, which should be extended to cover domestic workers in the employ of diplomats.

This briefing examines the consequences of the Government proposals for migrant domestic workers. It assesses the reasoning behind the proposals, which is found to be flawed. Details of current protections for migrant domestic workers can be found in Appendix 1.

Proposals – a summary

The Government's proposals, contained within the consultation on employment-related settlementⁱⁱ are to:

“Abolish the route for overseas domestic workers in private households or consider restricting leave to a 6 month period as a visitor only, or 12 months where accompanying a Tier 1 or Tier 2 migrant, with no possibility of extension, no right to change employer, no ability to sponsor dependants or alternatively no right for dependants to work in the UK, and no right to settlement.

If the route remains: strengthen the pre-entry requirements to minimise the possibility of abusive or exploitative employer/employee relationships being imported into the UK; and continue to provide access to assessed forms of protection for genuine victims of trafficking

Stop granting settlement to domestic workers in diplomatic households, restrict temporary leave to 12 months and remove their ability to sponsor dependants, or alternatively remove the right for dependants to work in the UK.”

Consequences of these proposals for migrant domestic workers

No possibility to change employer – a return to bonded labour

A 6-12 month non-renewable visa has been thoroughly discussed before under the previous Government's proposals to reform the visa system and was ultimately rejected because of concerns about the safety of domestic workers.

The Home Affairs Select Committee enquiry on trafficking stated that they agreed with Kalayaan that

*“to retain the Migrant domestic worker visa and the protection it offers to workers” is the single most important issue in preventing the forced labour and trafficking of such workers.*ⁱⁱⁱ

The type of visa proposed would facilitate forced labour and trafficking as it would give unscrupulous employers more power over an already isolated and dependent worker – the power to denounce them to the immigration authorities – leaving the worker with no bargaining power at all. If workers do flee they will become homeless, destitute and ‘illegal’. The government will create a criminalised underclass of women who simply want safe conditions of work.

Workers who escape a situation of trafficking or exploitation will be unable to pursue compensation through the employment courts as whilst they wait for their case to come to court, their visas will expire and anyway they will not be able to work to support themselves and their families. Victims of trafficking will need protection under the Government's National Referral Mechanism, which is costly to the tax payer^{iv}, has been roundly criticised by NGOs for being overly focused on immigration status and criminal justice rather than the victim^v, and has been shown not to work for migrant domestic workers^{vi}.

Restrictive visa regimes have been widely condemned by experts across the world as being a cause of forced labour and trafficking^{vii}. In fact, the current UK system, which the Government proposes to do away with, has been cited as good practice by the International Labour Organization.^{viii} The United Nations Special Rapporteur on the Human Rights of Migrants noted the effectiveness of visa protections in the UK and suggested they be extended to cover those domestic workers employed by diplomats.^{ix}

The Government's proposals suggest they will allow workers to enter the UK as visitors not workers, giving these individuals no protections under labour legislation. This flies in the face of the recently adopted International Labour Organization Convention on 'decent work for domestic' workers, voted for by an overwhelming majority of the world's governments. The proposals state the Government will allow employers to bring workers to the UK who have no right to work. This will effectively legalise the mistreatment of undocumented workers.

Removing the visa altogether – likely to increase trafficking via illegal routes and unlawful working

This proposal is presented as reducing net migration and the evidence of abuse and exploitation is used as justification. Removing the route would not, however, help to achieve government targets since so few migrant domestic workers fall under the classification of 'net migrant'.

There is an underlying assumption that employers who currently bring domestic workers to the UK, who are often extremely wealthy and very powerful, will respect UK immigration rules and simply stop bringing their domestic staff. But even under current arrangements, some employers actively choose to evade UK immigration controls. Migrant domestic workers have been brought by employers on visit visas, on false passports arranged by the employer and as family members. In some cases the individual has not even cleared immigration control as they came in from Europe by car^x or on an employer's private jet^{xi}.

Further evidence of the ineffectiveness of pre-entry checks has been gathered from UK Diplomatic Posts. Visa application files show that visit visas were issued, where applications stated the domestic worker was being brought to the UK for work. The above proposal will allow employers to legitimately bring domestic workers on visit visas, the proposal to remove the visa will, albeit unspoken, allow the same thing.

Removing the visa is likely to increase trafficking via unlawful routes to the UK and to increase illegal working. Most domestic workers have no control over their passports and it is the employer who applies for their visa. Even if a domestic worker were to see her passport and understand that a visit visa is not an appropriate working visa for the UK, they would be powerless to refuse to come to the UK if they are working overseas in their employer's country rather than their own.

When workers experience abuse, exploitation or trafficking, instead of being able to escape and move on to new work, they will be reliant on Government accommodation whilst their immigration claims are decided.

Workers brought unlawfully to the UK will have no recourse to justice through the employment tribunal system. This will deny victims of trafficking their right to compensation, deny workers their right to fair pay, and because criminal convictions for domestic servitude are so low, will ultimately mean there is no deterrent for employers who traffic people for domestic slavery.

Reasoning behind the proposals

These proposals are ostensibly part of Government attempts to reduce net migration to the UK. The headline figures used by the UK Border Agency (UKBA) are that approximately 15,000 visas were issued to domestic workers in 2010. However, this obscures the fact that 94% of the domestic workers coming here return home again with their employer within a short period of time and do not stay on and renew their visa^{xii}. The UK Border Agency states that grants of settlement to migrant domestic workers went up by 34% between 2009 and 2010^{xiii} but this completely masks not only the real numbers settling - only 795 individuals in 2009 - but also the effect on net migration; in 2009 migrant domestic workers accounted for only 0.5% of the total grants of settlement.^{xiv}

Removing the domestic worker visa is unlikely to free up any more jobs for British or EU workers. The Recruitment and Employment Confederation state that its members have needed to turn to non-EU nationals to fulfill domestic worker roles. British and EU nationals are unable to do live-in work as most have family responsibilities of their own. The REC “recognizes the value that immigrants arriving on the Domestic Workers Visa bring to the UK Economy; making a net contribution to the Exchequer and providing essential care and support to many families and individuals”. They support the current visa scheme.^{xv}

The Government makes these proposals on the basis that migrant domestic workers will be adequately protected under the National Referral Mechanism for victims of trafficking. This system has been criticized as ineffective by NGOs, provides no protection to domestic workers who have only been badly abused or exploited but do not fit the narrow definition of trafficked person, and is much more costly option for the taxpayer.

The Government suggests they will prevent trafficking at the border yet they give no detail on how they plan to do this. Evidence shows that they do not currently interview migrant domestic workers when issuing visas and they are unlikely to introduce the practice because of cost cutting. In any case migrant domestic workers are unlikely to report abuse whilst still in their employer’s country of origin, reliant on them for work and housing.

Another argument used by the UKBA is that only 3 other countries in the EU have specific arrangements for migrant domestic workers. This is based on a survey of only 13 of the 27 EU states, and includes countries such as Hungary, Lithuania, Latvia, the Slovak Republic and Portugal. None of these countries has anything like the international presence that the UK has. The UK relies on highly skilled workers and wealthy investors from overseas, many of whom wish to bring their domestic staff.

Conclusion

The proposals set forth by the Government on the overseas domestic worker visa are short sighted, are premised on flawed assumptions, will make virtually no contribution to the Government’s aim to reduce net migration, will increase trafficking, forced labour and unlawful working, and will be extremely costly to the taxpayer. The proposals, if implemented, will achieve some administrative purity with regards to preventing low skilled immigration from outside the EU. The human cost to real individuals, most of them very vulnerable female workers, in the return to slavery like conditions simply isn’t worth paying for this. We should not sacrifice our long held commitment to combat slavery for a policy that won’t work and will cost us more in the process. It is critical that the UK Government do not take these retrogressive steps and return us to slavery in the UK.

Kalayaan have recently published a detailed report on these issues entitled “Ending the abuse: Policies that work to protect migrant domestic workers”. This report can be downloaded from the publications section of our website www.kalayaan.org.uk

Appendix 1

Current immigration situation for migrant domestic workers

The domestic worker visa was introduced in 1998 for the specific purpose of protecting migrant domestic workers (MDWs) from abuse and exploitation. This was in recognition of their peculiarly vulnerable position, working in an under-regulated environment, isolated from co-workers and the outside world and dependent on an employer for their work, accommodation, immigration status and any information about their rights in the UK.

MDWs can only be brought to the UK by an employer; they cannot elect to come alone. The employer must prove a twelve month pre-existing employment relationship. The visa is an independent status for the MDW: it is not tied to the employer. MDWs can change their employer but only to another domestic work position in a private house. They can then renew their visa if they are in full time work and after 5 years, they are eligible to apply for settlement if they meet Government criteria.

The ability to change employer offers a vital escape route from abuse and exploitation as it allows an MDW to leave an employer without jeopardising their ability to remain in the UK and to work to provide for their families. The ability to withdraw their labour is the only bargaining power that MDWs have. Domestic workers employed by diplomats are not allowed to change their employer and are far more vulnerable to trafficking as a result^{xvi}.

It means that MDWs can enforce their rights through the employment courts and the police, which would be impossible if they were to lose their right to be in the UK and their ability to support their families whilst they waited for their case to be resolved. Gaining settlement finally removes and MDW's dependence from an employer.

ⁱ Consultation closes 9 September 2011. Employment Related Settlement, Tier 5 and Overseas Domestic Workers: A Consultation. UKBA. June 2011
<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/consultations/employment-related-settlement/>

ⁱⁱ ibid

ⁱⁱⁱ Home Affairs Select Committee. The trade in Human Beings: Human Trafficking in the UK. Sixth report of Session 2008-09. Volume I. House of Commons. p26

^{iv} Lalani, M. Ending the abuse: Policies that protect migrant domestic workers. Kalayaan. May 2011. P30-31

^v The Anti Trafficking Monitoring Group Briefing: Assistance to Trafficked People, January 2011

^{vi} Lalani, M. Ending the abuse; Policies that work to protect migrant domestic workers. Kalayaan. May 2011. p16.

^{vii} Unprotected Work, Invisible Exploitation: Trafficking for the Purpose of Domestic Servitude'. OSCE. 2011 <http://www.osce.org/cthb/75804>; Report of the Special Rapporteur UN Special Rapporteur on contemporary forms of slavery, including its causes and consequences, 18 June 2010, A/HRC/15/20 http://www2.ohchr.org/english/issues/slavery/rapporteur/docs/A.HRC.15.20_EN.pdf; 2010 Trafficking in Persons Report, US Department of State, June 2010, p 24 <http://www.state.gov/g/tip/rls/tiprpt/2010/>

^{viii} Draft ILO Multilateral Framework on Labour Migration Non binding principles and guidelines for a rights- based approach to labour migration, Geneva, 31 Oct- 2 Nov 2005. Annex II 'Examples of best practise, VI Prevention of and protection against abusive migration practises', pt 82

^{ix} Report of the Special Rapporteur on the human rights of migrants, Jorge Bustamante: Mission to the United Kingdom of Great Britain and Northern Ireland. United Nations, Human Rights Council. 16 March 2010. <http://www.unhcr.org/refworld/docid/4c0623e92.html>

^x Lalani, M. Ending the abuse: Policies that protect migrant domestic workers. Kalayaan. May 2011, p23

^{xi} Kalayaan database

^{xii} Calculation based on UKBA management information figures for visa renewals in 2009

^{xiii} Employment Related Settlement, Tier 5 and Overseas Domestic Workers: A Consultation. UKBA. June 2011. P31

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/consultations/employment-related-settlement/>

^{xiv} Lalani, M. Ending the abuse; Policies that work to protect migrant domestic workers. Kalayaan. May 2011. P22.

^{xv} Recruitment and Employment Confederation. Lobbying brief: The Domestic workers visa.

^{xvi} Lalani, M. Ending the Abuse: Policies that work to protect migrant domestic workers. Kalayaan. May 2011. p32

<http://www.kalayaan.org.uk/documents/Kalayaan%20Report%20final.pdf>