



KALAYAAN

justice for migrant domestic workers

4th July 2014

Producing Slaves: The tied Overseas Domestic Worker visa

In April 2012 a change in the immigration rules tied migrant domestic workers entering the UK to their employer. All available evidence preceding and since this change condemns the tying or bonding of this particularly vulnerable group of workers and agrees that this has facilitated their exploitation and abuse, including trafficking. In 2009 the Home Affairs Select Committee in its inquiry into trafficking said that that retaining the visa was “*the single most important issue in preventing the forced labour and trafficking of such workers*”ⁱ. The reports by workers coming to Kalayaan since the implementation of the tied visa confirm this and a recent report by Human Rights Watchⁱⁱ is highly critical of the impacts of the tied visa. The report of the Joint Committee on the Draft Modern Slavery Billⁱⁱⁱ describes the current tied Overseas Domestic Worker (ODW) visa as having “*unintentionally strengthened the hand of the slave master against the victim of slavery*”^{iv} and calls for an urgent reversal of the 2012 changes.^v We are disappointed and confused by the Government’s response that it has no plan to change the immigration rules despite the wealth of evidence as to the urgent necessity of doing so.

In the first two years since the tied visa was implemented Kalayaan registered 402 new migrant domestic workers. 120 of these workers were tied to their employers as they entered on the tied ODW visa or the diplomatic domestic worker visa^{vi}. New workers registering with Kalayaan give a report of their treatment in the job with which they entered the UK. It is noticeable that those who entered on a visa which tied them to their employers (the tied or the diplomatic domestic worker visa) had worse conditions and less freedom.

- Migrant domestic workers (MDWs) who were tied to their employers were twice as likely to report having been physically abused as those who were not tied (16% and 8%).
- Almost three quarters of those tied reported never being allowed out of the house where they lived and worked unsupervised (71%), compared to under half on the original visa (43%).
- 65% of tied MDWs didn’t have their own rooms, so shared with the children or slept in the kitchen or lounge, compared with 34% of those not tied.
- 53% worked more than 16 hours a day compared to 32% of those who had the right to change employer.
- 60% of those on the tied visa reported pay of less than £50 a week, compared with 36% on the original visa.
- Kalayaan staff internally assessed more than double (69%) of those who were tied as trafficked in contrast with 26% of those who had not been tied. Two thirds of referrals into the National Referral Mechanism for identifying victims of trafficking made by Kalayaan were of domestic workers who were tied to their employers^{vii}

Unjustifiable

The Government’s justifications for the 2012 changes to the ODW visa do not stand up to scrutiny. As explained in the Government’s response to the recommendations of the Joint Committee on the Draft Modern Slavery Bill^{viii} the Overseas Domestic Worker route was designed to provide protections to migrant domestic workers. However, this applies to the *original* Overseas Domestic Worker visa, introduced in 1998 in response to overwhelming evidence of

abuse of migrant domestic workers. The original route recognised ODWs as workers and crucially allowed them to change employer, though not sector, so providing a way in which they could escape exploitation, seek help from the authorities and move on with their lives. The visa needed to be renewed annually so the workers could not remain if there was no demand for her labour and carried a provision of no recourse to public funds, so the worker's contribution was a net gain to the UK. The annual renewal of the visa provided additional opportunity to keep the worker visible and conditions of employment scrutinised. *The current tied visa in no way provides these protections.* Instead it ties the worker to their employer, sending a clear message that they are under the employer's control and will be criminalised if they escape.

The Government claims that requiring a minimum of 12 months preexisting employment is a safeguard for ODWs entering the UK. This is problematic for several reasons. First, this requirement assumes that if someone has worked for an employer for a certain amount of time the job must be okay. This is an odd assumption to make if you are talking about slavery where presumably there is no real element of choice involved anyway. Evidence collected from migrant domestic workers registering at Kalayaan show that checks on preexisting employment are cursory at best^{ix}.

Another defense of the current system is that workers should be issued with a written contract. However a contract is not worth the paper it is written on if it cannot be enforced. Migrant domestic workers who are tied by the immigration rules to the employer whose house they live and work in have no way of bargaining with their employer or challenging any abuse. We are also told in the official response that workers are 'informed of their rights in the UK when they apply for a visa'. Not only have few of the workers who we see at Kalayaan been given the Home Office information leaflet but it is unclear how the leaflet would be of any help to them anyway as it clearly informs them that they cannot leave their employer. Alarming when Kalayaan have supported workers to call the Pay and Work Rights Helpline mentioned on the leaflet the (incorrect) response has been that as a result of living and working within their employer's household ODWs are not entitled to the National Minimum Wage.

Pre entry checks and issuing of contracts are ways in which workers who have basic rights can be protected and supported to protect themselves against abuse. However without the means of leaving an employer they cannot be used to justify the existence of a system shown to encourage serious exploitation.

Urgent need to reinstate protections

It is clear that the tied ODW visa is morally unjustifiable and actually facilitates the serious exploitation and abuse of this particularly vulnerable group of workers in the UK. It is also clear that its very existence makes a mockery of the UK's stated commitment to combating modern day slavery.

We are calling for an amendment to the Modern Slavery Bill which would reinstate the rights and protections included within the original Overseas Domestic Worker visa, in this way the Bill would not only protect migrant domestic workers who have been enslaved or trafficked but would also make significant steps in preventing the exploitation, forced labour, slavery and trafficking of migrant domestic workers in the UK.

Case Study

'Rupa'^x arrived at Kalayaan scared and destitute. She had escaped the smart central London apartment where she was staying with her employers the previous day and had spent the night with someone she had met and begged for help. They had brought her to Kalayaan.

Rupa and her employers are Indian and she explained that she had worked for her employers for over 4 years in India. They had told her they were bringing her to the UK while they were here on holiday as they needed her to look after their baby. Rupa explained that she had little choice but to work for these employers in spite of what she knew were poor conditions as her husband is sick and cannot work to support their family.

Rupa had no say in the decision to come to the UK, nor did anyone at the British High Commission in India speak to her during the visa application process for which she was accompanied by her employer or explain anything about UK employment law.

Rupa explained that her passport was taken from her by her employers as they boarded the plane to India and she has never seen it since.

Once in the UK Rupa explained that she was on call all the time as she had sole charge for the baby, who regularly got her up during the night. She slept on the floor next to the baby's cot and never had any breaks or time off. She didn't have a key to the property and never went out except with her employers. She ran away because she was exhausted, was paid £26 a week, and she was regularly shouted at by the baby's mother.

When Rupa came to Kalayaan she had no money, no belongings apart from the clothes she was wearing, knew no one and did not have her passport or know what her immigration status was. She was tearful and emotional from years of being shouted at. She told us she needed to find another job in order to send money to her family.

We had to explain to Rupa that she was almost certainly on the tied ODW visa, which prohibited her from working for anyone other than the employer with who she entered the UK. When she asked us to support her getting her passport back we had to explain that involving the police would almost certainly result in her being detained and her passport confiscated until she left the UK. We explained that there were indicators of Rupa having been trafficked for domestic servitude and with her consent we could refer her into the Government's identification system for victims of trafficking. However Rupa didn't see how this was in her interest; she needed to work and to earn money.

Rupa spent the day at Kalayaan, crying and talking through her miserable options. At the end of the day she decided to go back to her employers. She needed to work. Even if in conditions of servitude for pittance.

Had Rupa come to Kalayaan before April 2012, when migrant domestic workers had the right to change employer we could have worked with the police to secure the return of her passport, supported her to challenge her employers for unpaid wages and helped her to find a good job. She wouldn't have had recourse to public funds or been able to renew her visa without employment but she would have had a chance at justice.

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ⁱ House of Commons Home Affairs Select Committee, The Trade in Human Beings: Human Trafficking in the UK, Sixth Report of Session 2008-2009, Volume 1, 6 May 2009, p26

ⁱⁱ 'Hidden Away'. Human Rights Watch, March 2014.

ⁱⁱⁱ House of Lords. House of Commons. Joint Committee on the Draft Modern Slavery Bill. Draft Modern Slavery Bill Report. Session 2013-14.

^{iv} Ibid, Introduction. Page 4.

^v Ibid, Section 7. Overseas Domestic Workers. Paragraph 227. Page 101.

^{vi} 92 entered on the tied ODW visa and 28 on the diplomatic domestic worker visa. The remainder entered on the original ODW visa prior to the 2012 changes or had Indefinite Leave to Remain (ILR).

^{vii} Kalayaan is a First Responder and so is able to make referrals into the NRM. However we can only do so when the client gives their informed consent. The majority of the domestic workers who we register at Kalayaan do not consent to such a referral either because they are fearful of the implications of such exposure to the authorities or because they do not see how it would be in their interest as they need to continue working and sending remittances home.

^{viii} THE GOVERNMENT RESPONSE TO THE REPORT FROM THE JOINT COMMITTEE ON THE DRAFT MODERN SLAVERY BILL SESSION 2013-14 HL PAPER 166 / HC 1019: Draft Modern Slavery Bill. June 2014, page 27 'Overseas Domestic Workers'.

^{ix} See also 'Turning a Blind Eye' Nick Clark and Leena Kumarappan. Working Lives Institute. 2011.

^x Name and identifying details have been changed. Kalayaan ID 3465