



KALAYAAN

justice for migrant domestic workers

Britain's forgotten slaves; Migrant domestic workers in the UK three years after the introduction of the tied Overseas Domestic Worker visa

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Since April 2012 migrant domestic workers who enter the UK with their employer on the Overseas Domestic Worker visa have been tied to this employer by the immigration rules. The visa is valid for six months, is not renewable and prevents them from leaving their employer, no matter the circumstance. If the worker leaves anyway, they have breached the immigration rules. This has led to an increase in exploitation and restrictions of freedom of a group of migrant workers already shown to be vulnerable to exploitation.

In 2014 16,753 individuals entered the UK on the Overseas Domestic Worker visa.¹ Little or nothing is known as to what happens to the majority of these workers once they have entered the UK. What is clear is that the reports of abuse made by workers who register with Kalayaan have been consistent over the three years since the tied Overseas Domestic Worker visa was introduced. These statistics show that the levels of abuse reported by those who entered on the original visa, and so who have some rights, remain unacceptably high. Even more concerning is that these already shocking levels are consistently higher for those workers who are tied to their employers.

Between 1st April 2014 and 31st March 2015 Kalayaan registered **188 new workers**. **64** of these workers were tied to their employers, either because they entered the UK on the tied Overseas Domestic Worker visa (43), or because they entered in the employ of a diplomat (16). Those who come to the UK employed by a diplomat enter under Tier 5 of the Points Based System, a separate category. Their visa can be valid for the duration of their diplomatic employer's posting, up to a period of 5 years. They are not allowed to change employer or since April 2012 to apply for settlement or to bring dependants to the UK. The prevention, via the immigration rules, of allowing a domestic worker to change employer means that they cannot challenge any aspect of their employment, as ultimately both they and the employer know they cannot leave without becoming undocumented and destitute and so unable in practise to access any kind of justice or legal remedy. For those employed by diplomats, this situation is compounded by the employer's diplomatic immunity as demonstrated in last year's Court of Appeal case Reyes and Suryadi vs Malki² in which diplomatic immunity was found to trump trafficking.

Of these 188 workers reports of abuse made by the 64 tied workers are proportionately consistently higher than the (also unacceptably high) levels reported by the 124 other workers.

- 28% of those tied reported physical abuse, compared with 11% who weren't tied
- 68% of tied workers report not being allowed to leave the house freely, compared to 38% not tied
- 70% of tied workers report having no time off, compared with 49%
- 38% of tied workers reported that they were not paid at all, compared with 14% of workers who were not tied
- 66% of workers who were tied reported their passports being kept from them, compared with 54% who weren't tied

¹ <https://www.gov.uk/search?q=immigration+statistics+2014> (accessed 1.5.15)

² <https://www.judiciary.gov.uk/judgments/ms-c-reyes-and-ms-t-suryadi-v-mr-j-al-malki-and-mrs-al-malki-and-others/> (accessed 5.5.15) Kalayaan intervened in this case.

- Kalayaan staff internally identified 55% of the workers who entered on a visa tying them to their employers as trafficked, compared with 23% of workers who were not tied

When we look at the **reports of abuse made by workers to Kalayaan during the three years since the introduction of the tied visa in 2012** the trends remain the same; while levels of abuse reported by all workers on the Overseas Domestic Worker visa are unacceptable, those who are tied are consistently higher.

In the **three years between April 2012 and the end of March 2015** Kalayaan registered a total of **590** new workers. **184 of these workers were tied** to their employers. Proportionally, the levels of abuse reported remain consistent.

- 14% of workers tied by their visa to employers reported physical abuse, compared with 9% who were not tied
- 66% of tied workers reported being prevented from leaving the house freely, compared with 41% of those who had entered on the original visa.
- 81% tied workers reported having no time off compared to 66%
- Reports by workers tied to employers were that 31% were not paid at all, compared with 11% who were not tied
- 74% of workers who were tied reported having their passport kept from them, compared with 50% who were not tied
- Kalayaan staff³ internally identified 64% of the workers on a tied visa as trafficked, compared with 25% who were not tied

Removing basic employment rights will lead to more abuse

It is not surprising that proportionately more workers on the tied visa have consistently for three years reported higher levels of abuse. Kalayaan has long warned of the disastrous implications of removing the right to change employers. This was also predicted by the Home Affairs Select Committee in their 2009 inquiry into trafficking when they said that retaining the visa was *“the single most important issue in preventing the forced labour and trafficking of such workers”*.⁴ Since its implementation the tied visa has been criticised by Human Rights Watch⁵, the United Nations special rapporteur on violence against women⁶, two parliamentary Committees⁷ and the Centre for Social Justice among others. At the request of Theresa May, a further review of the visa is currently underway.

The above statistics are based on data gathered when workers first register with Kalayaan. These workers have not yet built up confidence in the organisation nor learned to trust the staff member working with them. Many will have recently fled abuse and be preoccupied with receiving practical help, perhaps not knowing where they will sleep that night. Many will still be fearful of their former employers and the employers’ perceived hold over them. At Kalayaan we are constantly told by workers that they don’t want to ‘make trouble’ for their employers in spite of appalling treatment. It is highly likely that much abuse, particularly concerning more sensitive areas such as sexual abuse, are underreported for reasons of stigma and a fear of the implications of telling.

The number of workers coming to Kalayaan has consistently decreased since the introduction of the tied visa in April 2012. However, as mentioned above, the number of visas issued has increased slightly. Given that all available evidence shows that treatment has worsened, the smaller number of workers coming forward is not likely to mean

³ Kalayaan is a recognised First Responder and has experience of identifying victims of trafficking since the National Referral Mechanism (NRM) was established in 2009. However we only make referrals to the NRM where the individual concerned has given their informed consent. Therefore number identified internally are higher than NRM referrals made.

⁴ Home Affairs Committee, The Trade in Human Beings: Human Trafficking in the UK, Sixth Report of Session 2008-2009, Volume I, 9 June 2011.

⁵ Hidden Away; Abuses against migrant domestic workers in the UK. March 2014

⁶ Rashida Manjoo, following a visit to the UK in April 2014 when she highlighted the increase in vulnerability of migrant domestic workers in the UK due to the tied visa.

⁷ The Joint Committee on the Draft Modern Slavery Bill and the Joint Committee on Human Rights in their legislative scrutiny of the Bill.

an improvement in the circumstances of migrant domestic workers generally. It seems that fewer numbers are coming to Kalayaan because it is clear that the organisation can do far less to help them in practise since the immigration rules changed. The majority of our clients find us through word of mouth and are likely to be told that they have breached the immigration rules, making them fearful of coming forward. The increase in reported restrictions on freedom suggest that it is also likely that fewer have the opportunity to escape.

'Suma' came to Kalayaan having worked for eight years as a domestic worker in the Middle East. It was clear that by the time she escaped the employers who brought her to the UK she had suffered extensive psychological damage. For years she had no privacy or day off, sharing a room with the employer's children. She slept on the floor and would often be kicked by the children. She was addressed with animal names rather than her own. She spoke with her own family rarely and had not told them the truth about her treatment. Instead she despaired as they complained why she couldn't send money more regularly and asked why she couldn't come home and visit 'like the other mothers'. Suma entered the NRM in the UK and was conclusively recognised as trafficked. However together with this notification she was told to leave the UK and given a leaflet on voluntary returns. Suma maintains that she cannot go home as her children 'will not eat'. Kalayaan has secured further immigration advice for her but it is likely she will not be able to remain in the UK. Suma insists that if she goes home she will migrate again for work. She recognises she may again be trafficked but explains that she has no choice, she has to 'sacrifice herself' for her family.

Empower workers to address exploitation

One of the reasons given during the debates on the Modern Slavery Bill (now Act) for not reinstating the basic right and protection of permission to change employers was that this would not solve the problem. It is correct that allowing migrant domestic workers to change employers would not end exploitation for domestic servitude. However this is no reason to maintain a visa system which all available evidence suggests has led to an increase in abuse.

Instead the right to change employer is a first step which goes some way towards preventing abuse and allowing migrant domestic workers to challenge mistreatment. This most basic of rights alone can never be the whole answer while the balance of power in the employment relationship remains so unequal and the domestic worker's workplace so unregulated. The ability to change employer allows migrant domestic workers to leave their employer without breaking the law, but if migrant domestic workers are to access justice in practise it must be supported by other measures.

The UK Government should introduce a number of checks to clearly demonstrate that they are serious about the status of migrant domestic workers as workers and be prepared to enforce these measures. The current six month visa, in addition to prohibiting change of employer, sends the message that the worker is in the UK on a temporary basis and that UK employment law will not be seriously enforced. If the worker is in the UK for longer than six months, they should start earning enough to become eligible for tax deductions. When an application to renew the worker's visa is made there should be checks to ensure that they are registered with the HMRC and that they have their own bank account.

The UK Government should sign and ratify ILO Convention 189 for Decent Work for Domestic Workers. In addition a range of relatively inexpensive and simple measures could be introduced to ensure that employers who chose to employ a worker in their home are complying with their responsibilities and addressing the current situation where all of the responsibility lies on the worker to speak out, and in doing so losing their livelihood, where there is a problem. Such measures could include:

- With the first visa or after six months of employment (whichever the sooner) passing the details of employee and employer to HMRC to ensure that tax and NI contributions are being paid

- Issuing the worker with the Biometric Residence Permit in person without the employer present and in doing so speak with the worker about their employment (this is the case for workers employed by diplomats in Austria)⁸
- Requiring that the worker have a bank account in their name and that their salary is paid into this account (this is the case is for workers employed by diplomats in Belgium)⁹
- Obliging employers to issue payslips
- If a worker's visa is not renewed because of non compliance by the employer (for example the employer not paying the National Minimum Wage or not issuing payslips) the worker should be issued with a temporary three month visa to give them time to find suitable employment
- Migrant domestic workers should be able to access justice. A worker who has suffered exploitation should be able to access legal aid in order to seek legal advice and assistance. Where the worker does not meet the definition of a victim of trafficking in human beings, but has suffered exploitation including the failure to pay wages, access to legal aid should be provided.¹⁰

Migrant domestic workers are acknowledged internationally to be more likely to be exploited and abused than workers in a more visible and regulated workplace. If they live in (as the majority do) the boundary between work and leisure time is often (intentionally) blurred. Without colleagues, most are dependent on their employer for all information about the UK and their status and rights here. Their work is often not recognised as work, and many employers appear to believe that they have purchased the whole of the worker, who is not entitled to privacy, space or time off to develop her own relationships or identity. The current Home Office guidelines which stipulate that the employer's name appear on the worker's visa¹¹ can only help encourage this perception of ownership. Workers tell of asking for time off and being told by their employers 'we are your family; you don't have time off from your family'. The majority of these workers have their own children, who they left at a very young age in order to provide for and who they will see briefly once every one or two years.

Migrant domestic workers need to be recognised as workers and as people. The current immigration rules have disempowered this workforce and the UK needs to urgently address this. The Commons amendment, now included in the Modern Slavery Act, does not do so. It provides only that migrant domestic workers who have been trafficked may be granted a six month visa. Aside from the fact that six months is too short a time to realistically secure work which predominantly involves caring for a child or elderly person, it also does nothing to prevent abuse, nor for workers only exploited but not trafficked, nor for workers who are desperate to leave but need the reassurance that they are not breaking the law before doing so.

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⁸ 'How to prevent human trafficking for domestic servitude in diplomatic households and protect private domestic workers' OSCE 2014

⁹ Ibid

¹⁰ Recommendation developed in conjunction with solicitors at the Anti Trafficking and Labour Exploitation Unit (ATLEU)

¹¹ UK Visas and Immigration Guidance. Overseas Domestic Workers in private households:WRK2.1 Subsection 12