



KALAYAAN

justice for migrant domestic workers

4th December 2014

Kalayaan briefing for Committee Debate on Amendment 94 in the House of Lords

On the 8th December, the House of Lords will debate Amendment 94 to the Modern Slavery Bill, in the names of Baroness Cox, Lord Hylton, Baroness Royall of Blaisdon and Lord Alton of Liverpool.

The Amendment reads as follows:

“Protection from slavery for overseas domestic workers

All overseas domestic workers in the United Kingdom, including those working for staff of diplomatic missions, shall be entitled to—

- (a) change their employer (but not work sector) while in the United Kingdom;
- (b) renew their domestic worker or diplomatic domestic worker visa, each such renewal being for a period not exceeding twelve months, as long as they remain in employment and are able to support themselves without recourse to public funds;
- (c) a three month temporary visa permitting them to live in the United Kingdom for the purposes of seeking alternative employment as an overseas domestic worker where there is evidence that the worker has been a victim of modern slavery.”

Kalayaan believes that this amendment if included in the final Act, it will go a long way towards protecting migrant domestic workers in the UK from modern slavery. We therefore respectfully ask Peers to support this amendment.

The Modern Slavery Bill 2014 as published contains no provisions dealing with migrant domestic workers. This was despite the Joint Committee on the Draft Modern Slavery bill calling for an urgent reversal of the April 2012 changes. The Committee expressed its serious concerns that the impact of the tied visa and stated in their report that the tying of domestic workers to their employer had: *‘unintentionally strengthened the hand of the slave master against the victim of slavery’*.

In April 2012 the UK Government ended a system which had protected significant numbers of migrant domestic workers who entered the UK with their employers from horrendous abuse and exploitation including slavery. The original Overseas Domestic Worker visa recognised that migrant domestic workers were workers and should be allowed to resign from their job. However, since

April 2012 migrant domestic workers have entered the UK on a 6 month long non-renewable visa and are prohibited from changing their employer. This leaves them unable to escape their traffickers as to do so would render them undocumented and in practice to challenge abuse and exploitation or to seek redress.

A similar amendment tabled by David Hanson MP, was narrowly defeated at Committee Stage in the House of Commons on division only after the Chair of the Committee added his vote to the no votes. It was also defeated at Report Stage in the Commons despite former Deputy Chief Whip Sir John Randall and Sarah Teather from the Liberal Democrats speaking out in favour of the amendment.

The Government has declined to accept the Joint Committee recommendations and has claimed that existing and planned measures will be sufficient to protect migrant domestic workers. They have put significant emphasis on the fact that theoretically all overseas domestic workers have the protection of UK employment law while working in the UK. The Government assert that anyone who believes they are being mistreated by their employer has access to a number of organisations who can help, including the police, ACAS, the pay and work rights helpline and employment tribunals. However, while it is to be welcomed that the government recognise that domestic workers need protection, in practice most migrant domestic workers don't receive this information and these measures cannot be effective while domestic workers remain tied to their employers.

Access to Employment Tribunals

While in theory all workers in the UK can access can take a case against their employer to an employment Tribunal, in practice this right is denied to domestic workers on the tied visa. In addition to barriers such as cuts to legal aid, if they want to avoid breaching the immigration rules tied domestic workers must take a case against their employer while remaining in that employer's home. It is totally unrealistic for these workers to take any kind of legal action against an employer who has potentially trafficked them, exploited them and denied them their most basic rights while still living with their home. In Kalayaan's experience, domestic workers will only consider seeking redress for any breaches of employment law they have suffered when they leave that employer. Of the 120 domestic workers that Kalayaan has registered on the tied visa in the two years since the April 2012 change less than 5 have taken an employment case and none have gone to Tribunal. In addition the fact that under the tied visa, employers are visitors to the UK and may have no assets in the UK creates additional barriers for these cases.

Domestic workers often report to Kalayaan that their employer's confiscate their mobile phones or refuse them permission to make calls during working hours (which can be excessively long), therefore ensuring that they cannot access services like ACAS, the pay and work rights helpline. Even where they can do so, given that domestic workers on the tied visa are prohibited from leaving the employer, they would be unable to act on the advice they are given

Access to the Police

Prior to the April 2012 visa changes, Kalayaan regularly accompanied domestic workers to the police in situations to recover passports where these had been retained by the former employer or to report abuse. However, while the percentage of domestic workers on the tied visa whose passport has retained by the employer is significantly higher than those on the original ODW, very few are willing to go to the police to try to recover their passport as they fear being detained as an immigration offender. Although some domestic workers who have been referred to the NRM have been supported by Kalayaan to report their trafficking to the police the numbers are very small as

the majority are too fearful to consent to such a referral. There has been to date no successful prosecution for trafficking for domestic servitude and unfortunately this is unlikely to change if domestic workers become undocumented through leaving their employers.

Strengthening arrangements for issuing visas

The government in the Modern Slavery Strategy have committed to further strengthening the arrangements in relation to the issuing of visas overseas to domestic workers to safeguard against their abuse.

While welcome, these measures have limited effect as we have seen with the existing requirement for a written contract. Many workers terms and conditions of employment are not what is stated in their contract but they have little choice to sign especially if working in exploitative situations. Domestic workers desperate to ensure that they can continue to support families in desperate situations in their country of origin by keeping their job are not in a position to negotiate with their employer regarding their terms and conditions of employment. In addition many cannot read even in their own language and the consequence of their employer being refused a visa on the basis of their disclosing abuse would undoubtedly be severe.

While it is important that employers are made aware what is required of them in relation to issues such as retaining domestic workers passports, it is not clear how the Home office will ensure in practice that these safeguards are complied with when the worker comes to the UK. In Kalayaan's experience the Home Office sometimes allow applications to renew the (original) ODW visa where the application states clearly that the salary is way below the minimum wage so it is doubtful that they will ensure any other conditions are met. Moreover, while employers are told that the domestic worker cannot leave their employment, there is little hope that they will respect their rights to retain their own passport etc.

The Government through the publication of this Bill and its wider Modern Slavery Strategy intend that the UK should be a world leader in the fight against modern slavery. This is a laudable ambition. However, this is to be fulfilled the current visa system which facilitates trafficking of migrant domestic workers, and deprive them of basic rights cannot continue.

In its statement during the United Nations Council Universal Period Review of Qatar which took place this year the UK, urged Qatar to reform the Kafala system. At the same time, the UK Government has ignored the recommendations of Parliamentary Committees, academics, NGO's and others to reverse the April 2012 changes to the ODW visa, a system which now bears many similarities to the Kafala system.

In her introduction to the recently published Modern Slavery Strategy, the Home Secretary recognises that 'Domestic workers are imprisoned and made to work all hours of the day and night for little or no pay'. By tying domestic workers to their employers the current visa regime serves to ensure that these workers remain imprisoned in situations of exploitation and inhumane treatment and to deny them redress for the abuses of human and labour rights they have suffered.

Case Study

'Nerita' (not her real name) was brought to the UK by her employer to work in their private household. She explained that she comes from a poor family in South India and her husband, children and elderly parents are dependent on her remittances for their support. There is little work available in her town and when neither she nor her husband were able to find work, she had no choice but to approach an agency to look for work abroad. The agency found her work with a family who lived in the Middle East. Nerita described having to borrow the agency fee from various relatives. It took her over a year to save the money on her meagre salary to repay the loan

Nerita explained that she accompanied her employer to the UK in early 2014. Her conditions of employment changed little when she came to the UK. She worked 7 days a week from 7am until midnight. She was not permitted to leave the employer's home unaccompanied and her passport was taken from her when she started working for this employer and never returned to her. She slept on a small mattress in the children's room. Nerita's salary in the Middle East was the equivalent of £150 per month, however Nerita was not paid during her time in the UK.

She had limited contact with her family as her employer prohibited her from having a phone. She was able to get one with the help of the family driver but she had to keep it hidden at all times. Her employer also warned her not to speak to people outside of her employers' household. She described being regularly verbally abused by her employer who would call her 'stupid' and tell her she had 'no brain'. She was told she should not speak because she was a 'servant'. The employer also threatened Nerita that she would send her back to India. Nerita did not doubt that her employer could do this. The employer's children were physically and verbally abusive to Nerita and the employer made no attempt to stop them.

Nerita speaks very little English and was not aware of the terms and conditions of her visa. Her family's situation in India is desperate and she was distressed to learn that as she had come to the UK on the tied visa she could only work with the employer who brought her to the UK and then only for a maximum six months. When she asked for our support in 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 also had to inform her that although she was forced to work excessive hours for no pay, she would almost certainly not be able to seek redress, given that under the terms of the tied visa her employer was a visitor to the UK and may have already left the UK.

Kalayaan has spoken to Nerita about referral to the National Referral Mechanism (NRM) as a victim of trafficking. However, while this will provide short term support for this very vulnerable woman, because she came to the UK on the tied overseas domestic worker visa, she will not get the justice she deserves.