



KALAYAAN

justice for migrant domestic workers

UK Immigration Law and the position of migrant domestic workers

Abstract

In 1998 the current UK government, in response to the unacceptable levels of abuse of migrant domestic workers (MDWs) in the UK, changed the immigration rules for MDWs, recognising them as workers and granting basic protection under UK employment law including the right to change employer.

The Home Office paper on the points-based migration system, presented to Parliament in March 2006 does not include MDWs. However, on Friday 10th March 2006, the Immigration and Nationality Directorate (IND) presented their proposals to Kalayaan, which are to again change the immigration rules for MDWs. These changes would restrict domestic workers accompanying their employers to a maximum of 6 months, with no right to change employers and no route to settlement. This paper will discuss the serious concerns raised by the proposals under which MDWs will again become bonded labourers, tied to one employer and more vulnerable than ever to abuse and exploitation.

Many of the concepts in this paper have been examined in more detail by Dr Bridget Anderson, COMPAS, University of Oxford, from whose work I have drawn heavily.

Introduction

Kalayaan is a small UK charity which works with migrant domestic workers (MDWs) of all nationalities in the UK.

The profile of domestic workers and domestic work is huge and varied. It includes live in and live out work, caring and cleaning. Employment relations are described in any number of ways from 'helping out' to nannies with contracts. Domestic work is also done by a large profile of people, from British nationals cleaning another families house for a few hours a week to child labours brought to the UK under the guise of 'family reunification'.

Kalayaan works with a particular group of Migrant Domestic Workers. These are individuals who have come to the UK with a named employer, on a specific visa, to work in the employer's private household. According to Home Office statistics obtained under the Freedom of Information Act 17,137 Domestic Worker visas were issued during 2005. Between April 2005 and March 2006 Kalayaan registered 387 new Migrant Domestic Workers (MDWs), a tiny proportion of MDWs who enter the UK, and in the same period 2,494 MDWs accessed advice sessions and support services at Kalayaan. It is this group of domestic workers who entered the UK on the domestic worker visa which I will discuss today while acknowledging that treatment of other workers brought to the UK in less formal ways is likely to be far worse.

MDWs are currently recognised as workers under UK employment law and so at present have entitlements such as to the NMW, sick pay and statutory holiday. MDWs also have the right to change employer, but not sector. The right to leave an abusive employer without becoming undocumented is crucial for the protection of this group of workers. The difficulties are *accessing* these rights due to a combination of factors which will be discussed in more detail in this paper and which include the isolated and unregulated nature of working in a private house, the fact that domestic work within a private household is frequently not recognised as work, the links between immigration status and access to employment law, the dependency upon one employer for work, housing and immigration status as well as information.

In this paper I will first examine the vulnerabilities of domestic workers in private households and why workers in this sector are susceptible to abuse. I will then look at the situation of migrant domestic workers and how the combination of being a migrant and domestic work in a private household can lead to situations of forced and bonded labour.

I will examine these issues in the context of the charity Kalayaan, where I am employed, drawing from our work with and on behalf of MDWs and on the successes and challenges of our work to enable MDWs to access their rights as workers in the UK. Finally I will outline the Immigration and Nationality Directorate's (IND's) proposed changes to immigration rules and practise for MDWs and the serious concerns raised by these proposals which include removing the right of an MDW to change employers even if they are abused.

A private matter: Vulnerabilities of domestic workers in the private household

In a country which has a National Minimum Wage (NMW), and increasing legislation and guidelines around childcare and work with children, work in a private household (which frequently includes childcare) often remains unrecognised as 'work'. This can be seen in the continued popularity to host 'au pairs' in lieu of employing childcare and in Kalayaan's experience of dealing with employers who are horrified to hear that their 'help' is entitled to the NMW and set hours of work.

Cash in hand is the norm and contracts, payslips and specified hours of work are rare. Surprise is often expressed by employers when these are requested. Instead employers often prefer to think of the domestic worker they employ as a 'member of their family'. Surely family loyalty and love for their children will replace any need for a written agreement?

Kalayaan frequently comes across such views; Employers will advertise for a worker 'who will stay with our family and grow with it' and we receive calls from employers who want to help 'by giving a girl a room, and she can work in return'. There is often no mention of payment yet the people making these offers believe they are being charitable not exploitative. They see the worker as someone vulnerable and from a poor country who should be happy to live in a comfortable part of the world like the UK with them. They will treat the worker well, she will be 'part of the family'. There is no recognition of the person as a migrant worker who is selling their labour often to support their own family (or several families). One example is an MDW who came to Kalayaan for support after being sacked. This was because coming back from her day off, rather than play with the children as she usually did, she went to her room to rest

as she was feeling unwell. The employer justified the dismissal to the MDW by saying that the worker had rejected them by spending her free time by herself. These employers are not 'slave drivers' in the traditional sense of the word but none the less they will use their relative power to keep a hold over the worker they employ and extract labour from them without due recognition.

Another example of the informal manner in which employing a worker in the private household is viewed by the majority of employers is the unwillingness to register their employee as a worker with the Inland Revenue and to make tax and National Insurance contributions. Where employers do register they frequently only declare part of the worker's salary. This willingness to defrauding the Inland Revenue demonstrates clearly how domestic work is not considered 'real' work by the employer so they are not 'really' breaking the law. At Kalayaan we have not come across any employer being prosecuted for non payment of tax and NI.

Domestic workers are left in a very difficult position by this type of behaviour. If they denounce their employer to the Inland Revenue they are likely at the least to loose their job. They cannot be guaranteed confidentiality since they are usually the only worker in the house and in any investigation it would be very difficult for the worker to prove they were not complicit in not declaring their earnings. In fact non payment of tax and NI is also in the interest of an abusive employer for another reason; it makes the employment itself illegal and so leaves the worker without any option of recourse to UK employment law. A migrant domestic worker cannot rectify the situation themselves by becoming self employed as this would be in conflict with the conditions of their visa which is to be in full time *employment* as a domestic worker in a private household.

Employers of domestic workers often see no problem with being discriminatory about who they employ in their home. This applies to both nationality and gender and is perhaps encouraged by the fact that work in a private household is exempted from the Race Relations Act meaning that employers in private households are legally allowed to discriminate on the basis of colour and/ or nationality. Kalayaan runs a weekly 'jobs workshop' in order to support MDWs who come to our centre to find work. A condition of the domestic worker visa is that the MDW is in 'full time work as a domestic worker in a private household'. This means if a worker loses their job shortly before their visa is due to expire they will be desperate for any job in order to renew it. Despite stating that we will not advertise any job which is discriminatory Kalayaan frequently finds employers attempting to specify the race of the worker they wish to employ, often justifying this by making generalisations about certain nationalities as being 'hard workers' or 'good with children'.

We also find much gender discrimination among employers of domestic workers. MDWs are frequently assumed to be female. While this is often the case, 14% of new MDWs registering at Kalayaan during the year 2005-6 were male. It is incredibly difficult for male MDWs for find domestic work in the UK, yet this is the type of work to which they are restricted by their immigration status. Employers advertising a position at Kalayaan usually state explicitly that they will not employ a man 'because my wife does not like men' or 'because men are not good with children'.

The lack of boundaries and resulting confusion around employment status in the private household can also be seen in the emotional attachment and feelings of personal debt demonstrated by MDWs towards the children they care for, and sometimes also to the adult employers despite being treated in a way which when looked at objectively is appalling. Kalayaan sees many MDWs, who having not seen their own children for years, or due to the nature of their work never having had children of their own, often put up with incredible abuse in order to stay with the family and not lose contact with the children they care for. It is not unusual when we call an employer on behalf of an MDW who has 'run away' that the employer will try and encourage the worker to return by asking us to pass on the message that the children haven't stopped crying and are not coping without them. MDWs do return to this kind of situation. We also see cases where a worker has huge wages owing but will not challenge the employer for these as they feel an emotional debt because the employer 'was good to' although did not pay, them.

An example is the case of 'L' an MDW who was paid £200 a month when she first registered at Kalayaan. L had signed a contract with her employer agreeing to this salary and has told us that before she came to Kalayaan she had no idea that she was entitled to be paid more than this. Upon learning about her entitlements L asked for an increase. She is now paid £500 per month but her employer has said she cannot pay her any more. Although L knows she is entitled to change employer L tells us she feels sorry for her employer who is disabled and for whom she works as a full time live in carer. L has developed a sense of loyalty to her employer who tells her she cannot live without L. Her job extends beyond physical labour; she gives her emotions and her strength. As she puts it:

'Any troubles come and she (my employer) knows I will clean them nicely.'

The other form of bond of MDW to employer is financial bonds. We come across many cases where despite working constantly the worker is always in debt to the employer due to unlawful deductions for visa costs, solicitors, air flights or inflated accommodation costs. By the time one visa is paid off, it is time to renew the visa again. Hence the worker is never in the position where they save any money or can leave, and again feel gratitude to the employer for supporting them all this time while they work off their 'debt'.

'Your passport is your life'. How increasing emphasis on immigration status over workers' rights can lead to situations of bonded and forced labour.

Whatever the dynamics and rights and wrongs of work in a private household, this is clearly a sector where there continues to be a demand for labour. What is important is that these workers both maintain their existing rights and are supported and organised to access these rights.

Dr Bridget Anderson has already looked at how there is a specific demand for *migrant* domestic workers and the reasons for this¹. The research in this paper makes it very clear that for a family requiring a full time live in domestic worker there are real advantages to that person being a migrant. This is ultimately because migrants are easier to control because they have fewer options. The worker's dependence on the

¹ A very private business: migration and domestic work' COMPAS Working Papers Series 2006 WP-06-28

employer for the job, for the opportunity to work in the UK and to renew their visa, ironically can be interpreted by the employer as a genuine affection for being in their employ, rather than the employment remaining a 'professional' relationship. So long as conditions are bearable (and sometimes even when they aren't) the worker will stay 'loyal' to and remain working for the family.

Other employers are less concerned with appearances of affection and will be open about the fact that they want to employ someone who hasn't yet learnt about their rights. An MDW who has recently been brought to the UK by their employer may have little formal education, speak and read no English, have not had possession of their passport since entering the UK, and have no idea as to their own immigration status. Clearly such a person is in no position to access even the most basic of employment rights and will put up with extreme abuse before 'running away' and throwing themselves upon the mercy of strangers who may not even speak their language. MDWs, despite being recognised as 'workers' have no recourse to public funds and as soon as they leave an employer are liable to become destitute. Almost no refuge or homeless shelter will accept them as their funding comes from Housing Benefit, and the isolated nature of domestic work will have provided little opportunity to meet friends with who the MDW can stay while looking for another job. If they have met other domestic workers they may also be 'live in' so unable to offer a place to stay. It is not uncommon for an MDW to arrive at Kalayaan with no possessions, no idea as to their immigration status, not knowing their employer's name or the name of the part of London in which they worked, having not spoken to anyone since being in the UK and believing that since they have 'run away' the police will have been alerted and are looking for them in order to return them to their employers after a thorough beating. We have seen MDWs who have been deliberately lied to by employers about their immigration status, told they will be raped by the police if they leave, have been beaten regularly, have been denied all contact with their families and have not been paid for long periods of time. The statistics below, collected from 387 MDWs who registered with Kalayaan between April 05- March 06 give some indication as to the scale of the abuse:

Abuse by employers reported by MDWs registering at Kalayaan April 05- March 06

Total workers registered 387

- Physical abuse 23%
- Psychological abuse 70%
- Sexual abuse 2%²
- Not enough food 71%
- Working more than 16 hours a day 86%
- Locked in the house in which they worked 27%
- No private room (sleeping in the children's room or in public space in the house such as kitchen or lounge) 56%
- Passport kept by employer 32%

Crucially, these workers have been able to leave their abusive employer and find another job without jeopardising their employment status.

² I believe sexual abuse is underreported in these statistics which are taken at an initial interview, when the MDW is often still very fearful and may not yet have developed the trust to report this form of abuse.

Effects of 'internal enforcement' of immigration control and the lack of awareness about MDWs mean that MDWs are frequently misinformed by authorities about their rights. Alarming, it is now too risky for an MDW to report the theft of their passport to the police before having some alternative form of proof of their UK visa. This is because, before investigating the theft of the passport, the police will run a check with the Home Office on the MDWs immigration status. If the visa has expired the worker is liable to immigration detention. No investigation in our experience has been carried out in these circumstances as to why the employer was employing someone whose visa expired while in their employment and as to why the MDW has no knowledge of their own immigration status and was not in possession of their own immigration documents. Nor is it possible for an undocumented worker to access any kind of protection under UK employment law. While an undocumented worker who commits a crime will be punished accordingly (and then deported) they will not benefit from the protection of the law leaving them incredibly vulnerable to abuse and exploitation from employers who know it will never be in the worker's interest to report maltreatment.

There are similar challenges when an MDW attempts to make a National Minimum Wage (NMW) claim with the NMW Compliance Team within the DTI. There is a number which a worker can call if they are not being paid the NMW. The Compliance Team should then investigate this with the onus being on the employer to prove that they *are* paying the NMW. In Kalayaan's experience this is not what happens. In each case we have supported a MDW to take, the helpline have queried the MDWs status as a worker in the UK and attempted to claim that they are here as a 'family member' and so are not entitled to the NMW³. This is clearly not the case as the MDW visa is issued to domestic workers in *employment* in a private household. It again highlights the lack of recognition of domestic work as 'real work' and *migrant* domestic workers as workers rather than people who should just be glad for the opportunity to be in the UK.

The Home Office's proposed changes to the immigration rules for MDWs and the implications

Despite the desperate situation of MDWs in the UK today there is at least some protection in law for this group of workers. After more than ten years of organising, campaigning and documenting abuse the high levels of abuse of MDWs by employers was acknowledged by the British government in 1998 and deemed to be unacceptable. The current protection for MDWs was introduced by the current Labour government and included a concession which allowed for large numbers of MDWs who had become undocumented under the previous system to regularise their status. The Labour government was proud of its measures to protect MDWs as is demonstrated in the ILO Multilateral Framework on Labour Migration in which the UK government cites the fact that domestic workers can change employers as an example of good practice (Annex point 82 of the document).

The Home Office paper on the points-based migration system, presented to Parliament in March 2006⁴ does not include MDWs. However, on Friday 10th March, the Immigration

³ See the DTI booklet 'A detailed guide to the National Minimum Wage. Revised October 2004. Paragraph 37 'People living and working within the family'.

⁴ 'A Points-Based System: Making Migration Work for Britain'. March 2006

and Nationality Directorate (IND) presented their proposals to Kalayaan, which are to restrict domestic workers accompanying their employers to a maximum of 6 months, with no right to change employers and no route to settlement. This proposal raises the most serious concerns including the following:

- **Legalising trafficking for labour exploitation:**
If the proposals come into force MDWs will be outside of the managed migration system, coming instead as business visitors, tied to their employer, for a maximum of 6 months. They will have no option to change employer during this time, or to renew their visa. This will make it virtually impossible to challenge any maltreatment or abuse, and indeed will encourage it. This is in direct contravention to the Home Office stated policy to protect victims of trafficking.
- **Increase in abuse and illegality:**
Taking away the provision to renew their visa, or to change employers, as well as making employers responsible for seeing that MDWs leave the UK at the end of their stay, dramatically increases the power the employer has over the MDW and could be described as bonded labour. There will be increases in levels of abuse and more MDWs will be forced underground, where they will be further exploited by employers taking advantage of their irregular status.
- **Removing access to UK employment law:**
Despite the IND stating that MDWs will be recognised as workers under the new scheme, it will not be possible in practice to access UK employment law within the 6 months allowed and without the right to find alternative employment. As soon as MDWs leave an employer they will be homeless and destitute with no right to work to support themselves.

Conclusion

The 'private' nature of domestic work in a private household means that this type of work is subject to very little regulation. While wider global inequalities remain, domestic workers will continue to migrate to the UK in search of work just as employers will continue to bring them. If there was no specific visa for this purpose, workers would be brought in other ways- as 'visitors' or 'family members' leaving them without any rights and in a position where they are working illegally.

It is therefore important that the demand for this type of work continues to be recognised and legislated for. Abuse of MDWs by employers has been documented and has been acknowledged by the Home Office. Experience has showed that if a desperate worker has the chance to escape abuse they will do so whether or not they are entitled in law to leave. Without the right to change employer MDWs will escape from a situation of abuse into further exploitation. As we approach the bicentenary of the abolition of slavery it is unacceptable that there should be a change in legislation which will tie MDWs to a single employer making them once again bonded labourers.