



KALAYAAN
justice for migrant domestic workers

Human

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The Voice of 
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dignity at work

The Overseas Domestic Worker visa – keeping migrant domestic workers visible, legal and able to seek assistance from the authorities.

While the 2012 changes to the immigration rules, which removed the right to change employer, left domestic workers unable to access employment law or even to withdraw their labour and so challenge abuse, the existence of the Overseas Domestic Worker visa still provides some protection to domestic workers in the form of recognition as workers, albeit now with a limited and short-term right to change employers.

Removal of the route in its entirety would not prevent people bringing domestic workers to the UK and exploiting them. It would instead drive these employment relationships underground, decreasing the workers' access to justice and increasing the risk of abuse.

- 1. There is a direct inverse correlation between the legal recognition of the migration route and rights, on the one hand, and abuse and exploitation by employers reported by workers to Kalayaan, on the other. Keeping workers legal, visible and able to access employment, civil and criminal law to challenge mistreatment or denial of rights leads to lower levels of abuse.**

1996- Domestic workers had no rights, were not recognised as workers and entered on a concession or as visitors. During the period, a wide variety of visas were used by employers, and some domestic workers entered the UK with no legal documents at all.¹ The result of this was that domestic workers had no legal rights at all, and were tied to their employer, for if they tried to leave, they were undocumented. Applications to change employer were turned down because domestic workers did not arrive in the UK under a work visa. Abuse was widespread and it included violations of labour rights, such as unpaid wages or other instances of exploitation, and other kinds of abuse. According to Kalayaan, a total of 39% of workers who registered with the organisation in 1996 reported physical abuse, 87% psychological abuse and 89% denied time off.²

1998- The Overseas Domestic Worker visa was created (workers entered on a concession, until the immigration rules were changed in 2002). This meant visa holders

¹ See Mumtaz Lalani, 'Ending the Abuse', Kalayaan, 2011, p 14 ff.

² <http://www.kalayaan.org.uk/wp-content/uploads/2014/09/Kalayaan-Report-final.pdf> (table 4)

could change employer and so access employment law in practice. The numbers of workers suffering exploitation and abuse was significantly lower than during the earlier period. In 2010 18% of workers registering with Kalayaan this year reported physical abuse, 54% psychological abuse and 67% had no day off.³

2013- Domestic workers who entered the UK following April 2012 did so on the tied Overseas Domestic Worker visa. These workers were unable to leave their employer without jeopardising the terms of their visa and so their permission to work in the UK, making it not possible to access UK employment law in practice. In 2013 74% of those who entered on the tied visa and registered with Kalayaan reported psychological abuse and 100% reported that they had no day off.⁴

Domestic work in a private household needs increased regulation based on enforcement of workers' rights, which will only ever be enforced in practice by workers having regular immigration status as workers, and sufficient rights and options to expose poor treatment. It is notable that the lowest percentage of exploitation and abuse was documented when workers had the right to change employer and renew their visa. This needs to be built on. Restricting the visa or removing rights of visa holders has been shown to always be to the detriment of the workers who have no negotiating power.

2. Having a dedicated visa keeps Overseas Domestic Workers visible, legal and able to approach the authorities for help.

The original Overseas Domestic Worker visa was introduced in 1998⁵ as a result of a ten-year campaign by migrant domestic workers in coalition with unions and faith groups. The campaign was based on the earlier experiences of migrant domestic workers in the UK who were brought to the UK accompanying employers informally, through a 'concession' which allowed employers to bring workers as 'visitors' or as 'persons named to work with a specified employer'. This meant that as soon as any exploitation occurred or a dispute arose between the parties the worker had no status in the UK which was independent to that of their employer and any attempt to claim employment rights failed automatically on the basis that their employment was 'illegal'. Both criminal and civil allegations were also much harder to follow through.

Even though the Overseas Domestic Worker visa has to be reformed,⁶ its existence is vital if we compare workers' treatment before the visa was enacted. The history of migrant domestic workers migrating to the UK shows clearly that without the visa it is impossible to access labour laws or other protections leaving workers entirely dependent on their employer for work and accommodation. It has been well evidenced that one of the factors which prevents individuals who are in exploitation, including in situations of modern slavery and trafficking, from approaching the authorities for help is irregular immigration status. This is because they fear arrest and deportation.

³ Ibid

⁴ <http://www.kalayaan.org.uk/wp-content/uploads/2014/09/Slavery-by-a-new-name-Briefing.pdf>

⁵ The visa was introduced as a policy in 1998 and incorporated into the immigration rules in 2002

⁶ See James Ewins, Independent Review of the Overseas Domestic Worker Visa, 2015

It is also well evidenced that whatever border controls are in place, those with power who want to exploit others will find a way to take advantage of desperate people, and to bring them to the UK for exploitation. In the case of wealthy employers, it is likely that migrant domestic workers will be brought with them as ‘visitors’ on holiday with their employer or, in the case of child domestic workers as ‘family members’, as was the case for domestic workers prior to the creation of the ODW visa and as remains the case for many children trafficked for domestic servitude.

A comparison of the reported levels of abuse and exploitation experienced by migrant domestic workers in 1996 (when there was no ODW visa) and in 2010 (when the original visa with the right to change employer was in place) shows clearly that although abuse remains high in 2010, levels are far lower than in 1996 when migrant domestic workers had no status and so were unable to assert their rights or challenge any mistreatment. Abuse then increased again following April 2012 as rights were removed from visa holders.⁷

Policy makers should understand that **to minimise abuse overseas domestic workers need to have a lawful and coherent immigration status and to be able to access rights in practice including having access to employment law, and the right to change employers. As made clear by the Independent Review of the ODW visa (Ewins, 2015) the right to change employers is only meaningful in practice with the right to renew the visa.**

Removing the ODW visa would also be a significant backwards step in terms of preventing trafficking for domestic servitude, and flies in the face of other preventative policies.

Comparison of the levels of abuse and exploitation experienced by MDWs in 1996 and 2010 ⁸

	1996	2010
Denied time off	89%	67%
Psychological abuse	87%	54%
Physical abuse	39%	18%
Sexual abuse	12%	3%
Passport withheld by employer	62%	65%
Were given insufficient food	38%	26%
Worked an average of 17 hours a day	100%	48% (worked 16 hours a day or more)

3. The tying of the Overseas Domestic Worker visa in 2012 facilitated exploitation. To remove the visa altogether would compound this

⁷ For statistics of increases in reported abuse with the 2012 tying of the ODW visa see Kalayaan 2013 briefing ‘Slavery by another name: the tied migrant domestic worker visa <http://www.kalayaan.org.uk/wp-content/uploads/2014/09/Slavery-by-a-new-name-Briefing.pdf>

⁸ ‘Ending the Abuse,’ Kalayaan, 2010. Table 4

The changes to the immigration rules which were introduced in April 2012 undermined the ability of people on the Overseas Domestic Worker visa to challenge abuse and thus led again to an increase in abuse of migrant domestic workers in the UK. We continue to condemn this removal of rights, which have not been addressed by the 2015 Modern Slavery Act or the 2016 Immigration Act. In spite of this it is clear that the removal of the Overseas Domestic Worker visa would in effect be a wholesale removal of all rights of migrant domestic workers in the UK, as it would lead these employment relationships underground; a significantly retrograde step and in effect a return to the situation of 1996.

March 2019