

KALAYAAN

justice for migrant domestic workers

17 October 2019

Seema Kennedy
Parliamentary Under Secretary for Immigration
Home Office
2 Marsham Street
London
By email: public.enquiries@homeoffice.gov.uk

Dear Minister,

Re: The impact of differential rights of work for migrant domestic workers referred to the National Referral Mechanism

We write to draw your attention to the findings of new research conducted by Kalayaan, which highlights the impact of differential rights of work for migrant domestic workers referred to the National Referral Mechanism (NRM). In light of our research, we respectfully ask that your department reviews their respective policies in this area.

Kalayaan is delighted to be supported in our call for change by a number of MPs, charities and coalitions. This is a multi-signatory letter from a diverse range of bodies and individuals who all share a commitment to the prevention of abuse and exploitation of vulnerable people in the UK.

Kalayaan is the leading UK charity providing advice, advocacy and support to migrant domestic workers who have been brought to the UK by their employer to undertake domestic work in their private household. We use our frontline experience to inform and highlight issues experienced by this vulnerable workforce to improve their working conditions and ensure they have access to remedies if they experience any abuse. In some cases, workers report severe treatment amounting to trafficking and modern slavery. In our role as a government designated First Responder, we will refer these cases to the NRM for workers to access support and protection whilst their claims are considered by the Home Office.

Migrant domestic workers remain a vulnerable group in need of rights in the UK so that they are protected and not made vulnerable to exploitation. These workers seek opportunities abroad in the hope they will

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be able to provide for their families who depend on their remittances for essentials including food, shelter, medicines and education.

Following evidence of a significant increase in reported abuse after the introduction of the tied visa in 2012 and an independent review, the government made some reforms to the Overseas Domestic Worker visa in 2016.¹ The government conceded that workers needed to be able to escape abuse so permitted them to change employers and work but only for the remaining term of their six month visa which remains non-renewable.² The only exception to this applies to those workers identified as potential victims of trafficking or modern slavery who enter the NRM.

As part of the reforms, the government recognised the needs of migrant domestic workers in the NRM to be able to continue working and providing for their families. However the granting of permission to work was dependent on the date of receipt of a positive reasonable grounds decision - the initial decision made under the NRM which should be made five working days after a referral has been made. Only those who receive a positive reasonable grounds decision whilst their six month visa is still valid have their leave extended and have permission to work. Those workers who enter the NRM and receive a positive reasonable grounds decision after their six month visa has expired do not have permission to work in the UK and have to wait until their trafficking claim has been determined which can take months, often years to be made. On average, workers referred to the NRM by Kalayaan who received decisions in 2018 were waiting 24 months for a final decision on their trafficking / modern slavery claims. The longest wait was 37 months.

The right to work for migrant domestic workers referred to the NRM is contained in the **Immigration (Variation of Leave) Order 2016** which came into force on 6 October 2016. No impact assessment was produced when the Order was made.³

¹ James Brokenshire, then Minister of State for Immigration, Written Statement, HCWS583, 7 March 2016
<https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2016-03-07/HCWS583/>

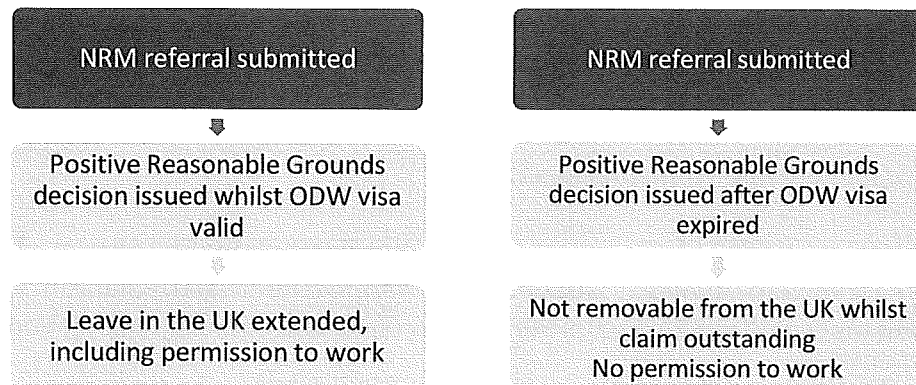
² Kalayaan does not consider the reforms go far enough in protecting workers, see: Kalayaan briefing on the Government response to the independent review of the overseas domestic worker (ODW) visa, 8 March 2016
<http://www.kalayaan.org.uk/wp-content/uploads/2014/09/Kalayaan-briefing-on-Government-response-to-Independent-Review-of-ODW-visa.pdf>

³ <http://www.legislation.gov.uk/uksi/2016/948/contents/made>

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Diagram: Effect of the Immigration (Variation of Leave) Order 2016 on entitlement to work in the NRM



New research conducted by Kalayaan demonstrates the arbitrariness of this policy given that workers trapped in exploitation have no or limited control over when they can escape. Interviews were conducted with 21 workers in the NRM, of whom 11 had permission to work while waiting, whereas the other 10 did not. The research revealed the government's failure to provide information during the visa application process or after workers had arrived in the UK directly contributed to the delay in entering the NRM as they did not know who to contact for assistance after their escape.

Without permission to work, workers reported being drawn into destitution and left vulnerable to further harm and exploitation. They are made to survive on subsistence provided under the NRM (£35 a week) which is not enough for them to meet their essential needs or those of their struggling families abroad. In some cases this resulted in workers feeling **pressurised into entering informal work and irregular hours with pay below the National Living Wage**. Workers reported they would be too afraid to complain should they experience any abuse given that they were working without permission. The restriction on work also affected the mental health of workers who reported feeling **worthless, subservient and punished by a system meant to protect them**. In contrast, workers with permission to work were generally financially independent and able to provide for their families. Issues they experienced resulted from a lack of clarity about their right to work.

The findings of the report also revealed the implications workers face when applying for further leave to remain under provisions contained in the Modern Slavery Act 2015 and how they would be addressed should all workers in the NRM have the right to work. Currently, workers are required to demonstrate how they will maintain and accommodate themselves without recourse to public funds within 28 days of their claims being determined. This is extremely difficult for those denied the right to work for months / years and who have been made reliant on support under the NRM.

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All workers interviewed for the research told Kalayaan they want to use their skills and work and not be made reliant on government support. The report demonstrates that the extension of the right to work to all migrant domestic workers in the NRM can help them live in dignity as they can support themselves and their families, prevent them falling into destitution and at risk of exploitation and improve their mental health.

Please find attached a copy of our report, **Dignity, not destitution: The impact of differential rights of work for migrant domestic workers in the National Referral Mechanism**. We would be very pleased to meet with you to discuss the findings made and our recommendations, as set out below:

1. Claimed safeguards during the visa application process must be rigorously enforced and express reference made to them in the contract between UK Visas and Immigration and commercial partners at Visa Application Centres abroad
2. Information sessions for workers remaining in the UK for more than 42 days must be implemented without further delay and be made mandatory for all workers to attend
3. All migrant domestic workers referred to the NRM, irrespective of their visa status, must be granted permission to work to prevent them falling into destitution and at risk of further exploitation
4. Reasonable grounds notifications must say in clear and unambiguous language that a worker's permission to work in the NRM extends beyond the 45 day recovery and reflection period and continues until they receive a conclusive grounds decision
5. Reasonable grounds notifications must expressly state that workers who entered the UK on the Overseas Domestic Worker visa (and under the Tier 5 visa category for workers employed by diplomats) have the right to apply for further leave to remain if they are not granted discretionary leave on account of their individual circumstances
6. Migrant domestic workers in the NRM should be issued with an Application Registration Card endorsed with their right to work
7. The Home Office should update workers of the status of their claims under the NRM every 6 months and provide a letter they can show to prospective employers

This report has been shared and, to date, has the support of the following MPs, charities and coalitions:

- Jess Phillips, Member of Parliament for Birmingham, Yardley
- Vernon Coaker, Member of Parliament for Gedling
- Diana Holland, Assistant General Secretary, Unite the Union
- Jasmine O'Connor OBE, Chief Executive, Anti-Slavery International

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- Clare Collier, Advocacy Director, Liberty (National Council for Civil Liberties)
- Nicole Francis, Chief Executive, Immigration Law Practitioners' Association
- James Ewins QC, Barrister and Author of the Independent Review of the Overseas Domestic Worker Visa in 2015
- Patrick Stoakes, Policy and Programmes Manager, British Institute of Human Rights
- Fizza Qureshi and Jilna Shah, Chief Executive Officers, Migrant Rights Network
- Chai Patel, Legal Policy Director, Joint Council for the Welfare of Immigrants
- Kate Roberts, Chair, Anti-Trafficking Monitoring Group
- Joanna Ewart-James, Executive Director, Freedom United
- Phoebe Dimacali, Founder, Filipino Domestic Workers Association
- Gisela Vale, Chair of the Labour Exploitation Advisory Group
- Lucila Granada, Chief Executive, Focus on Labour Exploitation
- Professor Bridget Anderson, Director of Migration Mobilities Bristol, University of Bristol
- Marissa Begonia, Founder, The Voice of Domestic Workers
- Amuerfina R. Reyes, Labor Attache, Philippine Overseas Labor Office (POLO), Embassy of the Philippines in London
- Wilson Solicitors LLP, Tottenham, London
- Minh Dang, Director, Survivor Alliance
- Professor Zoe Trodd, Director of the Rights Lab, University of Nottingham
- Jean Demars, Development Lead, Public Interest Law Centre
- Victoria Marks, Director, Anti Trafficking and Labour Exploitation Unit

We believe others will also join us shortly and will add to the above list on our website: kalayaan.org.uk/.

Yours sincerely,



Rita Gava
Director



Avril Sharp
Policy Officer

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