



# KALAYAAN

justice for migrant domestic workers

## **Kalayaan briefing for House of Lords Second Reading of the Immigration Bill 2015, 22 December 2015**

Kalayaan is a UK registered Charity established in 1987 to provide support and advice to migrant domestic workers in the UK. We are exempted by the Office of the Immigration Solicitor (OISC) to give immigration advice to level 1. We also give basic employment advice, run English classes and make referrals to specialist lawyers. As a recognised First Responder we are able to refer migrant domestic workers whom we have identified as trafficked and who consent to such a referral into the Government's identification system for identifying victims of trafficking, the National Referral Mechanism (NRM). Prior to the changes to the immigration rules for individuals who enter on the Overseas Domestic Worker (ODW) visa we used to register over 300 new workers each year, we now register fewer than 200. The number of ODW visas issued each year has remained constant, at over 16,000. The treatment reported to Kalayaan by those workers on the tied visa has been consistently worse than that reported by those not tied, particularly in terms of restrictions of freedoms. We believe the drop in numbers coming to Kalayaan has been caused in part by fewer domestic workers finding the opportunity to escape abuse and in part by the fact that the restrictions on the visa mean that the help we can offer is significantly limited.

This briefing does not attempt to comment on the Immigration Bill 2015 as a whole, but instead to highlight the current situation of migrant domestic workers in the context of the Bill.

The Overseas Domestic Worker visa has been described as the most disadvantageous labour migration status that exists.<sup>1</sup> It is a visa system that was designed for the benefit of a different, wealthier, migrant, the 'sponsor', or employer who brings the migrant domestic worker to the UK. As such, it allows the visa holder, the worker, permission to come to the UK to work. However, the conditions of the visa which restrict the worker to one full time job in the employers private household for a maximum period of six months, allows almost no rights in practise in UK law, or practical way of challenging any mistreatment. This is because workers on the ODW visa are almost inevitably living in their employer's house, have their employer's name written on their visa, are dependent on their employer's whim for almost all conditions of work and have no means of challenging any mistreatment under the ever present threat of losing their job and breaching the terms of the visa on which they entered. It is no surprise that all who have examined the tied visa in any detail<sup>2</sup> have condemned its restrictions and recommended that domestic workers be permitted to change employer and apply to renew their visa.

### **Migrant domestic workers and the Modern Slavery Act**

The Modern Slavery Bill gave significant time and parliamentary scrutiny to the situation of migrant domestic workers in the UK. Cross party parliamentary scrutiny both before and during the passage of the Bill was clear that

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<sup>1</sup> Sex Discrimination and UK Immigration Law, University of Oxford, Faculty of Law Border Criminologies Blog 10 July 2015 Catherine Briddick <https://www.law.ox.ac.uk/research-subject-groups/centre-criminology/centreborder-criminologies/blog/2015/07/sex> (accessed 13.12.15)

<sup>2</sup> See The Centre for Social Justice 'It Happens Here', Andrew Boff (Conservative GLA) Shadow City, Human Rights Watch 'Hidden Away', Frank Field MP Evidence review for the Modern Slavery Bill 'Establishing Britain as a world leader in the fight against modern slavery', December 2013, The Joint Committee on the Draft Modern Slavery Bill, April 2014, The Joint Committee on Human Rights in its legislative scrutiny of the Bill, November 2014, Independent Review of the Overseas Domestic Worker visa, James Ewins 16 December 2015.

the tying of migrant domestic workers to their employer has been a disaster and needed to be reversed with urgency.

- In 2009 the Home Affairs Select Committee in its inquiry into trafficking said **that retaining the visa was** “the single most important issue in preventing the forced labour and trafficking of such workers”.<sup>3</sup>
- Frank Field’s Evidence review for the Modern Slavery Bill ‘Establishing Britain as a world leader in the fight against modern slavery’ published in December 2013, recommended that *‘this visa rule should be abolished in order to give exploited staff the opportunity to escape their positions’*.<sup>4</sup>
- The Joint Committee on the Draft Modern Slavery Bill published in April 2014 found that *‘In the case of the domestic worker’s visa, policy changes have unintentionally strengthened the hand of the slave master against the victim of slavery. The moral case for revisiting this issue is urgent and overwhelming. Protecting these victims does not require primary legislation and we call on the Government to take immediate action’*.<sup>5</sup>
- The Joint Committee on Human Rights in its legislative scrutiny of the Bill in November 2014 reported that *‘We regard the removal of the right of an overseas domestic worker to change employer as a backward step in the protection of migrant domestic workers, particularly as the pre 2012 regime had been cited internationally as good practice. We recommend that the bill be amended to reverse the relevant changes to the immigration rules and to reinstate the pre-2012 protections in the bill’*.<sup>6</sup>

An Amendment which would have reinstated the key right of the domestic worker to change employer and provided the opportunity to apply for visa renewal, was tied during a Committee stage vote in the Commons (losing only to the Chair) and won in the Lords before being overturned on the Bill’s return to the Commons. In spite of the consistent evidence and accepted fact that tying domestic workers to their employers increases vulnerability, the only two elements in the Modern Slavery Act which attempt to address the situation of migrant domestic workers in the UK are Section 53 and the commitment to an independent review of the visa, to be carried out by James Ewins.

### Modern Slavery Act Independent review

The independent review promised during the course of the Modern Slavery asked James Ewins, a barrister with expertise on Modern Slavery, who served as a specialist legal adviser to the pre-legislative scrutiny Committee on the Bill, to evaluate the situation of migrant domestic workers on the Overseas Domestic Worker visa with recommendations. During debate the Government stated their intention to implement Ewins’ recommendations;

*‘We have asked for this review to take place and we look forward to the recommendations. I cannot commit a future Government, but the intention is that whoever is in government’... ‘will implement the review’s recommendations’.*

Karen Bradley MP, Parliamentary Under Secretary of State (Minister for Preventing Abuse and Exploitation)<sup>7</sup>

The report was presented to the Home Secretary on the 6 November 2015 and published on the 17 December 2015.<sup>8</sup> The Report finds that *‘the existence of a tie to a specific employer and the absence of a universal right to change employer and apply for extensions of the visa are incompatible with the reasonable protection of overseas domestic workers while in the UK’*.<sup>9</sup>

<sup>3</sup> <http://www.publications.parliament.uk/pa/cm200809/cmselect/cmhaff/23/2305.htm#a7> (accessed 16.12.15)

<sup>4</sup> <http://www.frankfield.com/upload/docs/Modern%20Slavery%20Bill%20Evidence%20Review.pdf> (accessed 16.12.15)

<sup>5</sup> <http://www.publications.parliament.uk/pa/jt201314/jtselect/jt slavery/166/16602.htm> (accessed 16.12.15)

<sup>6</sup> <http://www.publications.parliament.uk/pa/jt201415/jtselect/jtrights/62/6202.htm> (accessed 16.12.15)

<sup>7</sup> Karen Bradley MP 17 March 2015 Modern Slavery Bill Debate

<http://www.publications.parliament.uk/pa/cm201415/cmhansrd/cm150317/debtext/150317-0001.htm#15031750000002> Column 650 (accessed 15 December 2015)

<sup>8</sup> <https://www.gov.uk/government/publications/overseas-domestic-workers-visa-independent-review> (accessed 18.12.15)

<sup>9</sup> <https://www.gov.uk/government/publications/overseas-domestic-workers-visa-independent-review> paragraph 10

This right to change employers is a fundamental protection and the recommendations are an important first step in the protection of migrant domestic workers in the UK. Kalayaan is pleased that the review recommends that the permission to change employer also apply to those migrant domestic workers whose employers are diplomats and that all overseas domestic workers who are to work in diplomatic households are to be employed by the mission rather than individual diplomats.

The review also calls for **mandatory group information** meetings for all overseas domestic workers who remain in the UK for more than 42 days. Kalayaan welcomes any increase in opportunities for migrant domestic workers to receive information about their rights. We believe that if these meetings are delivered appropriately, in an environment where workers feel safe and genuinely able to disclose abuse, and are given meaningful options, such as changing employer, they can be an important tool in preventing and ending abuse.

### **Modern Slavery Act Section 53**

*'About as begrudging as can be imagined'*

Colin Yeo, Immigration Barrister, Garden Court Chambers, describing Section 53 of the Modern Slavery Act.<sup>10</sup>

Section 53 of the Modern Slavery Act, offers too little to migrant domestic workers and too late in the process. It does nothing to prevent or to protect against the trafficking and exploitation of domestic workers facilitated by the tied ODW visa. It allows only for migrant domestic workers who entered the UK on the ODW visa and who have been found by the UK authorities to have been trafficked or subjected to slavery to apply for a visa with a maximum duration of 6 months, permitting them to take full time work as a domestic worker in a private household. This visa must be applied for within 28 days of the trafficking finding. We have not had confirmation that legal aid will be available for the application. The resultant visa allows no recourse to public funds and it is unclear as what support processes the worker can access when the visa expires after 6 months.

Kalayaan fears that as a standalone measure, without the implementation of the review recommendations, Section 53 may increase the likelihood of further exploitation. As all who are eligible have been trafficked these workers will have no references, will be traumatised by the recent abuse they have suffered and yet will be expected to go out and find work in a private household. When seeking employment, it will be clear that they cannot legally work for more than 6 months. Reputable employment agencies have said it is unlikely they would be able to place workers in jobs which inevitably involve care responsibilities and are not usually considered short term. However if they cannot find work the no recourse stipulation means these women will be destitute or dependent upon the charity of others, making them vulnerable to exploitation.

### **Case study: 'Priya'** (names and identifying details have been changed)

*Priya entered the UK on the tied ODW visa. She worked for a family who told her that she would be needed in the UK for two months to cook and clean while continuing to receive her normal salary which was below the UK National Minimum Wage. Neither her employers nor the British embassy staff processing her visa application overseas gave her any information on her rights in the UK.*

*Once in the UK, Priya worked 18 hours every day without any breaks. She had no day off. She had to sleep on the kitchen floor, was locked in the house during the day and only given leftovers to eat. In addition to cooking and cleaning, she was also expected to take care of the employer's three children, all under 10 years old, and do all the housework and laundry for the family. When in the UK, her employers did not allow her to get in touch with her*

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<sup>10</sup> <http://www.equaltimes.org/has-the-modern-slavery-act-left#.Vm3n4OErHIU> (accessed 13.12.15)

*family and did not permit her to leave their employment as they said that she had a two year contract with them so could not leave.*

*Eventually Priya ran away in desperation. However, as Priya's visa was tied to her employer in doing so she had breached the UK immigration rules. She had been told this and so was too scared to go to the authorities for help and did not know of Kalayaan or where she could go for advice. Destitute and desperate for a job, she ended up working for someone who paid her less than £500 a month. This employer refused to help her get any legal advice and sexually harassed her.*

The current situation of migrant domestic workers in the UK who have entered on the Overseas Domestic Worker visa is dire. Reports of abuse made to Kalayaan remain consistently at levels which are unacceptably high and significantly worse than the already shockingly high levels prior to the removal of rights with the tying of migrant domestic workers to their employers in April 2012.

- 74% of workers who registered with Kalayaan during the first three years of the tied Overseas Domestic Worker visa who were tied to their employers reported that their passport was confiscated and held by their employer. This is in comparison with 50% of those not tied.<sup>11</sup>
- 64% of tied workers were identified by Kalayaan staff as potentially trafficked, in comparison with 25% of those not tied.
- 66% of workers who were tied were not allowed out of the house unaccompanied in comparison to 41% not tied.
- 81% of workers tied by their visa had no day off in comparison to 66% who were not tied.

#### **Recommendation**

- **We urge parliamentarians to seek assurance as to when the recommendations made within the Independent Review of the Overseas Domestic Worker visa will be implemented.**

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<sup>11</sup> Abuse reported to Kalayaan by workers who registered with us between April 2012 and March 2015. Of the 590 registrations during this time, 184 were tied to employers and 406 not tied (had entered the UK prior to 2012). For a fuller analysis see 'Britain's forgotten slaves; Migrant domestic workers in the UK three years after the introduction of the tied Overseas Domestic Worker visa' Kalayaan May 2015 <http://www.kalayaan.org.uk/wp-content/uploads/2014/09/Kalayaan-3-year-briefing.pdf> (accessed 15.12.15)