

Rights Not Rescue: Lessons from migrant domestic workers in the UK and their struggle for systems change

Kate Roberts

Response to the ATR debate proposition ‘It is worth undermining the anti-trafficking cause in order to more directly challenge the systems producing everyday abuses within the global economy.’

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Challenging the systems which produce everyday abuses within the global economy must be central to the anti-trafficking cause. This is because any system that leaves some people with no realistic way to challenge everyday abuses or access rights also creates the underlying conditions that render these same people vulnerable to human trafficking.

One example of this relationship is the effect of immigration rules, which can leave people vulnerable to abuse and exploitation, including trafficking. The conditions of an immigration visa, for instance, can determine its holder’s ability to access healthcare and labour law protections, including sick pay or state support when unable to work.

This is reflected in recent experiences in the United Kingdom (UK), where changes made in 2012 to the rules governing the Overseas Domestic Worker (ODW) visa illustrate how workers’ struggles to assert rights and challenge everyday abuses are directly related to the prevention of trafficking. From 1998 until April 2012, ODW visa holders had the ability to leave an employer, find a new job, and apply to extend their work visa on the basis of new employment. This meant that both they and their employers knew that the worker could change employer without losing their immigration status or income. The availability of this qualified yet still consequential option helped to partly rebalance the power difference between domestic workers and their employers. Research by

London-based support and advice organisation, Kalayaan, has revealed that the removal of these rights contributed to an increase in reported levels of abuse and exploitation, including human trafficking.¹

The ODW visa was first created in 1998. It was regarded as an example of good practice because it went some way towards addressing the structures enabling the exploitation of migrant domestic workers.² This original ODW visa recognised that migrant domestic workers were entering the UK as workers. It gave them the right to change employers and renew their visa based on ongoing employment. Workers on this visa had a pathway to settlement. Its creation ended the operation of an informal system under which domestic workers accompanying employers had simply received a stamp in their passports stating they had ‘permission to work with [employers name]’.³ This informal system had left such workers in legal limbo and workers had risked being penalised for violating immigration laws when they left exploitative work and reported problems to the authorities. The original ODW visa was thus a significant step forward, and the result of years of campaigns by migrant domestic workers and their allies.

Migrant domestic workers and their allies also made it clear that proposals to end or restrict the original ODW visa risked undoing all the achievements by migrant domestic workers, leaving them without the means to challenge abuse.⁴ Despite these campaigns, changes to the immigration rules introduced in 2012 prevented workers from changing employers or renewing their visas beyond six months.⁵ Although ODW visa holders were, in theory, still recognised as

¹ See for example: Kalayaan, ‘Britain’s Forgotten Slaves: Migrant domestic workers in the UK three years after the introduction of the tied visa’, Kalayaan, May 2015, retrieved 16 July 2020, <http://www.kalayaan.org.uk/wp-content/uploads/2014/09/Kalayaan-3-year-briefing.pdf>.

² The original ODW visa was cited internationally as good practice. See: International Labour Organization (ILO), *Multilateral Framework on Labour Migration: Nonbinding principles and guidelines for a rights-based approach to labour migration*, ILO, Geneva, 1 January 2006, p. 67, https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_146243.pdf.

³ B Anderson, *Doing the Dirty Work? The global politics of domestic labour*, Zed Books, London, 2000.

⁴ Kalayaan, ‘The Impact of Proposals to Abolish the Overseas Domestic Worker Visa’, Briefing by Kalayaan, Justice for Domestic Workers and Oxfam, July 2011, <http://www.kalayaan.org.uk/wp-content/uploads/2014/09/domestic-worker-visa-brief-july-2011.pdf>.

⁵ Kalayaan, ‘Slavery by Another Name: The tied migrant domestic worker visa’, Kalayaan, May 2013, <http://www.kalayaan.org.uk/wp-content/uploads/2014/09/Slavery-by-a-new-name-Briefing.pdf>.

workers, the dependence on their employer for accommodation, employment and immigration status, together with the hidden and undefined nature of 'live-in' domestic work, made it almost impossible to challenge abuse in practice. When the visa rules changed, reported exploitation increased, including indicators of trafficking. For example, in 2013, 86 per cent of workers on the new tied visa reported to Kalayaan that their passports or identification documents were being kept from them, an increase of 40 per cent when compared to reports from workers on the original visa. Reports of being unable to leave the house unsupervised were over 50 per cent higher among workers on the restricted visa, at 96 per cent of workers.⁶

In the wake of the adoption of the *Modern Slavery Act* in 2015 the government committed to review the ODW visa in light of the recognised need for options to prevent trafficking and slavery. The review recommended that all ODW visa holders should have the right to change employers, renew their visa on the basis of their employment, and have access to information about their rights in the UK.⁷ However, these recommendations were not implemented. Instead, in 2016, workers were permitted to change employers but not to renew their visa.⁸ For workers restricted to one full-time job as domestic worker in a private household, finding alternative decent work in a sector which inevitably involves building personal relationships and trust with only a few months remaining on a non-renewable visa is unrealistic.⁹ Only those ODW visa holders who are officially identified as trafficked have options to extend their visa.¹⁰ Support organisations such as Voice of Domestic Workers and Kalayaan report the bind in which the current situation leaves the majority of workers. Do workers risk leaving before abuse escalates? If this abuse does not equate to trafficking, they could be left destitute, without a reasonable prospect of finding work and without access to legal aid to challenge mistreatment. The desperate need to remit money to one's family and pay off debts means workers may not feel able to risk leaving exploitative labour situations.

⁶ *Ibid.*

⁷ J Ewins, 'Independent Review of the Overseas Domestic Workers Visa', Government of the UK, 16 December 2015, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/486532/ODWV_Review_-_Final_Report__6_11_15_.pdf.

⁸ *Immigration Act*, 2016.

⁹ A Sharp and N Sedacca, *Dignity, not Destitution: The impact of differential rights of work for migrant domestic workers referred to the National Referral Mechanism*, Kalayaan, October 2019, http://www.kalayaan.org.uk/wp-content/uploads/2019/10/Kalayaan_report_October2019.pdf.

¹⁰ *Ibid.*

Rather than listen to workers on the visa and reinstate the original ODW visa, the 2016 changes to the visa ignore the need for workers to be able to exercise their rights before exploitation escalates. This is only realistic when workers have alternative employment options and a safety net, such as access to public funds. Built-in options and choices where immigration rules, the labour market, and social security structures are concerned must be at the core of any effective approach to prevent exploitation, slavery, or trafficking.

Migrant domestic workers and their allies continue to recognise the importance of the anti-trafficking framework to push for change. They continue to highlight the legal and moral commitments to prevent and address trafficking and slavery and use these to make a clear case for systematic change to allow for rights to be exercised and exploitation to be challenged early on. Rather than undermine the anti-trafficking cause to directly challenge the systems producing everyday abuses within the global economy, the situation of migrant domestic workers in the UK makes clear how connected ‘everyday abuse’ and trafficking are; when workers cannot challenge their unpaid overtime or lack of holiday pay, at what point can they be sure their demands for justice will be supported? The ODW visa shows us that anti-trafficking responses will only be effective when they encompass the prevention of trafficking, including addressing the systems which produce everyday abuse.

Kate Roberts is UK & Europe Manager at Anti-Slavery International. She has 15 years of experience in workers’ and migrants’ rights and anti-trafficking work and has previously worked at the Human Trafficking Foundation and Kalayaan. She has in-depth knowledge of the UK’s anti-trafficking and anti-slavery measures, having compiled the Slavery and Trafficking Survivor Care Standards 2018 and having been a First Responder to the UK’s National Referral Mechanism from 2009 to 2016. Email: k.roberts@antislavery.org