



Written evidence to the Independent Review of the Overseas Domestic Workers Visa

21 May 2015

Submission by René Cassin

Main contact: Sam Grant, Campaigns and Programmes Manager, René Cassin

Address: JHub, Haskell House, 152 West End Lane,

London, NW6 1SD

Tel: 020 7443 5130

Sam.Grant@renecassin.org

<http://www.renecassin.org/>

“This year we are slaves; next year, may we be free”

Passover Haggadah

I. About René Cassin

1. René Cassin is a London-based human rights non-governmental organisation that works to promote and protect universal human rights, drawing on Jewish experience and values. The foundational narrative of the Jewish people is one of a people led from slavery to freedom. The story of Moses leading the Jews out of slavery in Egypt, through the desert and to the land of Israel is re-told every year at Pesach, and is remembered throughout the year. René Cassin continues the fight against slavery as it exists today.

II. Introduction

2. In 1772, Lord Mansfield eloquently denounced the practice of slavery in a case where a man attempted to enter the UK accompanied by his slave.¹ Similarly today, we must stop at nothing to prevent contemporary migrants from importing abusive employment relationships into the UK. We believe that adding a provision allowing migrant domestic workers to change employers reduces the risk of vulnerable people falling into situations of labour and criminal abuse, including slavery. Furthermore, we are confident this can be achieved without adversely impacting the integrity of the immigration system.

III. Summary

3. The Anti-Trafficking Monitoring Group clause regarding migrant domestic workers from their Alternative Bill should be inserted into the Modern Slavery Act (2015), creating extra protection for migrant domestic workers and most importantly, allowing them to change visas. We believe this would:

- Reduce instances of criminal and labour abuse by ensuring overseas migrant domestic workers access to justice without fear of deportation
- Protect the most vulnerable workers from their employers
- Uphold international standards of best practice combatting modern-day slavery
- Not affect the integrity of the immigration system

IV. Why are tied visas a matter of human rights?

4. The right not to be held in slavery is an absolute human right.² Accordingly, governments must take all steps within their own country to eradicate domestic servitude, as well as other criminal and labour abuses.

¹ *Somerset v Stewart* (1772) 98 ER 499.

² Art. 4, *Universal Declaration of Human Rights* (1948); Art. 4, *European Convention of Human Rights* (1950); Art. 8, *International Covenant on Civil and Political Rights* (1966).

5. Migrant domestic workers are in a special position of vulnerability: their lives are often heavily controlled by their employers, they may not speak English, and they are often accustomed to being paid below the minimum wage for long hours of work. Migrant domestic workers, the majority of whom are women and girls, are extremely vulnerable to violence and abuse. Live-in workers are particularly vulnerable to abuse as their workplaces are in private households, behind closed doors and out of the public eye. Consequently, they should be afforded special protection, and current legislation is permissive to abusive practices.

6. We applaud the initiative of Parliament and the Home Secretary in the formulation and passage of the Modern Slavery Act 2015.³ We contend, however, that the unnecessarily restrictive visa policy harms individuals and puts migrant domestic workers in situations that foster criminal and labour abuse, creating a culture of impunity for employers. The tied visa system is a significant impediment to the protection of the rights of migrant domestic workers, particularly essential labour rights.

7. Migrant workers often cite fear of authorities as a reason for staying in abusive employment arrangements. Tied visas make this fear legitimate, as leaving an abusive employer necessarily leads to deportation, which for many workers is not an option if they have family to support. For human rights to be upheld, barriers to justice must be removed.

8. In addition, restrictive visa regimes have been explored in the European Court of Human Rights in the case of *Rantsev v. Cyprus and Russia*,⁴ The Cyprus visa regime exceeded the restrictiveness of the Overseas Domestic Worker (ODW) visa. The same principles could be applied to the ODW visa in future challenges.⁵ It also found that there are positive obligations of states to satisfy Article 4 of the ECHR prohibiting slavery, servitude, and forced or compulsory labour.⁶ Freedom from slavery is a human right and states must do what they can to protect this right.

V. Can justice be achieved without compromising the integrity of the immigration system?

9. Despite the objections of many civil society actors, the right of migrant domestic workers to change employer was removed in April 2012. The rationale for the move can be understood by looking at the broader context of immigration.

10. The 2011 government consultation asserted that it was not 'logical or fair' to offer permanent settlement to low skilled workers whilst restrictions were being introduced

³ *Modern Slavery Act 2015* (UK)

⁴ *Rantsev v Cyprus and Russia*, App No 25965/04, (ECtHR, 7 January 2010)

⁵ Mantouvalou, V. Written Evidence submitted to Modern Slavery Bill (October 2014)

⁶ *Rantsev v Cyprus and Russia*, App No 25965/04, (ECtHR, 7 January 2010), 284-286.

for higher skilled workers.⁷ This view is maintained by the Modern Slavery Act which reflects the government's policy not to facilitate low skilled migration to the UK.⁸

11. The evidence suggests, however, that eradicating tied visas will not significantly increase immigration. When migrant domestic workers were allowed to change employers, UK Border Agency (UKBA) figures from 2009 showed that less than 0.5% of the people granted permanent settlement were domestic workers,⁹ demonstrating a negligible impact on total migration.

12. Other restrictions based on time limits on visas are legitimate, and are part of a nation's sovereign right to control its borders. A restriction on employment, however, is not necessary to achieve the goal of reducing immigration, and is unnecessarily onerous on migrant domestic workers, as it fosters abuse of all kinds, including situations of slavery.

13. There are competing policy considerations at stake when considering the question of tied visas. The small reduction in immigration achieved by restricting the visa is not worth the costs of criminal and labour abuse of migrant domestic workers. There are also options that make it possible to maintain time limits on the stay of migrant domestic workers without limiting their right to change employer.

VI. Are current arrangements for Overseas Domestic Workers Visas effective in protecting potential victims from abuse?

14. Employment tribunals, minimum wage laws, and the National Referral Mechanism (NRM) have been cited as the protections offered to migrant domestic workers in the government response to the Report from Joint Committee on the Draft Modern Slavery Bill, argued to be sufficient for protecting victims.¹⁰ These protections will be examined and evaluated individually.

15. Using the Employment Tribunal to achieve justice would require migrant domestic workers to stay in the country without income after their employment has presumably ended, without a visa to stay in the UK legally. This is an unfeasible path to a remedy. Furthermore, the most recent statistics for the Employment Tribunal from April to June 2014 reveal that the average length of time for a claim to reach final judgment is 38 weeks¹¹ – well in excess of the 6 months visa granted to migrant domestic workers.

⁷ UK Border Agency, *Employment-related Settlement, Tier 5 and Overseas Domestic Workers: A Consultation* (June 2011), para 7.13.

⁸ Home Office, *The Government Response to the Report from Joint Committee on the Draft Modern Slavery Bill*, Session 2013-14 HL Paper 166/HC 1019 (June 2014), p 28.

⁹ Calculation done by Kalayaan based on requested data requests to UKBA; Kalayaan, *Ending the Abuse: Policies that work to protect migrant domestic workers* (May 2011), p 24.

¹⁰ Home Office, *The Government Response to the Report from Joint Committee on the Draft Modern Slavery Bill*, Session 2013-14 HL Paper 166/HC 1019 (June 2014), p 27.

¹¹ Ministry of Justice, *Tribunal Statistics Quarterly: April to June 2014* (September 2014), p 17.

16. Minimum wage cases are also decided through Employment Tribunals, a process of seeking legal assistance, submitting a claim and awaiting judgment – a process that would usually be too long for this mechanism to be effectively enforced.

17. The NRM provides support and assistance to those that have been trafficked, and does allow for leave to remain in the UK to assist with the prosecution of abusers. In 2014, referrals for adults in domestic servitude numbered 234, accounting for 14 per cent of the total referrals for exploitation of adults.¹² It is unclear what percentage of this came from people on an ODW visa. There is, however, no right to work whilst awaiting trial, and migrant domestic workers must leave the UK following the trial, acting as a powerful disincentive to pursuing assistance.

18. This use of the NRM demonstrates that there is utility to be gained from this mechanism, and the assistance given is far preferable to situations of abuse. Though as the NGO Kalayaan, who fight for the rights of migrant domestic workers, argues, the NRM does not prevent migrant domestic workers from being deported, and as a consequence, victims remain reluctant to come forward.¹³

19. Consequently, the protections provided by the NRM, employment tribunals and minimum wage laws are merely theoretical for most migrant domestic workers, and not applied in practice due to lack of access to justice.

VII. What are the barriers to access to justice and how can they be removed?

20. Understanding the problems of tied visas requires an understanding of the perspectives of those in abusive arrangements.

(i) Migrant domestic workers have a lack of knowledge about protections available to them, and are often intentionally deprived of information by their exploiters.¹⁴

(ii) Migrant domestic workers have a lack of trust of immigration authorities, as they typically have a great fear of being deported.¹⁵

(iii) Migrant domestic workers often experience pressure to continue sending payments home to family in order to support them.¹⁶

21. On the first barrier, we welcome the recent pilot programme to provide more information to those arriving in the UK as domestic workers,¹⁷ though this does not go far enough. British embassy staff should meet individually with migrant domestic workers, and there should be consultation with frontline charities in order to maximise the effectiveness of information provided.

¹² National Crime Agency, *National Referral Mechanism Statistics – End of Year Summary 2014* (January 2015), p 2.

¹³ Kalayaan, *Still Enslaved: The Migrant Domestic Workers who are Trapped by the Immigration Rules* (April 2014), p 2.

¹⁴ Human Rights Watch, *Hidden Away: Abuses against Migrant Domestic Workers in the UK* (March 2014), p 4.

¹⁵ Kalayaan, *Slavery by another name: the tied migrant domestic worker visa* (May 2013), p 2.

¹⁶ Kalayaan, *Still Enslaved: The Migrant Domestic Workers who are Trapped by the Immigration Rules* (April 2014), p 3.

¹⁷ United Kingdom, *Parliamentary Debates, House of Commons*, 4 Nov 2014, 775 (Karen Bradley).

22. On the second barrier, it is clear that the fear of deportation is justified, as ending employment means ending their right to stay legally in the UK. Removing the visa restriction that forces migrant domestic workers to rely on a single, possibly abusive, employer would mitigate this concern. Allowing migrant domestic workers to remain in the same sector of employment but with a different employer need not be a permanent path to migration, but would successfully remove the immediate and justified fear of deportation that currently prohibits exploited domestic migrant workers from revealing abuse.

23. On the third barrier, a fear of destitution and the pressure to send payments home perpetuates abusive employment when there is no alternative. Reliance on a single employer under the current legislation means that migrant domestic workers cannot gain employment in any other form – their dependency is complete. Removing the restriction gives migrant domestic workers choice in their arrangement and empowers them to end abusive employment and pursue other paid work.

VIII. Have instances of slavery, trafficking and other abuse increased after the reintroduction of tied visas?

24. It has been suggested that incidences of abuse have actually decreased since the changes made in 2012, quoting the instances of reported abuse.¹⁸ The numbers quoted, however, do not account for the increased reluctance of migrant domestic workers to report abuse. Kalayaan statistics reveal increased controls placed on migrant domestic workers as well as increased psychological, verbal and physical abuse.¹⁹ The qualitative research of both Kalayaan and Human Rights Watch reveals that visa restrictions have been influential in reducing reportage.²⁰

25. Although the government has not given credence to these studies, it remains highly pertinent that two of the leading voices of civil society on this matter decry the practice of tied visas. More research would need to be done to establish more accurate figures, but the available evidence indicates that there has been an increase in instances of abuse.

IX. Will eradication of tied visas increase or decrease the incidence of abuse?

26. Karen Bradley has stated that having a system in place that allows people to change employers will allow abuse 'to go unchallenged'.²¹ We recognise the complexity of the issue, but expert opinion and available evidence suggest that exploited domestic migrant workers are far more likely to come forward if they do not have a fear of deportation.

¹⁸ United Kingdom, *Parliamentary Debates*, House of Commons, 17 March 2015, 649 (Karen Bradley).

¹⁹ Kalayaan, *Still Enslaved: The Migrant Domestic Workers who are Trapped by the Immigration Rules* (April 2014), p 2.

²⁰ Kalayaan, *Still Enslaved: The Migrant Domestic Workers who are Trapped by the Immigration Rules* (April 2014), p 2; Human Rights Watch, *Hidden Away: Abuses against Migrant Domestic Workers in the UK* (March 2014), pp 47-50.

²¹ United Kingdom, *Parliamentary Debates*, House of Commons, 17 March 2015, 564 (Karen Bradley).

27. The right to change employer is instrumental in facilitating the escape of migrant domestic workers from exploitative and abusive situations. It is important for abused domestic workers to receive support and assistance and be able to file a complaint against their employer and seek work with another employer without facing the risk of deportation.

28. Before the system was changed in 2012, the UN Special Rapporteur on the Human Rights of Migrants noted with appreciation that the right to change employer has been instrumental in facilitating the escape of migrant domestic workers from exploitative and abusive situations.²² In addition, granting an independent visa status, including the right to change employer, for migrant domestic workers has been hailed as good practice by the International Labour Organization.²³

29. Domestically, a 2009 report on Human Trafficking in the UK from the House of Commons Home Affairs Committee recognised that retaining the ODW visa and the protections it offered was 'the single most important issue' preventing the forced labour and trafficking of such workers.²⁴

30. Expert opinions have converged on a single point: that the right to change employers is a vital safeguard against abuse.

X. Will eradicating tied visas solve the problem?

31. Eradicating tied visas will not solve the problem of labour and criminal abuse of migrant domestic workers – abuse existed under the previous system as well. However, it is a vital step in minimising risks, but it is important to take all preventative measures available.

32. There are further provisions for protection included in the Anti-Trafficking Monitoring Group Alternative Bill, including the requirement of employers to report on tax and national insurance, ensuring the payment of the minimum wage and increasing accountability. In addition, we support the provision of temporary visas to all migrant domestic workers who experience exploitation and misconduct from their employers. This removes the fear of deportation from the equation, freeing migrant domestic workers suffering abuse to report their employers to the authorities.

XI. Recommendations

33. As part of their submission to the Modern Slavery Bill, the Anti-Trafficking Monitoring Group created an Alternative Bill. We recommend the adoption of Clause 19 of the Alternative Bill through amendment to the Modern Slavery Act.

²² Human Rights Council, *Report of the Special Rapporteur on the human rights of migrants*, Jorge Bustamante A/HRC/14/30/Add.3 (June 2009), paras 60-61.

²³ ILO, *Multilateral Framework on Labour Migration Non binding principles and guidelines for a rights-based approach to labour migration*, 2006, p.82;

²⁴ Home Affairs Committee, *The Trade in Human Beings: Human Trafficking in the UK*, HC 23-I, 14 May 2009, para 59.

34. Relevant to understanding the provision is the ATMG definition of exploitation:

"exploitation" includes but is not limited to the exploitation of the prostitution of others or other forms of sexual exploitation; the exploitation of labour or services including begging or practices similar to slavery, servitude or forced or compulsory labour; the exploitation of or for criminal activities or the removal of organs; enforced marriage; enforced surrogacy; unlawful adoption; and enforced drugs smuggling, manufacture, production or distribution.

19. Rights of overseas domestic workers

(1) Overseas domestic workers, including diplomatic domestic workers, shall be entitled to:

(a) change their employer (but not work sector) while in the United Kingdom, without any adverse consequences for their immigration status;

(b) renew their domestic worker visa or diplomatic domestic worker visa for as long as the worker is in employment;

(c) be joined in the United Kingdom by their spouse or civil partner and any of their children who are under the age of 18;

(d) apply for indefinite leave to remain after five continuous years of residence in the United Kingdom and where they continue to be required for employment as a domestic worker.

Obligations of an employer

(2) An employer must pay an overseas domestic worker the National Minimum Wage. A failure to do so shall be an offence under section 31 of the National Minimum Wage Act 1998. The Family Worker exemption provided for under Regulation 2(2) of the National Minimum Wage Regulations 1999 shall not apply to any dispute relating to the wages of an overseas domestic worker.

(3) An employer must inform HMRC in writing of the overseas domestic workers' tax and national insurance contributions (including where any exemption for the worker may apply) within three months of the commencement of an overseas domestic worker's first visa, or when their visa is renewed for the first time, whichever is the earlier.

(4) An employer who fails to comply with section (19)(3) commits an offence and shall be liable on summary conviction to a fine.

Additional protections - temporary visa for overseas domestic workers

(5) An overseas domestic worker shall be entitled to a three month temporary visa permitting them to live in the United Kingdom for the purposes of seeking new employment as an overseas domestic worker where—

- (a) there is evidence that the overseas domestic worker has been trafficked, enslaved or exploited by their employer, irrespective of whether or not the employer has been criminally charged or convicted in respect of such conduct;
- (b) the employer informs the Home Office that the overseas domestic worker has ceased to work for the employer and as a consequence the overseas domestic worker's visa is, or will be, revoked;
- (c) the employer dismisses the overseas domestic worker within three months of the date of expiry of their overseas domestic worker visa; or
- (d) the overseas domestic worker's visa is revoked as a result of the sponsoring employer's misconduct including, without limitation, the non-payment of National Minimum Wage, tax or national insurance, and where the overseas domestic worker would otherwise be unable to remain in the United Kingdom.

For the purposes of this section, and without limiting the general definition of exploitation in section 5 above, "exploitation" in section 19(5) expressly includes a failure by an employer to pay the overseas domestic worker the National Minimum Wage and non-minor breaches by the employer of applicable employment law.

(6) If a temporary visa is not granted to an overseas domestic worker under section 19(5), the overseas domestic worker shall have a right of review of that decision by the High Court and the right to apply for legal aid in relation to any such review.

(7) An overseas domestic worker shall have the right to remain in the United Kingdom on the same terms as their overseas domestic worker visa for a reasonable period for the purposes of preparing and lodging an application for a temporary visa under section 19(5) and for any period while they await any decision from the Home Office regarding their immigration status.

Applications for diplomatic domestic worker visas

(8) The Home Office shall only grant a diplomatic domestic worker visa where there is evidence that the diplomatic domestic worker is or will be employed in the United Kingdom pursuant to a direct contractual relationship with the relevant diplomatic mission.