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Protecting Migrant Rights Across Borders

Visa Pages: U.S. TEMPORARY FOREIGN WORKER VISAS

A-3 AND G-5 VISAS

Updated March 2021

The A-3 and G-5 nonimmigrant visas allow foreign diplomats and employees of international organizations to employ foreign workers for in-home domestic work.

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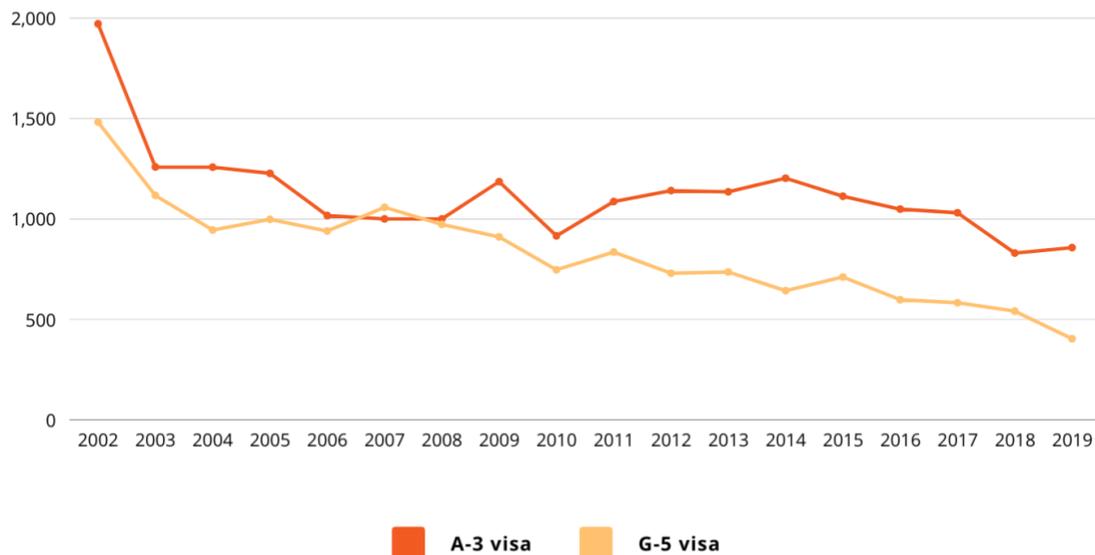
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I. A-3 AND G-5 VISAS

A. OVERVIEW

A-3 and G-5 nonimmigrant visas are specifically for domestic worker employees of foreign diplomats and international officials. A-3 and G-5 visas are very similar. The only difference is the nature of the employer’s work or mission in the United States. The A-3 visa considers domestic workers to include attendants, servants, and personal employees of a diplomat or foreign government official.¹ The G-5 visa designates attendants, servants, and personal domestic workers as domestic workers of an employee working for a designated international organization, such as the United Nations or the World Bank, “and the members of the immediate families of such attendants, servants, and personal employees.”² Both visas are initially valid for up to three years, and may be extended in two-year increments.³ However, the U.S. Department of State’s (DOS) standard and customary practice is to issue domestic worker visas for a period that does not exceed the validity of the visa held by the employer; usually, the maximum is 24 months.⁴ Extensions are available for both visas.⁵ There is no maximum number of years an individual may work with either an A-3 or a G-5 visa.

A-3/G-5 Visas Approved 2002-2019



Source: U.S. Department of State, FY 1997-2019 NIV Detail Table, available at <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-statistics/nonimmigrant-visa-statistics.html> (June 2020).

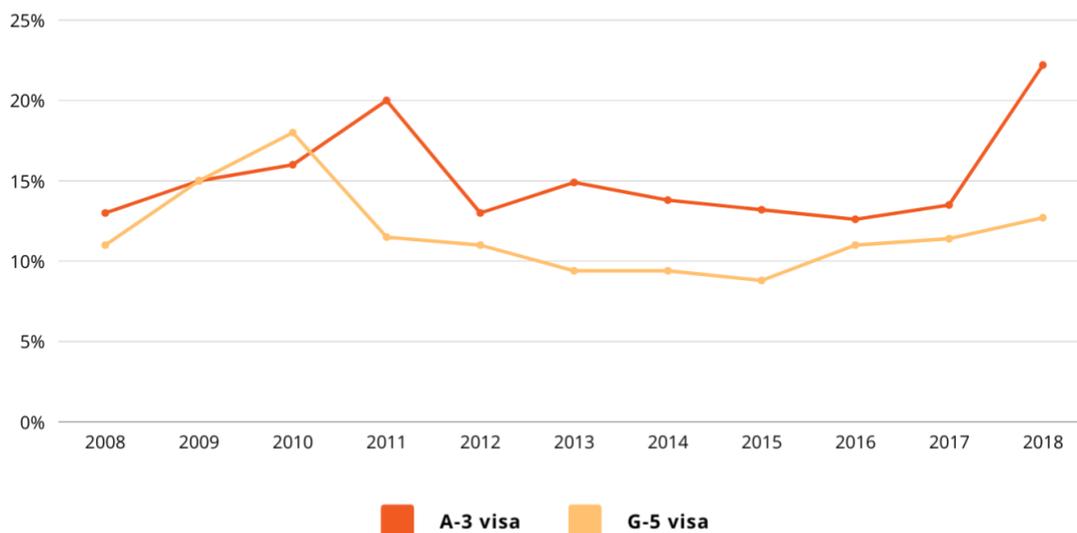
There is no annual cap. Even so, the number is relatively small compared to other nonimmigrant work visas. In 2019, less than 1,300 new visas were issued for both

groups of workers combined. Most A-3 workers are from Asia and Africa, while most G-5 visa holders hail from Asia and South America. The Philippines is the country that sends the most workers to the United States on A-3 and G-5 visas.⁶

In the wake of numerous reports related to the underpayment, abuse, and human trafficking of A-3 and G-5 workers, Congress passed extra protections for them in the 2008 reauthorization of the Trafficking Victims Protection Act (TVPA). DOS thereafter implemented guidelines for its consular officials specifically addressing protections for A-3 and G-5 visa applicants.⁷ For example, these guidelines include a mandatory employment contract with various requirements (e.g., the employer must pay a required wage and all transportation costs).

While having an employment contract in place prior to starting a job generally benefits foreign workers, once A-3 and G-5 workers are in the U.S., it has historically been difficult for workers to enforce their labor and contract rights. One government official had noted in 2012 that “[t]here is no way any [nonimmigrant domestic workers] are being paid” the prevailing wage.⁸ DOS is charged with oversight of contract and labor law compliance and has been subject to criticism in the past for its seeming reluctance to take on any significant role in contract enforcement.⁹ However, DOS has recently

A-3/G-5 Visa Adjusted Refusal Rate 2008-2018



Source: U.S. Department of State, Nonimmigrant Visa Statistics, NIV Workload by Category, 2006-2018, available at <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-statistics/nonimmigrant-visa-statistics.html> (June 2020). Adjusted Visa Refusal Rate = (Refusal - Overcome) / ((Refusal - Overcome) + Issuances). See U.S. Department of State, Guidelines of the Visa Waiver Program, available at <https://travel.state.gov/content/dam/visas/Statistics/Non-Immigrant-Statistics/refusalratelanguage.pdf> (June 2020). Percentages are rounded to the nearest tenth.

increased its efforts to prevent the exploitation of A-3/G-5 visa holders with an in-person registration system and periodic check-in program for workers in several U.S. cities. Further complicating the issue, many employers of A-3 and G-5 workers are diplomats often protected by diplomatic immunity, limiting workers' ability to seek redress for contract violations in U.S. courts.¹⁰ As with most other nonimmigrant visas that authorize work in the U.S., A-3 and G-5 workers are vulnerable to the extent that their immigration status is tied to their job placement.

A-3/G-5 Numbers at a Glance 2013-2019

AGENCY	DATA COLLECTED	FY13	FY14	FY15	FY16	FY17	FY18	FY19
U.S. Department of Labor	No data reported	---	---	---	---	---	---	---
U.S. Department of State*	Number of visas actually issued to domestic workers at U.S. Consulates abroad	A-3: 1,135 G-5: 736	A-3: 1,203 G-5: 643	A-3: 1,113 G-5: 711	A-3: 1,049 G-5: 598	A-3: 1,031 G-5: 583	A-3: 830 G-5: 541	A-3: 857 G-5: 404
U.S. Department of Homeland Security - U.S. Customs and Border Patrol**	Number of individual admissions and readmissions at the border with a I-94 entry document	A-3: 1,381 G-5: 1,137	A-3: 1,642 G-5: 1,116	A-3: 1,449 G-5: 1,093	A-3: 1,278 G-5: 1,019	A-3: 1,406 G-5: 1,006	A-3: 1,178 G-5: 972	---

*This number represents visas issued; receiving a visa does not guarantee admission to the U.S. Statistics on individuals who are turned away at the border are not disaggregated by visa classification.

**Individuals may be counted more than once in the admissions numbers because many workers depart and re-enter the U.S. in the same year. First-time and repeat entries are not distinguished. All admissions are counted regardless if the worker was admitted on a new I-94 or a valid I-94 that was previously used.

Source: U.S. Department of State, FY 1997-2019 NIV Detail Table, available at <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-statistics/nonimmigrant-visa-statistics.html> (June 2020); U.S. Department of Homeland Security, Nonimmigrant Admissions by Class of Admission and Country of Citizenship: Fiscal Year 2013-2018 (Supplemental Table 1), available at <https://www.dhs.gov/immigration-statistics/nonimmigrant> (June 2020).

II. A-3 AND G-5 HIRING PROCESS

In contrast to other temporary work visas, diplomatic and international employers who hire nonimmigrant workers with A-3 and G-5 visas do not petition the government for special permission. Employers are not required to make any application with either the U.S. Department of Labor (USDOL) or the U.S. Department of Homeland Security (DHS). Rather, the employer usually finds the prospective domestic worker in the worker's country of origin, and both parties sign an employment contract. Then, the prospective worker applies for the visa through the U.S. consular post abroad. Along with the visa application, the worker must present the signed employment contract, show proof of the employer's diplomatic mission, and be interviewed personally outside of the presence of the employer. The U.S. Department of State (DOS) approves most A-3 and G-5 visa applications. DOS requires that the employer's mission or agency confirm that the individual is authorized to bring a domestic worker to the United States through a pre-notification process. Once the worker receives the visa, he or she travels

to the U.S. and presents for admission at the U.S. border or port of entry. DHS's sub-agency, Customs and Border Protection (CBP), makes the final decision about whether to admit an individual with an A-3 or G-5 visa to the United States.

A. STEPS FOR EMPLOYERS

Diplomat and international employers may find A-3/G-5 workers in a variety of ways: a pre-existing employment relationship; a recruiting agency; recruitment through the worker's community; referral by a previous employer. The workers, however, may or may not be from the same country as their employers. Employers are not required to make any application with either USDOL or DHS. The employer must sign an employment contract with the domestic worker and then support the worker's visa application process with DOS by providing supporting documents, including the ambassador or chief of mission's pre-notification form, and in some cases proof of financial solvency.¹¹

Employers are required to pay for the domestic worker's transportation to and from the United States.¹² The A-3 and G-5 visas are only available for domestic workers whose employers are nonimmigrants. If the diplomat employer is a legal permanent resident in the U.S., then the domestic worker is not entitled to an A-3 or G-5 visa. Instead, the domestic worker must qualify for another type of temporary work program, such as a B-1/B-2 nonimmigrant visa for temporary work as a domestic worker.¹³ During the hiring process, the employer must provide a contract outlining the basic terms and conditions of employment. The contract must be provided to the worker in a language that the worker can read and understand; if the worker cannot read, the contract must be read to the worker in a familiar language.

DIGGING DEEPER: SERVANTS AND PERSONAL EMPLOYEES DISTINGUISHED FROM ATTENDANTS

A-3 and G-5 visas are available for servants, personal employees, and attendants. Servants and personal employees are paid from the private funds of the individual employer.¹⁴ Attendants are paid from the public funds of a foreign government or international organization.¹⁵ This is the only difference. Workers who serve on long-term contracts as attendants in the ambassador's residence, for example, usually come to the United States on A-2 visas and are not personal employees but are employed by the government that the ambassador represents.

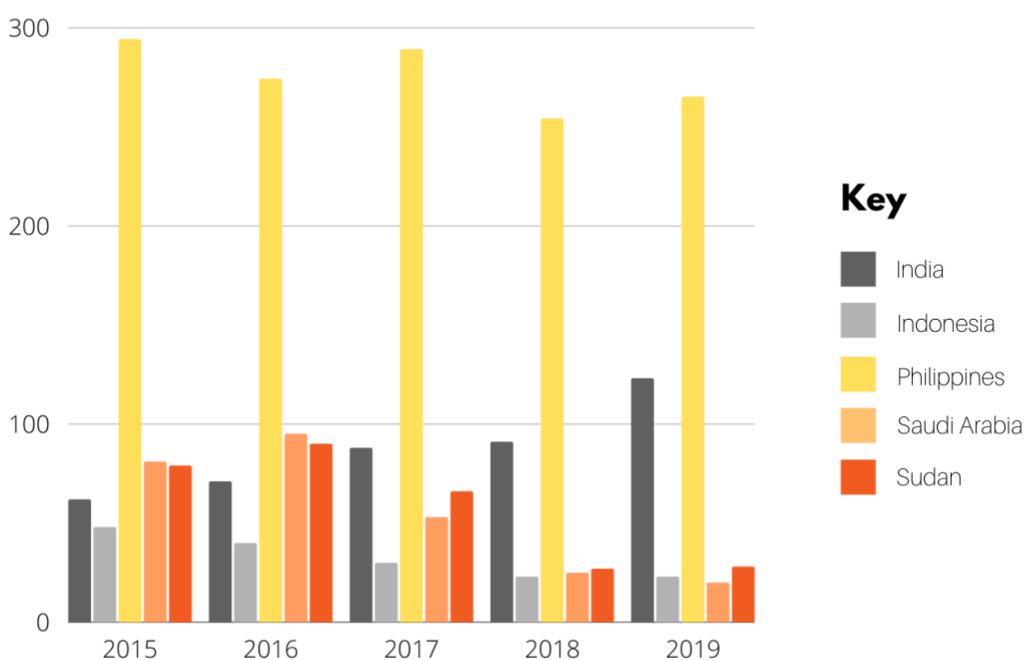
B. STEPS FOR WORKERS

The prospective A-3 or G-5 worker applies for the visa through the U.S. Consulate or Embassy abroad. The first step is to complete the Form DS-160 through an online application and upload a photo.¹⁶ There are no visa fees.¹⁷ All A-3 and G-5 applicants must appear for personal interviews for their visa at the U.S. Embassy or consular post abroad, outside the presence of the employer or any recruitment agent.¹⁸ At the interview, the applicant brings a printed confirmation of the Form DS-160, his or her passport, a diplomatic note confirming the official status of the employer, and a signed

employment contract.¹⁹ Consular officials must scan the employment contract into the electronic application record of the worker.²⁰

Unlike with most other nonimmigrant work visas, A-3 and G-5 applicants do not have to show nonimmigrant intent. Moreover, they do not need to show ties to a residence abroad.²¹ The applicants must instead show that they intend to work in the U.S. as domestic workers for their specific diplomat employers, and are not trying to come to the U.S. for another type of career.²² Additionally, visa holders may not be related to their potential diplomat employers.²³ During the application process, consular officers are directed to ask key questions, including whether the applicant is capable of performing the work required and whether the contract complies with requirements, such as providing a fair wage and free room and board.²⁴

Top 5 Sending Countries by A-3 Visas Issued 2015-2019



Source: U.S. Department of State, FY 1997-2019 NIV Detail Table, available at <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-statistics/nonimmigrant-visa-statistics.html> (June 2020).

A-3 and G-5 visa applicants are subject to the normal grounds of refusal that are applicable to nonimmigrants in general.²⁵ The adjusted refusal rate for A-3 and G-5 visa applications was 22.2% and 12.7%, respectively. The refusal rate has typically been higher for A-3 than for G-5 applications.²⁶

DIGGING DEEPER: EMPLOYER SUFFICIENT FUNDS

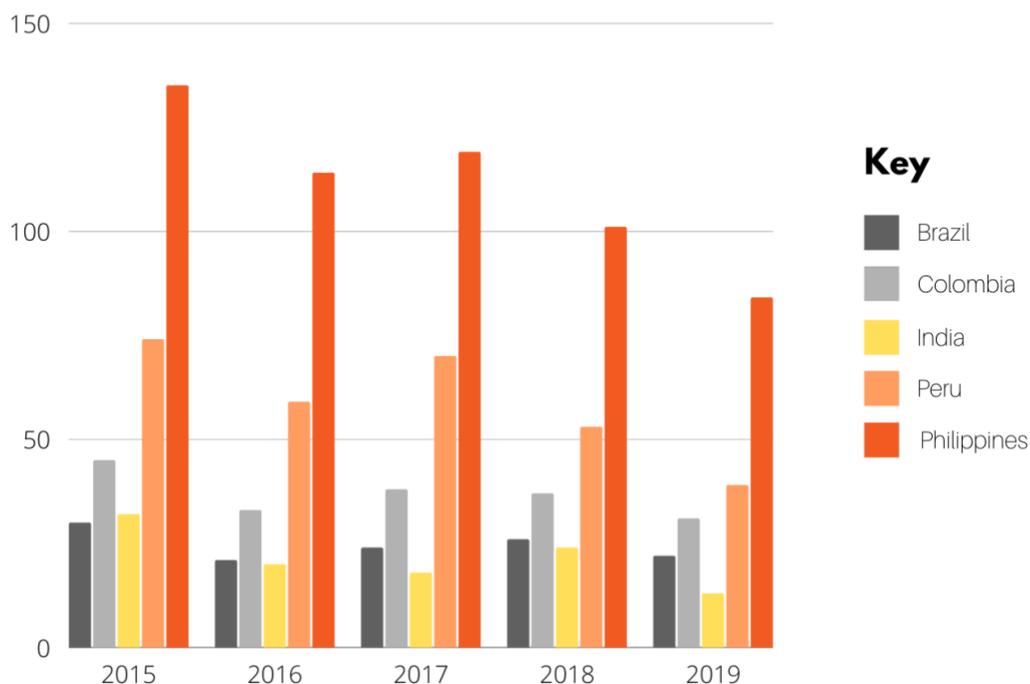
If the A-3 or G-5 employer does not carry the diplomatic rank of Minister, the equivalent, or higher, then the employer must prove possession of sufficient

funds to pay the wage promised in the employment contract.²⁷ The employer will have to provide this proof with the worker’s visa application.

1. “KNOW YOUR RIGHTS” PAMPHLET AND EDUCATION

When workers apply for their visas, the consular officers must provide them with a “Know Your Rights” pamphlet describing various worker rights and protections in the United States.²⁸ The consular officer must not only ensure that the worker receives the pamphlet, but also that they have read and understood its contents.²⁹ The information directs aggrieved workers to call 911, the National Human Trafficking Hotline (a toll-free hotline for victims of trafficking), or the U.S. Department of Justice (DOJ). DOS must train its consular officers about the labor protections described in the brochure.³⁰ The government has also created a “Know Your Rights” video that plays on a loop at consular offices.

Top 5 Sending Countries by G-5 Visas Issued 2015-2019



Source: U.S. Department of State, FY 1997-2019 NIV Detail Table, available at <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-statistics/nonimmigrant-visa-statistics.html> (June 2020).

According to the “2019 Trafficking in Persons Report: United States,” U.S. embassies and consulates worldwide continued to provide the pamphlet to applicants for A-3 and G-5 visas during the fiscal year (FY) 2018. The pamphlet generated 294 calls to the national hotline in FY 2018, marking a significant decline from the 714 calls it garnered in FY 2017. The report also stated that DOS updated the “Know Your Rights” video with input from survivors of human trafficking. Additionally, DOS launched a network of

survivor consultants and other subject matter experts to improve its anti-trafficking policies and programs.³¹

2. ADMISSION TO THE UNITED STATES

A visa does not guarantee admission to the United States. DHS's Customs and Border Protection will either permit or deny entry and determine the permitted time allowed in the U.S. DHS recommends that all nonimmigrant visa holders review admission requirements. Upon arrival, A-3 and G-5 workers will have their fingerprints taken.

DIGGING DEEPER: USCIS INVOLVED WHEN WORKERS SEEK EXTENSIONS

DHS's sub-agency, the U.S. Citizenship and Immigration Services (USCIS), is only involved with A-3 and G-5 workers when they are already present in the U.S. and need an extension. These workers must submit Form I-539³² with the fee, proof of I-94 status, and a signed statement which identifies the employer by name, visa status and official title, diplomatic or international organization affiliation, the expected end date of the appointment, and the workers' job duties.³³ The worker submits the Form through the embassy or the employer's organization. USCIS may consult with DOS about A-3 and G-5 workers' eligibility for an extension. While no interview is required for extensions when the workers are already in the United States, "the employee must provide a copy of the contract with the application for extension of stay. The contract should be reviewed for compliance and scanned into the record."³⁴

III. A-3 AND G-5 WORKERS – DATA TRANSPARENCY

The exact number of A-3 and G-5 workers that are present in the United States at any given time is unknown. DHS and DOS only maintain data about visa issuances. In 2019, there were 1,261 new A-3 and G-5 visas issued.³⁵ This number does not count the number of workers whose periods of stay may span more than one year and are thus already in the United States. The age and gender of A-3 and G-5 workers is collected but not published.

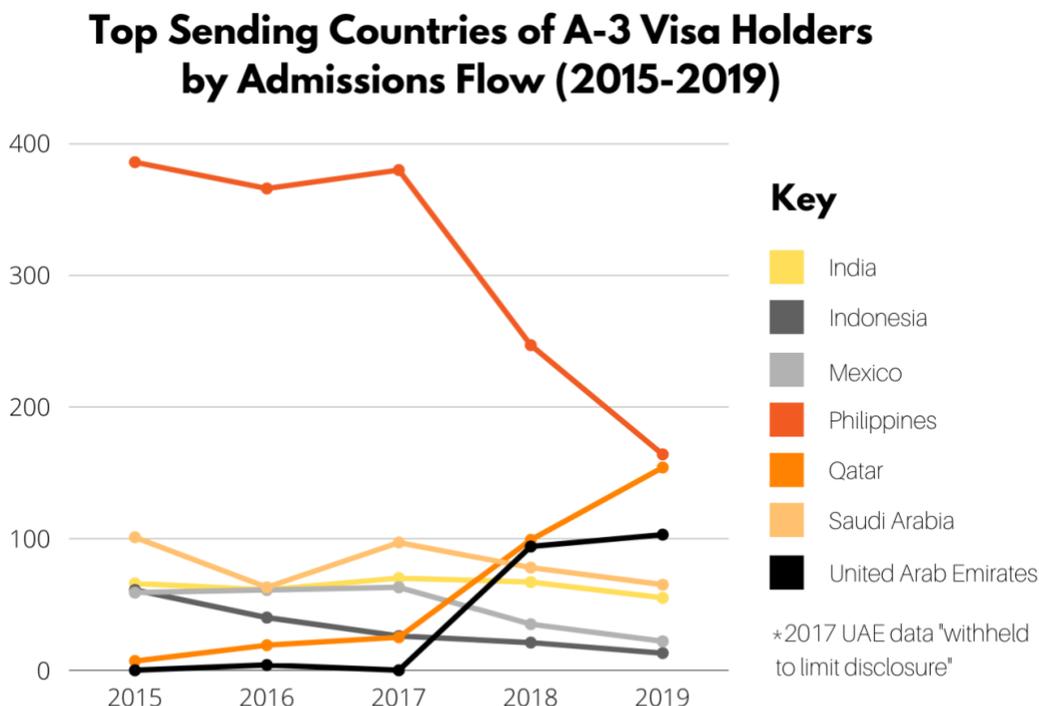
A. NUMBER OF A-3 AND G-5 WORKERS IN THE U.S.

1. U.S. DEPARTMENT OF LABOR

USDOL does not have any role in the administration of either the A-3 or the G-5 visa program. As such, USDOL neither collects nor maintains data regarding the number of these domestic workers who are present in the United States.

2. U.S. DEPARTMENT OF STATE

In 2019, DOS issued 857 new A-3 and 404 new G-5 visas.³⁶ Since 2002, the visa numbers for both of these categories have generally trended down.

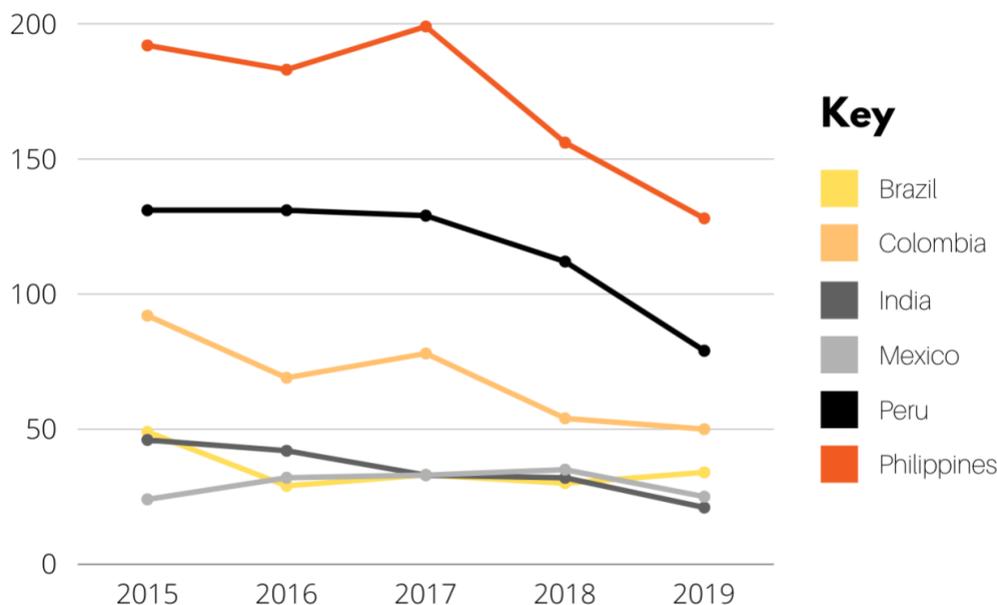


Source: U.S. Department of Homeland Security, Nonimmigrant Admissions by Class of Admission and Country of Citizenship (Supplemental Table 1), available at <https://www.dhs.gov/immigration-statistics/yearbook/2012>; <https://www.dhs.gov/immigration-statistics/yearbook/2013>; <https://www.dhs.gov/immigration-statistics/yearbook/2014>; <https://www.dhs.gov/immigration-statistics/yearbook/2015>; <https://www.dhs.gov/immigration-statistics/yearbook/2016>; <https://www.dhs.gov/immigration-statistics/yearbook/2017>; <https://www.dhs.gov/immigration-statistics/yearbook/2018>; <https://www.dhs.gov/immigration-statistics/yearbook/2019>; (June 2020).

3. U.S. DEPARTMENT OF HOMELAND SECURITY

At the border or port of entry, CBP interviews workers who have received A-3 and G-5 visas and decides whether to grant them admission. DHS annually publishes the number of admissions of nonimmigrants.³⁷ In 2019, there were 1,055 admissions of individuals with an A-3 visa and 791 admissions of individuals coming on a G-5 visa.³⁸ It is important to note that each time a nonimmigrant worker enters the United States, the entry is counted as an admission. Therefore, first and return entries are not distinguished; all are counted as separate admissions.³⁹ Departures are not always tracked.⁴⁰

Top Sending Countries of G-5 Visa Holders by Admissions Flow (2015-2019)



Source: U.S. Department of Homeland Security, Nonimmigrant Admissions by Class of Admission and Country of Citizenship (Supplemental Table 1), available at <https://www.dhs.gov/immigration-statistics/yearbook/2012>; <https://www.dhs.gov/immigration-statistics/yearbook/2013>; <https://www.dhs.gov/immigration-statistics/yearbook/2014>; <https://www.dhs.gov/immigration-statistics/yearbook/2015>; <https://www.dhs.gov/immigration-statistics/yearbook/2016>; <https://www.dhs.gov/immigration-statistics/yearbook/2017>; <https://www.dhs.gov/immigration-statistics/yearbook/2018>; <https://www.dhs.gov/immigration-statistics/yearbook/2019>; (June 2020).

B. A-3 AND G-5 WORKER DEMOGRAPHICS

1. NATIONAL ORIGIN

While most A-3 workers consistently come to the U.S. from Asia and Africa, several of the top five countries for G-5 workers are located in South America.

The top five sending countries for the G-5 visa have been consistent over the past four years: Philippines, Peru, Colombia, Brazil, and India. For new A-3 domestic workers, the top five sending countries have fluctuated a bit, but the Philippines and India are consistently in the top two.⁴¹

Based on admissions flow, the leading countries of origin are the same for the most part.⁴² However, A-3 workers from Mexico regularly registered more admissions than workers from countries with more A-3/G-5 visa holders. This is probably because A-3 workers from neighboring Mexico are more likely to return home during the year than workers from another continent.

DIGGING DEEPER: AGE AND GENDER DATA NOT AVAILABLE

Information about the age and gender of A-3 and G-5 workers is not published. DOS gathers and records gender and age as part of the visa application process at the U.S. consular posts abroad. However, there is no data collection or reporting requirement with respect to the A-3 and G-5 visas, and DOS does not otherwise publish this information.

2. JOB LOCATION

DHS publishes information about the destination states of nonimmigrants based on information gathered when A-3 and G-5 workers are admitted into the country.⁴³ Most domestic workers are bound for the Washington, D.C. and New York City metro areas, where most diplomatic missions and international organizations are based. The states receiving the largest flow of A-3 workers are California, New York, the District of Columbia, Virginia, Maryland, and Florida. For G-5 workers, the most common destinations are D.C., Maryland, New York, Virginia, New Jersey, and Washington.⁴⁴

C. EMPLOYER DEMOGRAPHICS

Only 1 to 2% of diplomats employ A-3 or G-5 domestic workers.⁴⁵

There is no published demographic information about the nationality of the employers of A-3 and G-5 domestic workers. Workers may or may not be from the same country as their employers. There is no requirement that the nationality of an A-3 or G-5 domestic worker must match the nationality of the diplomat who hires them. In other words, though the largest sending country for domestic workers is the Philippines, this does not mean that most employers are from there as well.

IV. A-3 AND G-5 WORKER RIGHTS IN THE U.S.

Federal law and DOS guidelines mandate that visa applications for A-3 and G-5 visas include an employment contract signed by the employer and the employee that contains important worker protections regarding wages, working conditions, and freedom of movement. While in the United States, A-3 and G-5 workers are protected by various federal and state wage and hour and discrimination laws. Whether specific statutes or common law rights apply to any given worker depends on the facts of each particular situation. Furthermore, A-3 and G-5 workers face unique challenges in enforcing their rights due to diplomatic immunity, which shields certain high-ranking diplomatic employers, during their posting, from criminal prosecution and civil lawsuits in U.S. courts. Diplomatic immunity does not bar civil and criminal cases against consular

Ratio of A-3 Visas to Principle Visas (A-1 and A-2)

	A-3 Visas	A-1 + A-2 Visas	Difference
2012	1,141	10,857 + 99,573 = 110,430	1,141/110,430 = 1%
2013	1,135	10,574 + 95,994 = 106,568	1,135/106,568 = 1%
2014	1,203	10,612 + 101,436 = 112,048	1,203/112,048 = 1%
2015	1,113	10,909 + 100,563 = 111,472	1,113/111,472 = 1%
2016	1,049	10,754 + 101,778 = 112,532	1,049/112,532 = 1%
2017	1,031	10,033 + 98,849 = 108,882	1,031/108,882 = 1%
2018	830	9,856 + 103,134 = 112,990	830/112,990 = 1%
2019	857	10,040 + 99,131 = 109,171	857/109,171 = 1%

Source: U.S. Department of State, FY 1997-2019 NIV Detail Table, available at <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-statistics/nonimmigrant-visa-statistics.html> (June 2020). Percentages have been rounded up to the nearest whole number.

employees or international organization staff. As a general matter, these individuals enjoy only immunity for acts that could be deemed official or undertaken during their duties representing their state or organization as the employer. For diplomats with full immunity, that immunity ceases at the conclusion of their missions.

A. EMPLOYMENT CONTRACT REQUIRED

A prospective A-3 and G-5 worker must have an employment contract with his or her employer before a visa will be granted.⁴⁶ The contract must be written in English — if the worker does not understand English, then the contract must be written in a language understood by the worker.⁴⁷ The mandatory contract must be signed by both parties and contain various terms regarding payment, work duties, weekly work hours, holidays, sick days, and vacation days.⁴⁸ The employer must agree to abide by all federal, state, and local laws and must explicitly state that he or she will not withhold the worker's passport, employment contract, or other personal property.⁴⁹ Because of diplomatic immunity issues, whether and when an employment contract is enforceable depends on the type of immunity held by the employer and, in the case of full immunity, whether the diplomat is currently in their diplomatic post.

Ratio of G-5 Visas to Principle Visas (G-1 to G-4)

	G-5 Visas	G-1 + G-2 + G-3 + G-4 Visas	Difference
2012	730	5,355 + 12,622 + 286 + 26,520 = 44,783	730/44,783 = 2%
2013	736	5,081 + 12,954 + 251 + 25,230 = 43,516	736/43,516 = 2%
2014	643	5,369 + 14,491 + 247 + 22,158 = 42,018	643/42,018 = 2%
2015	711	5,407 + 16,313 + 393 + 21,792 = 43,905	711/43,905 = 2%
2016	598	5,168 + 15,906 + 386 + 22,756 = 44,216	598/44,216 = 1%
2017	583	5,131 + 15,380 + 292 + 23,930 = 44,733	583/44,733 = 1%
2018	541	5,328 + 16,340 + 343 + 23,617 = 45,628	541/45,628 = 1%
2019	404	5,327 + 16,718 + 425 + 24,615 = 47,085	404/47,085 = 1%

Source: U.S. Department of State, FY 1997-2019 NIV Detail Table, available at <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-statistics/nonimmigrant-visa-statistics.html> (June 2020). Percentages have been rounded up to the nearest whole number.

1. TRAVEL EXPENSES PAID BY EMPLOYER

The employer must pay the A-3 or G-5 worker's travel expenses at the beginning of employment, as well as outbound travel back to the worker's country of normal residence at the end of employment—no matter the reason the employment ended. The employer commits that they will not deduct travel costs from the worker's salary or recoup travel costs through any other means.⁵⁰

2. HIGHER OF MINIMUM OR PREVAILING WAGE MUST BE PAID

The employment contract must show that A-3 and G-5 workers will be compensated at the greater of the minimum or prevailing wage.⁵¹ Even though employers are not required to seek a prevailing wage determination from the USDOL, they do have to check the USDOL database,⁵² which breaks down prevailing wage statistics by occupation and metropolitan area.⁵³

A) DEDUCTIONS PROHIBITED

Housing provided to A-3 and G-5 workers must be free of charge and as such it is not permissible to withhold from wages any amount for lodging.⁵⁴ Neither may employers withhold wages for meals.⁵⁵ Deductions from wages for any other expenses – such as the provision of medical care, medical insurance, or travel – are also prohibited.⁵⁶

B) WAGES PAID DIRECTLY TO WORKERS

DOS guidelines do not require that the contract specify the frequency of payment. However, “the contract must state that after the first 30 days of employment, the employer will pay all wages by check or by electronic transfer to the [domestic worker’s] bank account.”⁵⁷ This bank account must be opened in the employee’s name only, in the United States, and within the first 30 days of arrival. The employer must agree to assist with setting up this account and proof of such bank account must be provided to DOS.⁵⁸

3. RECORDKEEPING REQUIRED FOR THREE YEARS

While the employment contract terms do not include providing wage statements to A-3 and G-5 workers, payment records must be retained “for three years after the termination of the employment in order to address any complaints that may subsequently arise.”⁵⁹

B. THE RIGHTS OF A-3 AND G-5 WORKERS

All domestic workers are entitled to an hourly minimum wage and protection from retaliation under the Fair Labor Standards Act (FLSA).⁶⁰ Many private household employers are exempt from FLSA’s overtime requirements when domestic workers live in their employer’s home.⁶¹ Beginning in January 2015, however, when third-parties (such as staffing agencies) are involved, live-in domestic workers will usually be entitled to overtime pay.⁶²

1. COUNTING THE HOURS WORKED

As of January 2015, new USDOL rules require that employers keep track of the number of actual hours worked by live-in domestic workers.⁶³ The amount of sleeping time, mealtime, and other periods of complete freedom from all work tasks is generally not included as time worked.⁶⁴ Employers do not have to pay for the domestic worker’s free time when it is sufficiently long enough for the worker to make effective personal use of the time. However, if such time is spent on-call and subject to interruptions for work, employers must pay for the entire time.

DIGGING DEEPER: PROTECTIONS FOR G-5 WORKERS MANDATED BY SOME INTERNATIONAL ORGANIZATIONS

Several international organizations such as the United Nations, World Bank, and International Monetary Fund (IMF) impose requirements on their employees who employ G-5 workers that are similar to and surpass the federal requirements. For example, the World Bank and IMF prohibit deductions for room and board, require that dismissal be for just cause only, or at least on one month’s notice, require employers to keep wage records for three years, and establish internal complaint procedures.⁶⁵ The World Bank further requires that employers provide medical insurance to G-5 workers.⁶⁶ However, enforcing these extra rights may be problematic. If the extra protections are added as terms in the employment contracts, then they may be enforceable. However, that is not always the case.

Furthermore, diplomatic immunity may be available to some employers defending breach of employment contract lawsuits (although this is not the case, as a rule, for international organization employees). Domestic workers have brought successful lawsuits against World Bank and IMF employers under the TVPRA and FLSA, as well as under contract law.

V. ENFORCEMENT

Even though DOS outlines various protections for A-3 and G-5 workers, there is no specific administrative enforcement scheme. There is no formal complaint procedure, no administrative tribunal, and no anti-retaliation protection. There is no regulatory mechanism to hold A-3 and G-5 employers liable for lost wages and benefits. Because there is no specific role for USDOL in the application process, its involvement in labor law enforcement with regard to violations involving A-3 and G-5 workers is limited to enforcing the labor laws that cover domestic workers more broadly. State agencies customarily will have the authority to enforce any state laws that apply. To the extent that there is an employment contract or applicable federal or state statute allowing a private lawsuit, A-3 and G-5 workers may attempt to enforce their rights in court. For those workers employed by international organization employees (such as the World Bank or IMF), there is no immunity claim that would prevent recovery. However, for employers who enjoy full diplomatic immunity, it may be difficult to sue or prosecute in U.S. courts while the diplomat remains in their post. In general, though, once the employers are no longer occupying their diplomatic posts, they are only afforded “residual immunity” and are no longer immune from lawsuits brought by former A-3 and G-5 workers.⁶⁷

DIGGING DEEPER: LIMITED COVERAGE FOR DOMESTIC WORKERS UNDER CERTAIN FEDERAL LAWS

Like most domestic workers, A-3 and G-5 nonimmigrants often fall outside the scope of critical federal labor, health and safety, and anti-discrimination provisions, including the National Labor Relations Act (NLRA), which protects workers’ right to organize, and the Occupational Safety and Health Act (OSHA), which protects health and safety on the job. The NLRA does not cover domestic workers.⁶⁸ Neither does OSHA.⁶⁹ Due to minimum employee requirements in several federal civil rights laws, domestic workers who work in isolation may not be covered by certain anti-discrimination laws,⁷⁰ the Americans with Disabilities Act,⁷¹ or the Family Medical Leave Act.⁷² State discrimination laws, however, may provide protection for domestic workers in many instances.

Comparison of Domestic Worker Visa Regulations

Contract terms required to obtain the visa	A-3	B-1[1]	G-5	NATO-7
Signed employer-employee contract	Yes	Yes	Yes	Yes
Wages: "employee will be compensated at the state or federal minimum or prevailing wage, whichever is greater" (amount and frequency)	Yes	Yes. Also see DOS pamphlet	Yes	Yes
Prevailing wage Department of Labor test	Yes	Yes [2]	Yes	Yes
Proof of recruitment of US workers	No	No	No	No
Overtime: "employee cannot be required to remain on the premises after working hours without compensation"	Yes	Not in FAM	Yes	Yes
Other jobs: Employee cannot accept any other employment while working for employer	Yes	Yes	Yes	Yes
Passport: Employer shall not withhold the employee's passport or personal property	Yes	Not in FAM, but in a pamphlet	Yes	Yes
Language: Contract must be in English and in a language understood by the employee[3]	Yes	Not in FAM	Yes	Yes
Employer payment of wages by check or electronic transfer	Yes	Not in FAM	Yes	Yes
Employer payment of round trip transport costs	Yes	Yes	Yes	Yes
Comply with US federal, state and local law	Yes	Not in FAM, but in a pamphlet	Yes	Yes
DOS written notice to employee of legal rights (pamphlet)	Yes	Yes[4]	Yes	Yes[5]
Employee allowed to deduct room and board costs for live in domestic workers according to FAM	Yes	No[6]	Yes	Yes

[1] The table only applies to FAM requirements for foreign national employers of B-1 visa holders. US citizens who employ domestic workers have fewer requirements to satisfy.

[2] U.S. Department of State, Determining Prevailing Wage Requirements for Visas of Domestic Employees, May 2005, available at http://travel.state.gov/visa/laws/telegrams/telegrams_2773.html.

[3] U.S. Department of State, available at http://travel.state.gov/visa/temp/types/types_2637.html (A-3) and http://travel.state.gov/visa/temp/types/types_2638.html (G-5 and NATO-7).

[4] 9 FAM 41.31 NOTES.

[5] 9 FAM 41.25 NOTES.

[6] 9 FAM 41.31 N9.3-2 and N9.3-3 (stating that employers must provide free room and board).

Source: <https://travel.state.gov/content/travel/en/us-visas/other-visa-categories/visa-employees-nato.html> , https://fam.state.gov/FAM/09FAM/09FAM040203.html#M402_3_7_N

A. DIPLOMATIC, CONSULAR, AND RESIDUAL IMMUNITY

According to the Vienna Conventions on Diplomatic and Consular Relations and U.S. law, diplomatic and consular immunity⁷³ protects certain foreign nationals from being taken to court in the United States.⁷⁴ U.S. law directs that:

[a]ny action or proceeding brought against an individual who is entitled to immunity with respect to such action or proceeding under the Vienna Convention on Diplomatic Relations, under section 3(b) or 4 of this Act [22 USCS §§ 254b or 254c], or under any other laws extending diplomatic privileges and immunities, shall be dismissed. Such immunity may be established upon motion or suggestion by

or on behalf of the individual, or as otherwise permitted by law or applicable rules of procedure.⁷⁵

This immunity exists “not to benefit individuals but to ensure the efficient performance of the functions of diplomatic missions as representing States.”⁷⁶ High-ranking diplomats and diplomatic-level staff of missions to international organizations have virtually complete civil and criminal immunity.⁷⁷ DOS’s Office of Protocol regularly publishes a list of the diplomatic staff and their family members.⁷⁸ Consular employees, however, have a more limited consular immunity. They are only immune from jurisdiction for “acts performed in the exercise of consular functions,” sometimes called official acts.⁷⁹

When the U.S. government wants to prosecute a criminal case against a diplomat, DOS can request that the foreign government waive immunity.⁸⁰ In civil cases brought by individual workers, however, DOS will not usually get involved. Individuals who enjoy immunity often may not even answer a complaint filed against them. If a diplomat fails to answer a civil complaint, and also fails to raise a defense of immunity, the court may enter a default judgment against the diplomat. Default judgments are enforceable, although some diplomats have sought to file Rule 60 motions to overturn such judgments. These efforts rarely succeed.

Diplomatic Immunity From Civil And Criminal Jurisdiction for Selected High Ranking Diplomats

Visa Category	Immunity from Civil Jurisdiction	Immunity from Criminal Prosecution
A, Diplomats	Yes	Yes
A, Administrative & Technical Employees	Immunity only extends to acts performed in the exercise of official duties	Yes
G, Diplomats & Senior Officers	Yes	Yes
G, International Organization Employees	Immunity only extends to acts performed in the exercise of official duties	Immunity only protects official acts
Career consular officers & staff	Immunity only extends to acts performed in the exercise of consular functions	Immunity only protects official acts

Source: 2 FAM 230, Immunities and Liabilities of Foreign Representatives and Officials of International Organizations in the United States, July 6, 2018, available at <https://fam.state.gov/FAM/02FAM/02FAM0230.html> (defining different levels of immunity for different foreign nationals working in the U.S. and possible exceptions to immunity, for instance, in emergency situations)

1. COMMERCIAL ACTIVITIES EXCEPTION TO DIPLOMATIC IMMUNITY DOES NOT APPLY TO EMPLOYMENT OF DOMESTIC WORKERS

The Vienna Convention on Diplomatic Relations allows an exception to immunity for civil claims “relating to any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions.”⁸¹ In other words, the exception allows cases against diplomats for commercial disputes. However, courts have held that disputes involving the employment of a domestic worker are not commercial in nature.⁸² Instead, “[d]ay-to-day living services.... are incidental to daily life.”⁸³ Therefore, aggrieved A-3 and G-5 workers will not be able to get around their employer’s claim of diplomatic immunity with this exception.⁸⁴

2. CONSULAR IMMUNITY LIMITED TO OFFICIAL DUTIES

Employers who work for certain international organizations or consulates have more limited immunity than diplomats. Thus, it is easier for a domestic worker’s case to proceed against them. These employers are only able to assert the defense of consular immunity where the challenged conduct is related to their official duties.⁸⁵ A consul’s employment of a housekeeper, for example, is not an official act. An A-3 worker successfully sued her employer – who was a deputy consul general from Korea – for violating various federal and state laws related to not receiving proper payment for work.⁸⁶ The employer raised an immunity defense but lost.

[T]he supervision and management of a domestic servant who was required to cook, clean, care for the children, and otherwise tend to the diplomat’s personal affairs, but also required to assist in entertaining official guests at the diplomat’s home were not “consular functions” within the meaning of the Vienna Convention.⁸⁷

3. RESIDUAL DIPLOMATIC IMMUNITY LIMITED TO OFFICIAL ACTS

Unlike consular immunity, diplomatic immunity is generally not limited to official acts and will shield a diplomat from a lawsuit by an employee. However, after a diplomat leaves his or her post, the diplomat can claim only residual diplomatic immunity.⁸⁸ Residual immunity is limited to acts committed in the course of being “a member of the mission.”⁸⁹ In other words, diplomats are protected from all civil and criminal cases while an acting member of a diplomatic mission, but once that mission ends, they are only immune for official acts. Employing a domestic worker for personal in-home services is not sufficiently linked to the exercise of official functions as a diplomat.⁹⁰

One particular case illustrates the limitations of residual diplomatic immunity. A G-5 domestic worker from India was allowed to sue her former employer who had been part of the Kuwaiti diplomatic mission to the United Nations.⁹¹ After suffering years of violent abuse and wage violations, the worker left the diplomat’s home and abandoned the job. The worker sued the employer and the court decided that the case was barred by diplomatic immunity and dismissed the case without prejudice, recognizing that it was conceivable for the worker to sue the diplomat when his mission was complete.⁹² After the diplomat’s family relocated to France, the worker sued him again. The court found that the diplomat was not shielded by residual diplomatic immunity because the alleged

facts clearly showed that the domestic worker met the family's private needs and was not there to assist with “mission-related functions.”⁹³ For example:

Swarna worked an average of seventeen hours a day, seven days a week, cooking, cleaning, caring for Al-Awadi's children, and tending to the family's personal needs. Al-Awadi also allegedly raped Swarna. If Swarna's work for the family may not be considered part of any mission-related functions, surely enduring rape would not be part of those functions either. Although Swarna also cooked and served guests at official functions from time to time and taught other servants how to cook Kuwaiti dishes, these duties were incidental to her regular employment as Al-Awadi's personal servant.⁹⁴

To be sure, after a diplomat's mission is complete, there is no remaining immunity for unofficial acts. Therefore, they may be subject to lawsuits by domestic workers.⁹⁵

4. THE KHOBRAGADE CASE

The issue of diplomatic immunity and abuse of domestic employees made headlines with the case of Indian Deputy Consul General Devyani Khobragade. Khobragade was arrested in December 2013 on charges of visa fraud and making false statements in regards to the employment of a live-in domestic employee.⁹⁶ Ms. Khobragade allegedly reported to the U.S. government that she was paying the domestic worker \$9.75 an hour as a housekeeper, but had in fact paid her less than \$3 an hour and forced her to work up to 100 hours a week cleaning, cooking, and taking care of Khobragade's children.

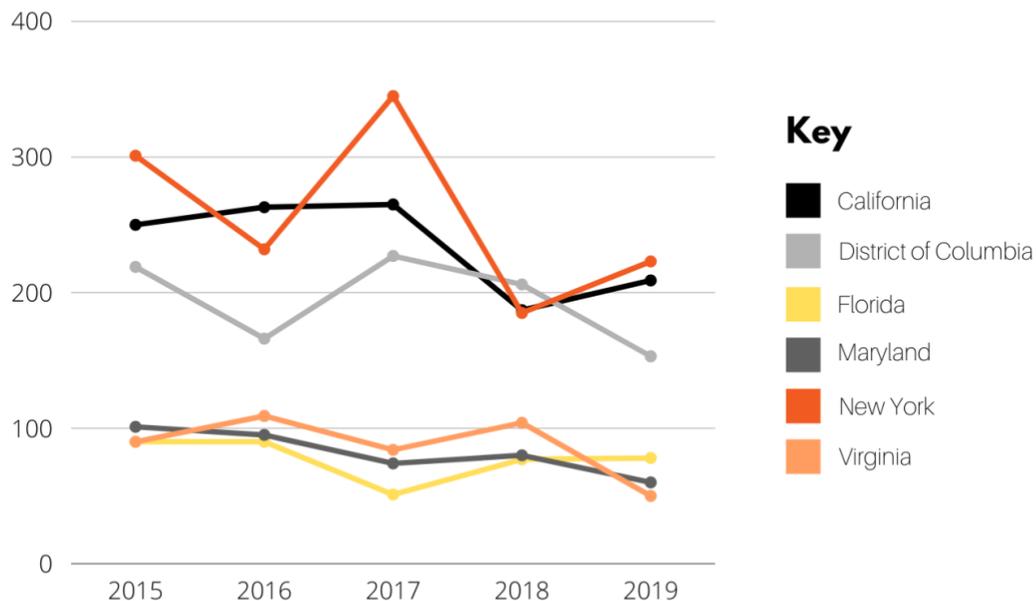
After being charged by the U.S. Attorney for the Southern District of New York for falsifying documents on her housekeeper's visa application and “evad[ing] U.S. laws designed to protect from exploitation the domestic employees of diplomats and consular officials,” Khobragade became the center of a diplomatic row between the U.S. and India.⁹⁷ At the time of her arrest, Khobragade enjoyed only consular immunity. The government of India reassigned her to the Indian Mission to the United Nations, a transfer which was approved by DOS.⁹⁸ After being granted diplomatic immunity, Khobragade departed the United States. But before she departed, and while her immunity was still in place, an indictment against Khobragade was issued. A federal judge dismissed the charges against her, citing diplomatic immunity. In March 2014, after her departure, Khobragade was re-indicted by a New York grand jury. It appears unlikely that she will ever be extradited to face the charges.⁹⁹ As of October 2020, Khobragade was appointed as India's next ambassador to Cambodia.¹⁰⁰

The issue of diplomatic immunity can certainly make it more difficult for domestic employees of diplomats to the U.S. to defend their basic employment rights. But diplomatic immunity is not an insurmountable hurdle.

DIGGING DEEPER: FAMILY MEMBERS HAVE IMMUNITY BUT NO RESIDUAL IMMUNITY

Spouses and family members of diplomats are also entitled to diplomatic immunity while they are in the United States on their diplomatic mission.¹⁰¹ However, residual immunity only applies to a person who was “a member of the mission.”¹⁰² Moreover, if the family member was not a member of the mission, there is no way he or she could have conducted acts ‘as a member of the mission.’¹⁰³ In short, even though family members have the same scope of immunity as the diplomat while a member of the mission, once the tenure as diplomat has expired, such derivative immunity “normally cease[s] at the moment when [s]he leaves [the United States], or on expiry of a reasonable period in which to do so.”¹⁰⁴

Top Destination States for A-3 Visa Holders (2015-2019)



Source: U.S. Department of Homeland Security, Nonimmigrant Admissions by Class of Admission and State or Territory of Destination (Supplemental Table 3), available at <https://www.dhs.gov/immigration-statistics/yearbook/2012>; <https://www.dhs.gov/immigration-statistics/yearbook/2013>; <https://www.dhs.gov/immigration-statistics/yearbook/2014>; <https://www.dhs.gov/immigration-statistics/yearbook/2015>; <https://www.dhs.gov/immigration-statistics/yearbook/2016>; <https://www.dhs.gov/immigration-statistics/yearbook/2017>; <https://www.dhs.gov/immigration-statistics/yearbook/2018>; <https://www.dhs.gov/immigration-statistics/yearbook/2019> (June 2020).

B. U.S. DEPARTMENT OF STATE

DOS has recently made several changes to its protocol around A-3/G-5 visas in order to prevent the abuse and exploitation of visa holders.

1. SUSPENSION AUTHORITY

The Trafficking Victims Protection Reauthorization Act (TVPRA) requires DOS to suspend the issuance of A-3 or G-5 visas for any country if “there is an unpaid default or final civil judgment directly or indirectly related to human trafficking against the employer

or a family member assigned to the embassy.”¹⁰⁵ The duration of the suspension shall be for “a period of at least one year.”¹⁰⁶ If the agency determines that “a mechanism is in place to ensure that such abuse or exploitation does not reoccur” the suspension may be lifted.¹⁰⁷ However, even though there have been documented cases of abuse involving diplomats from many countries, through 2018, DOS had failed to issue a suspension order.¹⁰⁸ That changed in 2019 when Malawi was suspended from soliciting A-3 visas for two years.¹⁰⁹

2. FIVE RELEVANT ACTIONS TAKEN AND POLICIES ENACTED

In recent years, the U.S. government has argued it has aimed to address domestic worker abuse in five main ways.

A) NEW CONTRACT PROVISIONS

First, beginning in 2009, DOS added requirements to the mandatory employment contracts for A-3 and G-5 workers and for the eligibility requirements for diplomats to be able to employ domestic workers. With respect to the former, the U.S. now requires mandatory employment contracts be written in English and, if the domestic worker does not understand English, also in a language the domestic worker understands. Wage payments must be made by either check or electronic fund transfer to a bank account in the domestic worker’s name only and accessible only by the worker. Additionally, no deductions may be taken from wages for lodging, meals, travel, medical insurance, or medical care. As of 2015, cash payments are impermissible after 30 days of employment. Contracts must describe the work to be performed, the hours of work, and the wage rate, which must be at least the greater of the minimum wage under U.S. federal, state, or local law for all working hours. Contracts must also state that any hours worked in excess of the normal number of hours are compensable time and that hours in which the employee is on call also count as work hours. Contracts need to state that the domestic worker’s presence in the employer’s residence will not be mandated except during working hours, and they must require that the domestic worker retain possession of their passport. Moreover, DOS stated in its 2015 Circular Note that “withholding a person’s passport may be evidence of the crime of trafficking in persons or constitute a separate crime of unlawful conduct with respect to immigration documents.”¹¹⁰ Mission members employing workers must now also provide them with records of employment, including a copy of their signed contract, pay slips, a record of daily and weekly hours worked, including any overtime, a record of any deductions made from pay relating to Social Security, Medicare, or other tax requirements, where applicable. Mission members must maintain these records for the duration of actual employment plus three years, and DOS must keep copies of contracts on file.

In regard to eligibility requirements for diplomats to employ domestic workers, DOS requires that such personnel must have either the diplomatic rank of Minister or above or be able to demonstrate their ability to pay the employee’s salary reflected in the contract. In its 2009 Circular Note, DOS explicitly stated it would look to Chiefs of Missions to ensure that the treatment accorded domestic workers by their employees meets contractual and other legal requirements.¹¹¹

B) PRE-NOTIFICATION SYSTEM

Second, DOS now requires diplomatic missions and international organizations to submit a “Pre-Notification” form for all anticipated A-3 and G-5 domestic workers. Consular officers must verify that DOS has received a pre-notification submission before they will issue an A-3 or G-5 visa. As a result, DOS has the power to hold processing of a request for two main reasons: the first is the belief that an employer may have a history of noncompliance with established domestic worker employment requirements, and the second is the existence of credible allegations of noncompliance brought to its attention.¹¹² Furthermore, the U.S. government views this system as a way to safeguard domestic workers from potentially abusive employers.

C) PAMPHLET ON RIGHTS

Third, in collaboration with USDOL and various NGOs, DOS has produced a “Know Your Rights” pamphlet informing domestic workers of their rights. The pamphlet also includes a hotline number to call and information about the illegality of slavery, human trafficking, and worker exploitation in the U.S. Below are some direct statements from the pamphlet:

1. The most important thing is for you to seek safety if you are being abused. You do not have to stay in your job if your employer is abusing you.¹¹³
2. Though your visa status will no longer be valid if you leave your employer, you may be able to change your visa status or employer. You may need to leave the United States to do so. Even if your visa status is not valid, help is available once you leave your abusive employer.¹¹⁴
3. You may make a formal complaint or file a lawsuit against your employer while you are working or after you leave your employer. If your employer takes action (or retaliates) against you for doing so, they are violating the law.¹¹⁵

DOS began distributing the pamphlet in June 2009 at all visa-issuing posts to applicants for A-3 and G-5 visas, and it has been translated into several languages understood by the majority of foreign domestic workers. Consular officers must confirm that the pamphlet has been received, read, and understood by the applicant at the time of their visa interview. The pamphlet was most recently updated and reissued in April 2016 and includes input from survivors and civil society.¹¹⁶

D) IN-PERSON REGISTRATION PROGRAM

Fourth, in October 2015, DOS started an annual in-person registration program for A-3 visa holders employed by bilateral diplomatic missions in the Washington, D.C. area. The program requires that workers are presented with registration cards during their in-person registration. During these meetings, visa holders are questioned on the terms of their contract and their employment conditions. Workers are also reminded of their rights in the U.S. and follow-up call is conducted several months later. These cards must be renewed annually. DOS later stated that the program would be expanded at a “later date” to include A-3 visa holders employed throughout the U.S. and G-5 visa holders.¹¹⁷ According to the “2019 Trafficking in Persons Report: United States,” DOS announced expansion of the program to operate in several new cities, including the New York metropolitan area (the five boroughs of New York City, and some areas of

New Jersey and Connecticut),¹¹⁸ Houston, and later, San Francisco, and Los Angeles.¹¹⁹

E) IMPROVING IMPLEMENTATION

The U.S. government has also taken steps to ensure compliance with visa adjudication procedures and practices: “The United States actively investigates allegations of diplomatic abuse to the extent its international law obligations permit. The Department of Justice regularly investigates diplomats accused of abusing their domestic workers, and the Department of State works cooperatively with the Department of Justice to facilitate these investigations.”¹²⁰

Specifically, DOS has created an internal working group to track and respond to all allegations of domestic worker abuse, as well as an Anti-Trafficking Unit that investigates allegations of domestic worker abuse by diplomats. DOS has also established a Trafficking in Persons Unit within the Bureau of Diplomatic Security’s Criminal Investigations Division, which works closely with DOJ’s Human Trafficking Prosecutions Unit and other federal law enforcement agencies involved in human trafficking investigations. In the event that diplomatic immunity may present a barrier to domestic workers seeking redress for their abuse, the U.S. government has stated that “[w]here a prosecutor informs the Department of State that, absent immunity, she or he would prosecute, the Department of State will request a waiver of immunity to enable the prosecution. In the case of a serious offense, if the waiver is not granted, the Department of State will require the departure from the United States of the foreign mission member.”¹²¹ It also stated that “a sending state that does not intend to grant a request for waiver of diplomatic immunity will typically withdraw its diplomat at the same time as communicating this refusal.”¹²²

U.S. consular officers abroad are required to interview domestic workers applying for visas and are trained to look for indicators of human trafficking. In an effort to detect abuses, A-3 and G-5 visa holders are also required to undergo a visa interview when renewing their visas. The Foreign Affairs Manual (FAM) now also includes guidance on terms and conditions of employment that are required for foreign diplomats’ domestic workers, and it is renewed regularly to keep all sections up to date.¹²³

In the 2008 reauthorization of the TVPA, Congress codified key features of the FAM, including mandatory contract and personal interview requirements, training of consular officers on fair labor standards, and distribution of the “Know Your Rights” pamphlet. Notably, Congress included a provision in the Act requiring that the Secretary of State suspend issuance of A-3 and G-5 visas for the entire relevant mission or international organization for such period as they deem necessary if there is credible evidence that a diplomat or international organization abused a domestic worker, and that the Mission or international organization tolerated the abuse. According to DOS, “the possibility of A-3 or G-5 visa suspension has served as useful leverage to address allegations of abuse or exploitation, including by prompting offers of compensation.”¹²⁴ According to the “2019 Trafficking in Persons Report: United States,” the government amended the reauthorized TVPA in 2019 to require DOS to suspend the A-3 or G-5 visa privileges of “any foreign mission or international organization in certain circumstances, including in

cases where there is an unpaid default or final civil judgment related to human trafficking against the employer assigned to the embassy.”¹²⁵

The U.S. government also noted that it has interpreted its international legal obligations to permit courts to exercise jurisdiction over suits once workers’ former employers are former diplomats. Section 203(c)(1) of the reauthorized TVPA allows A-3 or G-5 visa holders to remain in the country “for time sufficient to fully and effectively participate in all legal proceedings related to such action” if they have filed a civil action against their former employer alleging abuse.¹²⁶ Additionally, as of 2000, Congress amended U.S. immigration laws to provide a special nonimmigrant status for trafficking victims, known as the T visa. This visa allows victims to remain in the U.S. and work while assisting law enforcement in the investigation and prosecution of trafficking acts. After three years, victims can apply for permanent residence.¹²⁷

DIGGING DEEPER: A-3/G-5 SPECIFIC PROVISIONS ADDED TO TVPRA

On January 8, 2019, the Frederick Douglass Trafficking Victims Prevention and Protection Reauthorization Act became law after a 368-7 House floor vote. With overwhelming bipartisan support, the Act establishes programs to combat human trafficking and forced labor. In addition to requiring DOS to suspend issuing visas for domestic workers hired by foreign diplomats or individuals affiliated with an international organization if there is an unpaid judgment related to human trafficking against a person affiliated with that mission, the Act gives the President authority to investigate or impose sanctions on foreign government officials who participate in or condone human trafficking for financial gain. Under the Act, government agencies such as DOS and DOL must report information annually to the General Services Administration regarding efforts to ensure compliance with various laws and regulations relating to human trafficking.

Specifically, Section 123 of the Act —“Preventing Human Trafficking in Foreign Missions and Diplomatic Households”— amends Section 203(a)(2) and 203(a)(3) of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008:

(2) SUSPENSION REQUIREMENT

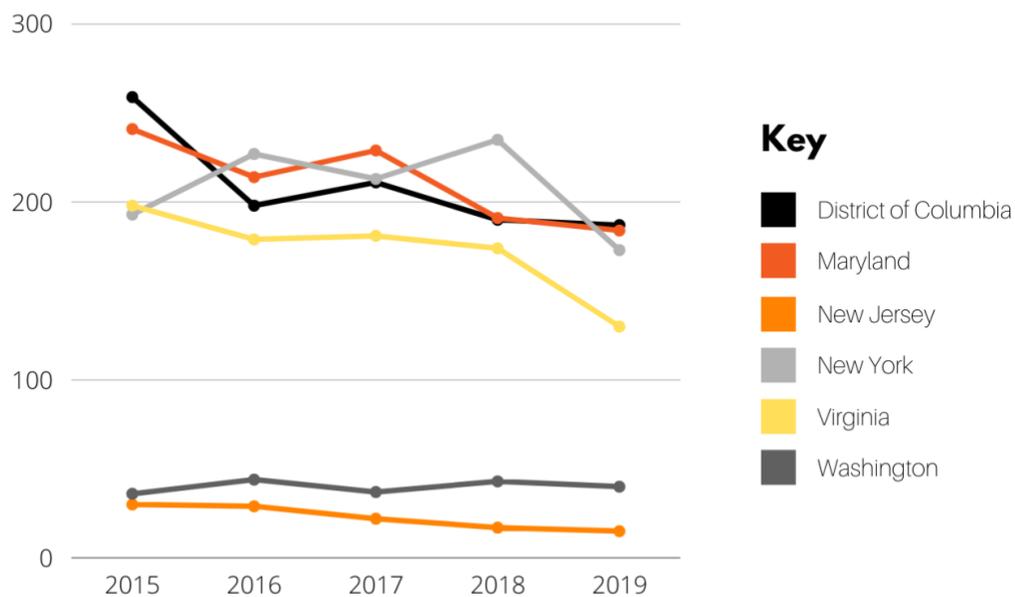
Notwithstanding any other provision of law, the Secretary shall suspend, for a period of at least 1 year, except if the Secretary determines and reports to the appropriate congressional committees, in advance, the reasons a shorter period is in the national interest, the issuance of A–3 visas or G–5 visas to applicants seeking to work for officials of a diplomatic mission or an international organization, if there is an unpaid default or final civil judgement directly or indirectly related to human trafficking against the employer or a family member assigned to the embassy, or the diplomatic mission or international organization hosting the employer or family member has not responded affirmatively to a request to waive immunity within 6 weeks of the request in a case brought by the United States Government and the

country that accredited the employer or family member or, in the case of international organizations, the country of citizenship, has not initiated prosecution against the employer or family member.

(3) ACTION BY DIPLOMATIC MISSIONS OR INTERNATIONAL ORGANIZATIONS

The Secretary may suspend the application of the limitation under paragraph (2) if the Secretary determines and reports to the appropriate congressional committees that, as applicable, the unpaid default judgment or final civil judgement has been resolved, the diplomatic mission or international organization hosting the employer or family member has waived immunity for the employer or family member or the country that accredited the employer or family member or the country of citizenship of the employer or family member completed the prosecution of the employer or family member, and the diplomatic mission or international organization hosting the employer or family member has a mechanism in place to ensure that such abuse or exploitation does not reoccur with respect to any alien employed by an employee of such mission or institution.¹²⁸

Top Destination States for G-5 Visa Holders (2015-2019)



Source: U.S. Department of Homeland Security, Nonimmigrant Admissions by Class of Admission and State or Territory of Destination (Supplemental Table 3), available at <https://www.dhs.gov/immigration-statistics/yearbook/2012>; <https://www.dhs.gov/immigration-statistics/yearbook/2013>; <https://www.dhs.gov/immigration-statistics/yearbook/2014>; <https://www.dhs.gov/immigration-statistics/yearbook/2015>; <https://www.dhs.gov/immigration-statistics/yearbook/2016>; <https://www.dhs.gov/immigration-statistics/yearbook/2017>; <https://www.dhs.gov/immigration-statistics/yearbook/2018>; <https://www.dhs.gov/immigration-statistics/yearbook/2019>; (June 2020).

DIGGING DEEPER: REPORTING TO THE DIPLOMATIC SECURITY SERVICE

Workers with A-3 and G-5 visas may report complaints to DOS. The Office of Protocol refers allegations of mistreatment and nonpayment of wages to the Diplomatic Security Service, which investigates and may refer a case for criminal prosecution. In such a case, the Department of Justice would issue a “but for” letter, indicating that the government would prosecute the case, but for diplomatic immunity. In cases where a domestic worker has an outstanding judgment, DOS is required to assist in resolving the matter. In 2019, Congress mandated that a mission with an outstanding judgment will have its A-3/G-5 visa privileges revoked until the case is resolved. Malawi became the first country to lose all domestic worker visa privileges, after the failure to resolve a trafficking case that ended in a \$1.1 million judgment.

C. U.S. DEPARTMENT OF JUSTICE

DOJ has encountered significant obstacles to investigating and prosecuting diplomats with immunity. In 2008, Congress requested that the Government Accountability Office (GAO) investigate allegations of A-3 and G-5 visa holder abuse. The report found that between 2000 and 2008, DOJ identified 42 A-3 or G-5 visa holders who alleged abuse while working for foreign diplomats. Eight of those allegations led to trafficking investigations on behalf of domestic workers, but they did not result in any indictments against a foreign diplomat. Additionally, nine civil suits were filed on behalf of visa holders (three dismissals, five settlements, and one default judgement).¹²⁹ GAO estimated that worker abuse by foreign diplomats with some level of immunity is probably much higher than the 42 distinct alleged incidents identified. This underreporting is likely due to four reasons: household workers’ fear of contacting law enforcement authorities, NGOs’ need to maintain client confidentiality, limited information on some allegations handled by the U.S. government, and federal agencies’ difficulties in tracking household worker abuse allegations and investigations involving foreign diplomats.¹³⁰ There is, however, one case where DOJ prosecuted a Tanzanian World Bank economist for lying to the FBI. That case ended in a guilty plea, and the World Bank employee was ordered to pay more than \$41,000 in restitution to the domestic worker. Following the criminal case, the domestic worker filed a civil suit for damages.¹³¹

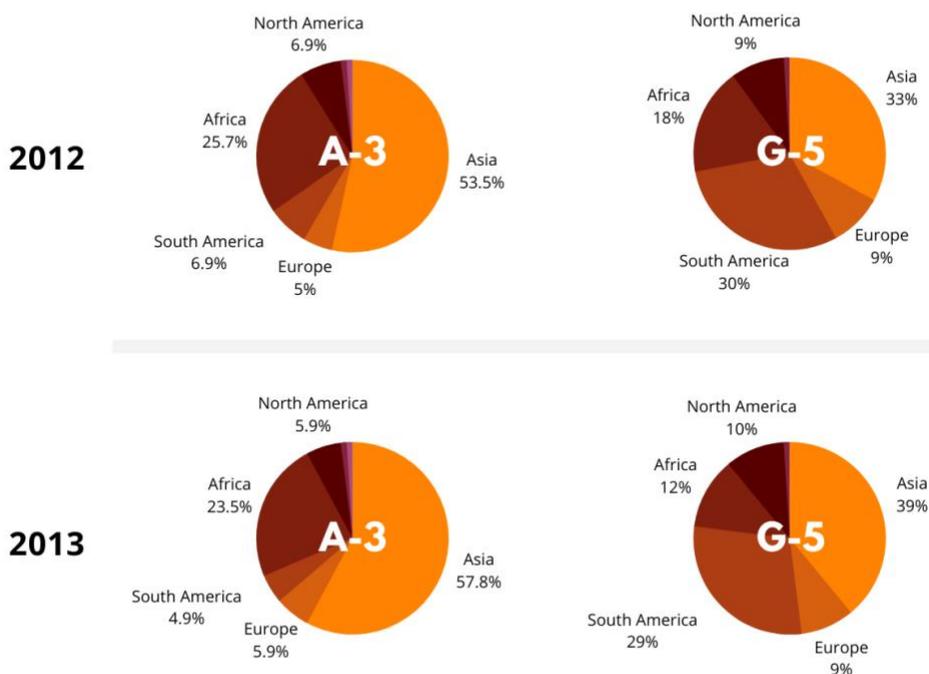
D. U.S. DEPARTMENT OF HOMELAND SECURITY

DHS’s enforcement role is not directed towards A-3/G-5 worker cases in particular. However, DHS does focus on trafficking, which is all too common with A-3 and G-5 domestic workers. For example, DHS runs a project known as the Blue Campaign.¹³² Designed to help combat human trafficking, the awareness campaign includes multi-lingual public service announcements, billboards, newspaper advertisements, victim assistance materials, and indicator cards for law enforcement. DHS has also expanded its online resources, including social media, and distributed a virtual toolkit to employers in the lodging, transportation, entertainment, agricultural, manufacturing, and construction industries.

DIGGING DEEPER: LIMITED ROLE FOR U.S. DEPARTMENT OF LABOR

The U.S. Department of Labor (USDOL) does not have any statutory or regulatory role with respect to workers who hold A-3 and G-5 visas. Since these employers are not required to conduct any labor certification test, USDOL plays no role in the process. A-3 and G-5 workers could file an administrative complaint with USDOL about unpaid wages, but this rarely happens. If a worker did file such a complaint against a diplomat, USDOL would likely be unable to enforce the law due to immunity. Even so, because USDOL does not always inquire about the complaining workers' immigration status, it is difficult to track the extent of complaints filed by A-3 and G-5 workers. Indeed, GAO found that, when asked, USDOL could only identify one investigation of an alleged violation.¹³³

Percentages of A-3/G-5 Visas Issued by Region 2012-2013



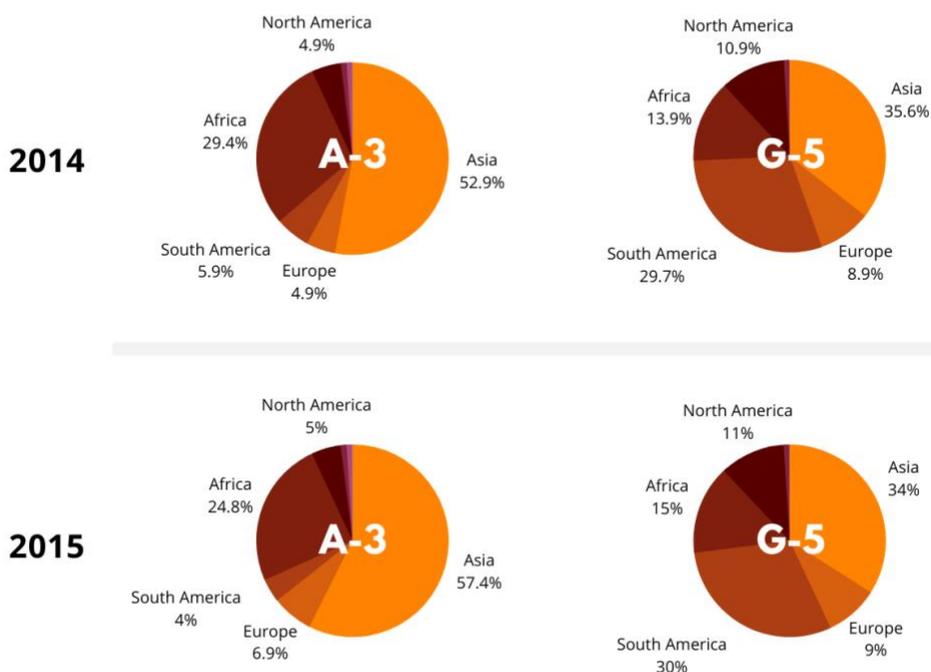
Source: U.S. Department of State, FY 1997-2019 NIV Detail Table, available at <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-statistics/nonimmigrant-visa-statistics.html> (June 2020). Percentages are rounded to the nearest whole number.

E. CIVIL REMEDIES

A-3 and G-5 workers may file a lawsuit to enforce their rights and have their day in court just like any other U.S. worker. A-3 and G-5 workers may enforce the terms of their employment contract, or any applicable federal or state statute or common law claim. A-3 and G-5 workers may have civil claims under various laws for unpaid minimum or overtime wages or other civil rights.¹³⁴ The TVPRA allows workers to sue their traffickers in federal court to recover damages and fees.¹³⁵

However, because diplomatic immunity shields some A-3 and G-5 employers from prosecution or civil action, a case may suffer a dismissal without prejudice on immunity grounds. The problem of diplomatic immunity therefore compounds the standard access to counsel issues faced by most nonimmigrant workers. Yet, full diplomatic immunity is usually only a temporary barrier to suit. A-3 and G-5 workers may effectively use private litigation to enforce their rights if their employers' immunity fades after the diplomatic mission is over. Counsel for A-3/G-5 domestic workers should always inquire about the level of an employer's immunity. Many diplomats choose to resolve these cases through settlement, even when they have immunity and could potentially request dismissal.

Percentages of A-3/G-5 Visas Issued by Region 2014-2015



Source: U.S. Department of State, FY 1997-2019 NIV Detail Table, available at <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-statistics/nonimmigrant-visa-statistics.html> (June 2020). Percentages are rounded to the nearest whole number.

1. ACCESS TO JUSTICE

A-3 and G-5 workers have similar access to counsel issues as other groups of nonimmigrant workers in that lawyers may not be available to take their cases due to language barriers, cultural differences, and isolation in the home. Moreover, because A-3 and G-5 workers are typically low-wage earners, the amount of money owed in back wages may be small relative to the cost and complication of litigation. Furthermore, because usually there is only one domestic worker per household, there is likely to be little chance of an attorney pursuing a collective or class action lawsuit, a course which often makes the effort more worthwhile in terms of time and cost. That said, if the case rises to the level of trafficking, extensive damages (including punitive damages) may be available. Judgments in A-3 and G-5 trafficking cases have been known to exceed \$1 million.

A) LEGAL SERVICES LAWYERS

Federally funded lawyers may represent individuals with an income below a certain financial level (usually between 125-200% of the federal poverty guideline, depending on the legal services organization) and only certain classes of immigrants.¹³⁶ In many cases, individuals with A-3 and G-5 visas will not be eligible for legal services because of these immigration and financial restrictions. However, there are exceptions when the worker is a victim of domestic violence, sexual assault, human trafficking, fraud in foreign labor contracting, or another crime.¹³⁷

B) PRO BONO ATTORNEYS

Pro bono attorneys can provide legal representation to A-3 and G-5 visa holders who have suffered human trafficking. NGOs have trained pro bono attorneys to handle these cases, building a specialist bar with expertise in diplomatic and consular immunity. Organizations such as the Human Trafficking Legal Center provide technical assistance to pro bono attorneys handling cases against diplomats and international organization employees.

2. DEFERRED ACTION WHEN ENFORCING RIGHTS THROUGH CIVIL SUITS

A-3 and G-5 workers who file a civil claim against their employer concerning the terms and conditions of their employment can remain in the U.S. and work legally (with some limited exceptions) for the amount of time necessary “to fully and effectively participate in all legal proceedings related to such action.”¹³⁸ This right to deferred action and employment authorization for aggrieved A-3 and G-5 workers was created by the 2008 reauthorization of the TVPA.¹³⁹ The right applies in any civil case the worker brings against his or her employer alleging violations of employment terms.¹⁴⁰ If the A-3 or G-5 worker who has left their employment does not pursue claims against their former employer, the government may terminate his or her lawful immigration status.¹⁴¹

DIGGING DEEPER: A-3 AND G-5 WORKERS' UNIQUE ACCESS TO IMMIGRATION RELIEF

When A-3 and G-5 workers want to seek redress for employment abuse through civil courts in the U.S., they may be eligible for deferred action and employment authorization.¹⁴² This means that an aggrieved A-3 or G-5 worker may stay in the U.S. and work anywhere while pursuing a case against his or her employer. The A-3 and G-5 visas are the only nonimmigrant visas that have this explicit procedure for immigration relief after employment ends. The law does not contemplate this structure for other categories of nonimmigrant workers who may choose to enforce their rights from inside the U.S. after their employment ends.

3. T-VISAS

A-3 and G-5 workers who have been victims of human trafficking are eligible to apply for T nonimmigrant status. The T nonimmigrant visa is a temporary immigration status for victims of a “severe form of human trafficking,” enabling them to remain in the U.S. for up to four years if they have assisted law enforcement in an investigation or prosecution

of human trafficking. Congress created this status in October 2000 as part of the Victims of Trafficking and Violence Protection Act.¹⁴³

T nonimmigrant status is also available for certain qualifying family members of these victims. It is important to note that nonimmigrant holders of a T visa are eligible for employment authorization and certain federal and state benefits and services, such as the Supplemental Nutrition Assistance Program (SNAP) and Medicaid.¹⁴⁴ T nonimmigrants who qualify may also be able to adjust their status and become lawful permanent residents after three years.

To qualify for T nonimmigrant status, individuals must:

1. be or have been a victim of severe trafficking in persons;
2. be physically present in the United States, American Samoa, or the Commonwealth of the Northern Mariana Islands, or at a port of entry on account of trafficking;
3. comply with any reasonable request from a law enforcement agency for assistance in the investigation or prosecution of human trafficking; and
4. demonstrate that they would suffer extreme hardship involving severe and unusual harm if they were removed from the United States.¹⁴⁵

According to data from DOS, during the 2020 fiscal year, 1,040 T-visas were granted the highest number of grants in history. Likewise, the highest number of T-visa denials in history occurred in FY2020 with 778 T-visas denied. During 2020, 1,100 T-visa applications were received the lowest number since 2016.¹⁴⁶ T nonimmigrant status was also assigned to spouses and children of victims during this period. For instance, during FY 2020, T nonimmigrant status was assigned to a spouse of a victim 33 times and to a child of a victim 131 times.¹⁴⁷

4. PORTABLE JUSTICE

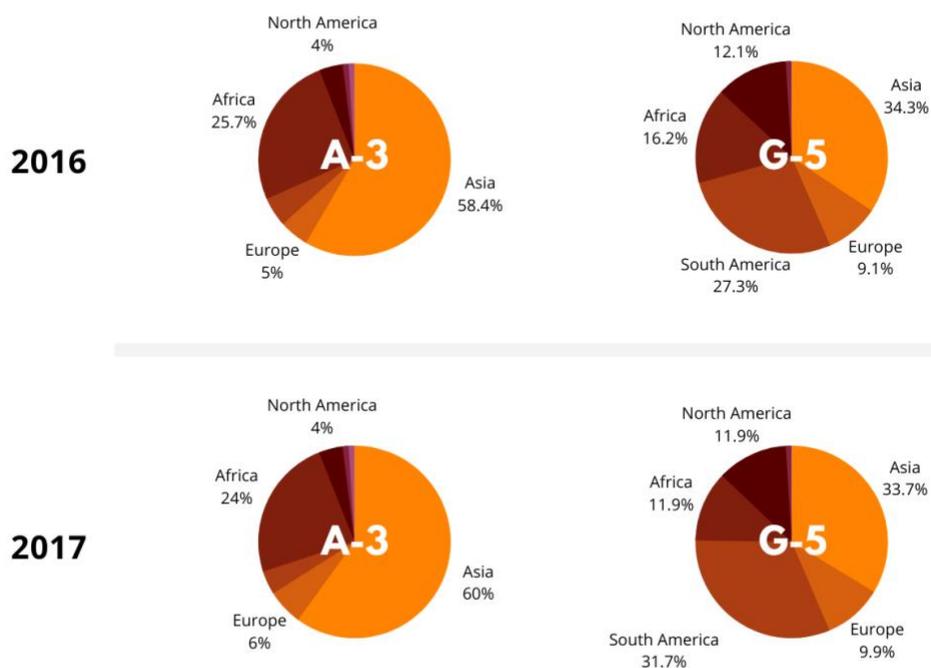
A-3 and G-5 workers have an opportunity unique to their status to remain in the U.S. while pursuing civil claims. This advantage, however, does not transfer to workers who seek legal remedy after they have returned home. Workers who depart the U.S. may also file suit, but their physical distance raises challenges for their participation in the case. Portable justice—the right and ability to access justice across borders—is therefore not provided in this or any other guestworker program in the U.S. Unaware of their legal rights or available services, many workers return home before exploring the possibility of seeking redress for any violation of their rights. Attempts to investigate possibilities for legal remedy with U.S. Consulates or Embassies are unproductive, as DOS is unprepared to handle complaints of labor law violations. This difficulty allows abusive employers to act with impunity while mistreating visa holders. While not impossible, the legal and practical obstacles to gaining redress for visa holders—or even to learn about their rights and legal options—from their home countries are so great that legal remedies are seldom pursued from abroad.¹⁴⁸ To remedy this flaw in the U.S. guestworker system, deferred action and a permit to work should be proactively

offered to temporary foreign workers who have colorable claims that they want to address through the U.S. legal system. This way, the legal remedies available can be at least marginally accessible to workers who have been violated.

VI. A-3 AND G-5 WORKERS – ISSUES

As DOS has noted, U.S. law has often viewed domestic work “as something other than regular employment.”¹⁴⁹ Many domestic workers legitimately fear retaliation if they complain about working conditions. Accessing effective legal options to hold foreign diplomats accountable can also be difficult, and A-3 and G-5 domestic workers confront the same exemptions in federal employment and civil rights law as all domestic workers do. Attorneys representing A-3 and G-5 domestic workers must also understand differences between consular and diplomatic immunity.

Percentages of A-3/G-5 Visas Issued by Region 2016-2017



Source: U.S. Department of State, FY 1997-2019 NIV Detail Table, available at <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-statistics/nonimmigrant-visa-statistics.html> (June 2020). Percentages are rounded to the nearest whole number.

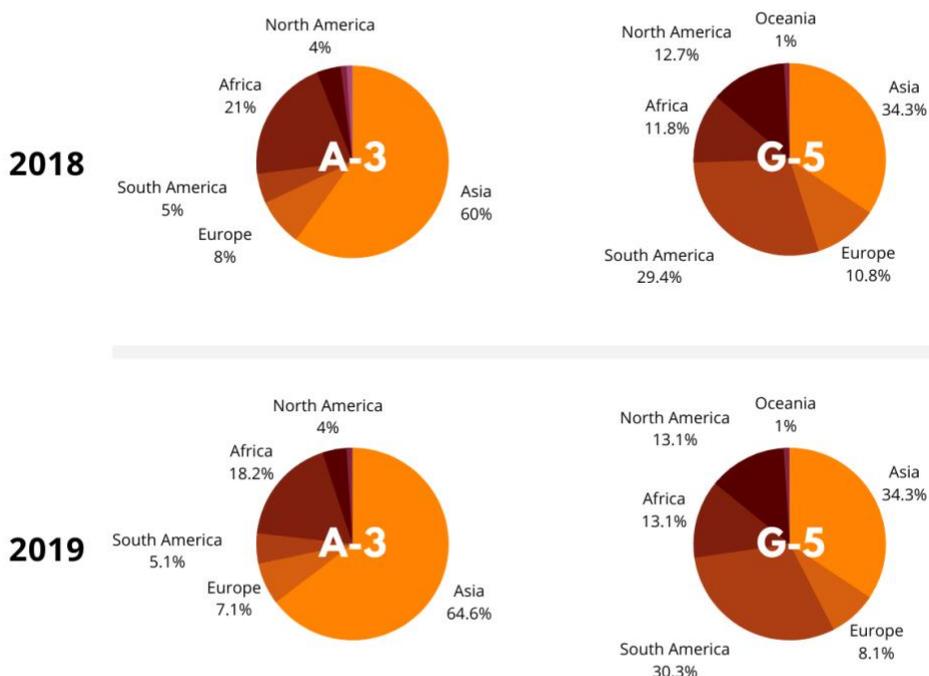
A. HISTORY OF ABUSE

The abuse of domestic workers brought to the U.S. on A-3/G-5 visas has been an open concern for decades.¹⁵⁰ In 1996, DOS announced concern about continuing problems with diplomat employers who underpay wages, confiscate passports, and even imprison workers.¹⁵¹ Since then, numerous independent investigations have uncovered cases where A-3 and G-5 workers suffered unpaid wages, intimidation, retaliation, sexual harassment, and even violence.¹⁵² For example, an in-depth Human Rights

Watch report found that employers routinely did not adhere to signed contracts, underpaid their workers, and often confiscated their passports.¹⁵³

GAO even documented 42 cases of abuse over the course of an eight-year period and noted “a striking power imbalance because workers often are poor, uneducated, and fear retaliation, not only against themselves but also against family members in their home country.”¹⁵⁴ Indeed, exploited domestic workers often fear reporting their diplomat and international employers to the authorities.¹⁵⁵

Percentages of A-3/G-5 Visas Issued by Region 2018-2019



Source: U.S. Department of State, FY 1997-2019 NIV Detail Table, available at <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-statistics/nonimmigrant-visa-statistics.html> (June 2020). Percentages are rounded to the nearest whole number.

1. 2007 A-3/G-5 INTER-AMERICAN COMMISSION ON HUMAN RIGHTS PETITION

In 2007, the ACLU filed a petition to the Inter-American Commission on Human Rights (IACHR) that decried the treatment of migrant domestic workers at the hands of the diplomats employing them. The petitioners to the Commission describe long hours performing difficult labor, only to receive substandard wages in direct contradiction to the labor contracts that they had agreed to with their employers. This abuse is often accompanied by physical and sexual assault, forced labor, and human trafficking. Domestic workers laboring in diplomats’ homes had their movement outside of the house restricted, often had their passports confiscated, and were either forbidden or severely restricted from using the telephone. Many victims reported being intimidated, insulted, and threatened by their employers.¹⁵⁶

The following cases were set forth as examples of the type of abuse suffered by domestic workers from their diplomat employers:

- Siti Aisah worked for the Ambassador of Qatar from 1998 until 2000. She worked 16-hour days and only received payments of \$150 a month. When she arrived to the United States, her passport was taken from her, her freedom of movement was restricted, and she was not allowed to communicate with anyone outside of the home. She was able to escape the ambassador's home in March 2000.¹⁵⁷
- Hildah Ajasi worked for a Botswana diplomat for nearly a year beginning in 2004. She worked from sunrise to sunset seven days a week, and she was only paid \$250 a month instead of the nearly \$1,100 a month that she was promised in her contract. She was forced to not only clean the house of the diplomats, but also the home of her employer's friend. Ajasi was also denied the ability to practice her religion while she was working for the diplomat.¹⁵⁸
- Raziah Begum labored for two and a half years for a Bangladeshi diplomat in New York City beginning in the summer of 1997. She regularly worked from 6:00 in the morning to 10:00 at night and was forbidden to take any rest. Her passport was confiscated by her employer, and she was forced to sleep on the bare floor of the diplomat's daughter's room or under the dining room table. Instead of receiving wages, her employer sent \$29 per month to her son in Bangladesh.¹⁵⁹
- Lucia Mabel Gonzalez Paredes worked for a year in the home of an Argentine dignitary in 2004. She worked in excess of 15 hours a day for very little pay. Gonzalez was also induced to sign declarations that she had received much higher wages. She was denied promised medical aid and finally left the home when her demands for better conditions went unmet.¹⁶⁰
- Otilia Huayta suffered abuse and exploitative working conditions in the home of a Bolivian diplomat in 2006. She worked seven days a week for 15 hours a day for a year. She was only paid \$200 a month for her services, a mere fraction of her agreed upon salary. Her young daughter was also living in the home and was made to do domestic work as well. She was able to escape after the police were called by school officials because of her daughter's malnourishment.¹⁶¹
- Susana Ocares worked for approximately 18 months in the home of a Chilean diplomat until her escape in 2007. She typically worked more than twelve hours a day, without receiving overtime pay, as was stipulated in her contract. She was subject to abusive treatment by her employer and was also sent to do domestic work for contacts of her employer at the diplomat's whim.¹⁶²

Beyond the condemnation of the treatment that these and other A-3/G-5 domestic workers received from their diplomat employers, the petition offers a critique of the U.S. and international jurisprudence as it applies to domestic workers. The immunity provided to diplomats discriminates against domestic workers by depriving them of basic labor law protections that are afforded to other workers. Petitioners also contend

that DOS and U.S. government oversight has failed to enforce the policies and procedures set up to protect these workers disenfranchised by diplomatic immunity:

The petitioners contend that the United States' failure to activate some of the measures introduced, including intervening in cases involving diplomats where a complaint is filed, suspending missions from the A-3/G-5 visas program, and declaring a diplomat persona non grata after credible allegations by domestic workers, suggest that diplomats and other representatives of international organizations who abuse their domestic workers will not face consequences for either violating the rights of domestic workers or for flouting the terms on which the United States issued their visas.¹⁶³

In response to this petition, IACHR admitted that A-3 and G-5 visa holders are denied access to legal remedy under the current scheme of immunity:

... the Commission concludes that in the domestic venue, no remedies are available to assert the claims of the alleged victims due to the diplomatic immunity. Additionally, the Commission considers that the situation of vulnerability and isolation in which the alleged victims found themselves, as well as the fear of retaliation they faced, including in relation to their legal status in the United States, prevented them to file and exhaust the existing domestic remedy.¹⁶⁴

2. U.S. GOVERNMENT RESPONSE TO ACLU PETITION

Nine years later, the U.S. government filed a response arguing for dismissal of the ACLU's petition.¹⁶⁵ Specifically, the U.S. government claimed that petitioners failed to exhaust the remedies available to them through the domestic legal system. Even so, the U.S. government argued that the petitioners' claims that the U.S. failed to uphold its commitments under the American Declaration were meritless due to supervening information regarding its efforts to strengthen measures preventing domestic worker abuse in the A-3 and G-5 nonimmigrant visa program.¹⁶⁶ In its response, the U.S. government described five relevant actions taken and policies enacted in recent years to address domestic worker abuse: new contract provisions, a pre-notification system, the "Know Your Rights" pamphlet, an in-person registration program, and more comprehensive implementation of the TVPA and the FAM.

3. IACHR'S DECISION

The ACLU filed its reply in June 2019.¹⁶⁷ In 2020, the Commission issued a decision finding the petition admissible and allowing the petition to proceed on the merits.

DIGGING DEEPER: CRITICISM OF ENFORCEMENT SCHEME WITH REGARD TO TRAFFICKING

While initiatives enacted since 2008 have been a "welcome and long overdue effort to acknowledge and begin to address domestic worker trafficking by diplomats," some argue that the enforcement scheme does not go far enough.¹⁶⁸ A specific concern is DOS's focus on preventing future problems rather than

providing relief for trafficking victims.¹⁶⁹ Scholars have argued that pegging “hopes on the specious notion that its prevention efforts will obviate the need for remedies” is not a fair solution for workers who have actually suffered.¹⁷⁰ For example, DOS guidelines requiring consular officials to make sure that employers are financially solvent are not helpful; as case examples show, “trafficking is not connected to an abusive employer’s inability to pay.”¹⁷¹ Likewise, DOS has only reluctantly become involved in providing remedies to trafficked A-3 and G-5 workers, despite the fact that Congress explicitly required the agency to consider a stepped-up enforcement role.¹⁷² For example, in response to the statutory requirement “to study and report on a range of compensation approaches to ensure payment to exploited workers,” the agency stated it was “not in a position to adjudicate claims of rights violations, to determine levels of compensation, to run compensation programs, or to adjudicate civil claims or mediate allegations between diplomatic personnel and their employees.”¹⁷³

Another critique is that DOS does not use its power to publicly “name, shame and deter” diplomat employers known to have trafficked their domestic workers.¹⁷⁴ For example, the agency has the power to request that a country waive the offending diplomat’s immunity and if that country declines, DOS may mark the offending diplomat as a *persona non grata*.¹⁷⁵ Furthermore, the agency could request that the other country prosecute the diplomat under its own laws or compensate the domestic worker directly.¹⁷⁶ However, despite doing so in other contexts, DOS has rarely “declared a diplomat–trafficker *persona non grata* or requested that the sending State waive immunity or provide an *ex gratia* payment to a victim.”¹⁷⁷

B. TRAFFICKING

In January 2015, the National Domestic Workers Alliance launched their Beyond Survival campaign to end human trafficking of domestic workers, including A-3 and G-5 workers, and highlighted several trafficking cases brought against former employers.¹⁷⁸ Indeed, there have been several trafficking cases brought in federal court.¹⁷⁹ For example, one worker received a \$1 million default judgment in a case brought against her Tanzanian diplomat employer for subjecting her to involuntary servitude and forced labor.¹⁸⁰ In another trafficking case that was settled in 2012, three women from India sued their diplomat employers from Kuwait, claiming that they were forced to work more than 18 hours per day for just \$250 to \$350 a month.¹⁸¹ Their passports were confiscated, they were subject to threats and verbal and physical abuse, and they were not allowed time to eat or use the bathroom.¹⁸² In another trafficking lawsuit in 2012, a Bolivian former G-5 worker sued her employer (a dual Bolivian and German citizen) who worked at the World Bank. The worker’s passport was confiscated. She was forced to work for nearly three years receiving very little pay and was also threatened when she asked about her wages.¹⁸³

Other cases have made the news in the past several years. A domestic worker for a Malawian diplomat accused her employer of serious abuse and mistreatment during her

time working for the dignitary near Washington, D.C. Ms. Lipenga, the domestic worker, had worked in East Africa for Ms. Kambalame, the diplomat from Malawi, before coming to the United States. In their home country, Lipenga had no complaints about mistreatment or work conditions while she worked for Kambalame. However, the treatment she received from her employer changed drastically once they arrived in the U.S. Her passport was confiscated and any communications she had with someone outside of the household were monitored closely. Lipenga was forced to sleep on the basement floor, and she was locked inside the home by the diplomat. Whenever Lipenga questioned the treatment that she received or the conditions of her employment, her boss explained that because she was a diplomat, she had immunity and would not face any consequences for her conduct. Lipenga finally escaped the home of her employer by sneaking under the partially closed garage door her boss had left unsecured after returning home inebriated from a party.¹⁸⁴

After her escape, Lipenga found a lawyer to represent her and sued Kambalame in a civil suit for her mistreatment. Lipenga claims she was forced to work 16 hours a day, seven days a week. She was paid less than 50 cents an hour. The diplomat had already left the United States at the time the suit was filed and failed to respond to the allegations against her. A default judgment in excess of \$1 million was awarded to Lipenga. That judgment remains unpaid. As a result of this case, DOS eventually suspended the A-3 privileges of Malawi.¹⁸⁵ This suspension is in line with the changes made to the TVPRA in 2019.

In 2019, the former Ambassador from the Permanent Mission of the Kingdom of Morocco to the United Nations and others were charged with conspiracy to commit visa fraud. Workers would submit visa applications containing false statements and fraudulent employment contracts in order to secure visas to work in the U.S. The Ambassador and his co-conspirators would have the petitioners for the visas falsely state that they would work as administrative staff at the Moroccan Mission, even though they ended up working as personal drivers, domestic helpers, farmhands, and assistants at their residence in Bronxville, New York and their farm in Ancramdale, New York. The workers were paid less than the minimum salary required by law and were regularly forced to work far more than 40 hours per week. Additionally, the employment contracts exaggerated the workers' salaries and often listed benefits of employment – such as sick leave, dental insurance, and medical insurance – that were never provided to them.¹⁸⁶

C. DISPLACEMENT OF U.S. WORKERS

The regulations of this temporary nonimmigrant worker visa program do not set up any system to evaluate whether A-3 and G-5 workers will displace U.S. workers.¹⁸⁷ Neither DOS nor the employers are required to consult with USDOL, conduct a labor market test, recruit U.S. workers, or circulate job offers through the interstate clearance order system, like with other temporary nonimmigrant work programs (such as under the various H programs).

ENDNOTES

- ¹ 8 U.S.C. § 1101(a)(15)(A)(iii) (2020).
- ² 8 U.S.C. § 1101(a)(15)(G)(v).
- ³ 8 C.F.R. § 214.2(a)(1), (g)(1); 9 FAM 41.112 Exhibit I.
- ⁴ 9 FAM 402.3-9(B)(7).
- ⁵ 8 C.F.R. § 214.2(a)(1), (g)(1); 9 FAM 402.3-9(B)(7).
- ⁶ U.S. Department of State, *Nonimmigrant Visa Issuances by Visa Class and by Nationality: FY 1997-2019 NIV Detail Table*, available at <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-statistics/nonimmigrant-visa-statistics.html> (last visited June 2020).
- ⁷ U.S. Department of State, 9 FAM 402.3, available at <https://fam.state.gov/fam/09FAM/09FAM040203.html> (last visited June 2020).
- ⁸ Ashwini Sukthankar, *Visas, Inc.: Corporate Control and Policy Incoherence in the U.S. Temporary Foreign Labor System*, Global Workers Justice Alliance (2012), available at <http://traffickingroundtable.org/wp-content/uploads/2013/09/Visas-Inc-By-Global-Workers-Justice-Alliance-2.pdf> (last visited Sept. 25, 2020), at 21.
- ⁹ Human Rights Watch, *Hidden in the Home: Abuse of Domestic Workers with Special Visas in the United States*, June 2001.
- ¹⁰ See generally 2 FAM 230. (diplomats and high-ranking employees of international organizations who employ these nonimmigrant domestic workers have immunity from civil and criminal prosecutions.)
- ¹¹ U.S. Department of State, *Visas for Diplomats and Foreign Government Officials*, available at <https://travel.state.gov/content/travel/en/us-visas/other-visa-categories/visas-diplomats.html> (last visited Sept. 25, 2020); *Visas for Employees of International Organizations and NATO*, available at <https://travel.state.gov/content/travel/en/us-visas/other-visa-categories/visa-employees-nato.html> (last visited Sept. 25, 2020).
- ¹² 9 FAM 402.3-9(B)(3)(c)(3)(d).
- ¹³ 9 FAM 402.3-9(B)(1)(c).
- ¹⁴ 22 C.F.R. § 41.21(a)(4) (2020); 9 FAM 41.21(4).
- ¹⁵ 22 C.F.R. § 41.21(a)(2); 9 FAM 402.3-5(D)(1)(c).
- ¹⁶ U.S. Department of State, *Online Nonimmigrant Visa Application (DS-160)*, available at <https://ceac.state.gov/genniv/> (last visited Sept. 25, 2020).
- ¹⁷ U.S. Department of State, *Visas for Diplomats and Foreign Government Officials*, available at <https://travel.state.gov/content/travel/en/us-visas/other-visa-categories/visas-diplomats.html> (last visited Sept. 25, 2020). Individuals who establish entitlement to an official visa classification (such as A and G) are exempt from paying visa fees.
- ¹⁸ 9 FAM 402.3-8(G)(b); 9 FAM 402.3-9(B)(3)(a) (However, the foreign diplomats and international organization employees themselves are generally not required to personally appear for interviews as a condition to their visa application. See, e.g., 9 FAM 402.3-4(E)(a).).
- ¹⁹ *Id.* (“You may not issue or renew an A-3, G-5, or NATO-7 visa unless the visa applicant has executed a contract with the employer or prospective employer and such contract includes each of the provisions[.]”).
- ²⁰ 9 FAM 402.3(B)(1)(a)(2).
- ²¹ 9 FAM 402.3-9(B)(6)(b); 8 U.S.C. §§ 1184(b) and 1257(b) (written waiver may be required and special adjustment of status rules apply to A-3/G-5 visa holders).
- ²² 9 FAM 402.3-9(B)(5)(b). (However, if a consular officer believes that an “applicant is presented as a domestic employee for an alien in A, G, or NATO status, but will actually pursue other work, then the A-3, G-5, or NATO-7 visa should be denied[.]”).
- ²³ 9 FAM 402.3-9(B)(6)(e)(2).
- ²⁴ See generally 9 FAM 402.3-9(B)(1).
- ²⁵ See generally 9 FAM 402.3-9(B)(6).
- ²⁶ U.S. Department of State, *Nonimmigrant Visa Statistics: NIV Workload by Category, 2006-2015*, available at <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-statistics/nonimmigrant-visa-statistics.html> (last visited Oct. 2020).
- ²⁷ 9 FAM 402.3-9(B)(5)(c)(1) (pertains to A-3 employers and G-5 employers who have a G-4 visa).
- ²⁸ U.S. Department of State, 9 FAM 402.3-9(C)(1) and 9 FAM 402.3-9(C)(2), available at <https://fam.state.gov/fam/09FAM/09FAM040203.html> (last visited June 2020); U.S. Department of State, *Rights and Protections for Temporary Workers*, available at <https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/temporary-workers.html> (last visited Dec. 10, 2020).
- ²⁹ 9 FAM 402.3-9(B)(1)(a)(7).
- ³⁰ *Id.*; 8 U.S.C. § 1375c(b)(3).
- ³¹ U.S. Department of State, *2019 Trafficking in Persons Report: United States*, available at <https://www.state.gov/reports/2019-trafficking-in-persons-report-2/united-states/> (last visited Jan. 20, 2021).

- ³² U.S. Department of Homeland Security, USCIS, *Form I-539, Application to Extend/Change Nonimmigrant Status*, available at <https://www.uscis.gov/i-539> (last visited Sept. 25, 2020).
- ³³ U.S. Department of Homeland Security, USCIS, *Form I-539 Instructions*, available at <https://www.uscis.gov/sites/default/files/document/forms/i-539instr.pdf> (last visited Sept. 25, 2020).
- ³⁴ 9 FAM 402.3-9(B)(1)(2).
- ³⁵ U.S. Department of State, *FY 1997-2014 NIV Detail Table*, available at <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-statistics/nonimmigrant-visa-statistics.html> (last visited Nov. 2020).
- ³⁶ *Id.*
- ³⁷ U.S. Department of Homeland Security, *Nonimmigrant Admissions by Class of Admission: FY 2010 to 2019*, available at <http://www.dhs.gov/yearbook-immigration-statistics-2019-nonimmigrant-admissions> (last visited Nov. 2020).
- ³⁸ *Id.*
- ³⁹ U.S. Department of Homeland Security, *Telephone and Email Correspondence with Office of Immigration Statistics Employees* (2011, 2013), available at <https://www.dhs.gov/office-immigration-statistics> (last visited Nov. 2020).
- ⁴⁰ T. Robbins, “U.S. Aims To Track Foreigners Who Arrive, But Never Leave,” National Public Radio (May 1, 2013), available at <http://www.npr.org/2013/05/01/180338462/u-s-aims-to-track-foreigners-who...> (last visited Sept. 25, 2020).
- ⁴¹ U.S. Department of State, *FY 1997-2019 NIV Detail Table*, available at <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-statistics/nonimmigrant-visa-statistics.html> (last visited Nov. 2020).
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- ⁴⁶ 8 U.S.C. § 1375c(a)(1)(A); 9 FAM 402.3-9(B)(3)(a).
- ⁴⁷ 9 FAM 402.3-9(B)(3)(a).
- ⁴⁸ 9 FAM 402.3-9(B)(3)(b)(2).
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- ⁵² U.S. Department of Labor, The Foreign Labor Certification Data Center, Online Wage Library, available at <https://www.flcdatacenter.com> (last visited Sept. 25, 2020).
- ⁵³ 9 FAM 402.3-9(B)(4). (“State minimum wages can be found on the Department of Labor’s Minimum Wage Laws page or you can check with L/CA, CA/VO/DO/DL or your VO/F desk officer.”).
- ⁵⁴ 9 FAM 402.3-9(B)(3)(c)(8)(h).
- ⁵⁵ *Id.*
- ⁵⁶ *Id.* See also 9 FAM 402.3-9(B)(3)(c)(8)(j) (“The contract must indicate whether the employer will provide/will not provide the employee with medical insurance.”).
- ⁵⁷ 9 FAM 402.3-9(B)(3)(c)(8)(e).
- ⁵⁸ 9 FAM 402.3-9(B)(3)(c)(8)(d).
- ⁵⁹ 9 FAM 402.3-9(B)(3)(c)(11)(b).
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⁶⁵ The World Bank, *World Bank Group Code of Conduct Regarding Employment of G5 Domestic Employees* (2017), available at <http://pubdocs.worldbank.org/en/251831496341459107/G5-Domestic-Employee-Program.pdf> (last visited Sept. 25, 2020); International Monetary Fund, *Conduct of Staff Members: Treatment of G5 Domestic Employees*, Order No. 33, Annex V (Oct. 15, 2009).

⁶⁶ *Id.*

⁶⁷ M. Vandenberg and A. Levy, *Human Trafficking and Diplomatic Immunity: Impunity No More*, 7 INTERCULTURAL HUM. RTS. L. REV. (2012), at 77, 79-81.

⁶⁸ 29 U.S.C. § 152(3) (NLRA) (“The term ‘employee’ shall include any employee . . . but shall not include any individual employed . . . in the domestic service of any family or person at his home.”).

⁶⁹ 29 C.F.R. § 1975.6 (OSHA excludes private employers who hire workers for what are “commonly regarded as ordinary household tasks, such as house cleaning, cooking and caring for children.”).

⁷⁰ 42 U.S.C. § 2000e(b) (2020).

⁷¹ 42 U.S.C. § 12111 sec. 5(A).

⁷² 29 C.F.R. § 552.109(a).

⁷³ Vienna Convention on Diplomatic Relations, pmbl. cl. 4, Apr. 18, 1961, available at https://legal.un.org/ilc/texts/instruments/english/conventions/9_1_1961.pdf (last visited Oct. 25, 2020).

⁷⁴ The distinguishing role differentiating a diplomat from a consular official is representation of the sending government. While both consular officials and diplomats protect the interests, whether individual or corporate, of the sending State and of its nationals in the receiving State, only diplomats officially represent the sending State in the receiving State; and negotiate with the Government of the receiving State. See Vienna Convention on Diplomatic Relations, 1961, and Vienna Convention on Consular Relations, 1963.

⁷⁵ 22 U.S.C. § 254d (2020).

⁷⁶ Vienna Convention on Diplomatic Relations, pmbl. cl. 4, Apr. 18, 1961, available at https://legal.un.org/ilc/texts/instruments/english/conventions/9_1_1961.pdf (last visited Sept. 25, 2020); 767 *Third Ave. Assocs. v. Permanent Mission of the Republic of Zaire*, 988 F.2d 295, 300 (2d Cir. 1993) (“[M]odern international law has adopted diplomatic immunity under a theory of functional necessity.”).

⁷⁷ Vienna Convention on Diplomatic Relations, Art. 31(1), Apr. 18, 1961, 23 U.S.T. 3227; 22 U.S. Code Subchapter XVIII—Privileges and Immunities of International Organizations.

⁷⁸ U.S. Department of State, *Diplomatic List Spring 2020*, Office of the Chief of Protocol, available at <https://www.state.gov/resources-for-foreign-embassies/diplomatic-list/> (last visited Sept. 25, 2020).

⁷⁹ Vienna Convention on Consular Relations, Art. 43(1), Apr. 24, 1963, 21 U.S.T. 77.

⁸⁰ 2 FAM 232.5.

⁸¹ Vienna Convention on Diplomatic Relations, Art. 31(1)(c), Apr. 18, 1961, available at https://legal.un.org/ilc/texts/instruments/english/conventions/9_1_1961.pdf (last visited Sept. 25, 2020).

⁸² *Tabion v. Mufti*, 73 F.3d 535, 538-39 (4th Cir. 1996); *Gonzalez Paredes v. Vila*, 479 F. Supp. 2d 187 (D.D.C. 2007).

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⁸⁴ *Id.*

⁸⁵ U.S. Department of State, 2 *FAM Exhibit 233.4(7) and 232.3(b), Office of Foreign Mission, Diplomatic and Consular Immunity: Guidance for Law Enforcement and Judicial Authorities Immunities and Liabilities of Foreign Representatives and Officials of International Organizations in the United States* (August 2018), available at https://www.state.gov/wp-content/uploads/2019/07/2018-DipConImm_v5_Web.pdf (last visited Sept. 25, 2020).

⁸⁶ *Park v. Shin*, 313 F.3d 1138 (9th Cir. 2002).

⁸⁷ *Id.* at 1143.

⁸⁸ M. Vandenberg and A. Levy, *Human Trafficking and Diplomatic Immunity: Impunity No More*, 7 INTERCULTURAL HUM. RTS. L. REV. (2012), at 79-81, 90-91.

⁸⁹ Vienna Convention on Diplomatic Relations, Art. 39(2), available at https://legal.un.org/ilc/texts/instruments/english/conventions/9_1_1961.pdf (last visited Sept. 25, 2020).

⁹⁰ *Id.* Compare *Brzak v. United Nations*, 597 F.3d 107, 113 (2d Cir. 2010) (U.N. officials qualified for residual immunity under the Vienna Convention on Consular Relations against alleged acts of sex discrimination, retaliation, the intentional infliction of emotional distress because they were “personnel management decisions falling within the ambit of the [U.N. officials] professional responsibility” in the course of office management).

⁹¹ *Swarna v. Al-Awadi*, 622 F.3d 123 (2d Cir. 2010).

⁹² *Id.* at 130 (noting that in that first case, when the defendant was served, “he was employed as a diplomat by the Kuwait Mission and therefore was entitled to diplomatic immunity. The court dismissed the case without prejudice because Swarna could plausibly institute a new action against the individual defendants—“if she can locate them”—after their association with the Kuwaiti Mission had terminated.”)

⁹³ *Id.* at 135-38.

⁹⁴ *Id.* at 138.

- ⁹⁵ *Baonan v. Baja*, 627 F.Supp.2d 155 (S.D.N.Y. 2009) (finding no residual immunity for former member of the Philippines diplomatic mission to the United Nations; former G-5 worker's lawsuit for forced labor and minimum wage violations survived motion to dismiss).
- ⁹⁶ I. Tharoor, *After Khobragade: Can U.S.-India Relations Recover?*, Time (Jan. 13, 2014), available at <http://world.time.com/2014/01/13/khobragade-us-india-diplomacy/> (last visited Sept. 25, 2020).
- ⁹⁷ U.S. Department of Justice, *Statement of Manhattan U.S. Attorney Preet Bharara on U.S. v. Devyani Khobragade* (Dec. 18, 2013), available at <https://www.justice.gov/usao-sdny/pr/statement-manhattan-us-attorney-preet-bharara-us-v-devyani-khobragade> (last visited Sept. 25, 2020).
- ⁹⁸ J. Bellinger, *The Khobragade Kerfuffle: An Assessment*, LAWFARE (Jan. 12, 2014), <https://www.lawfareblog.com/khobragade-kerfuffle-assessment> (last visited Dec. 10, 2020). Following this, the U.S. Mission to the United Nations altered the criteria for accreditation by the U.S. government. In order to qualify for diplomatic privileges and immunities, candidates must "not be subject, at the time accreditation is sought, to any pending criminal charges in the United States punishable by incarceration for more than one year nor have a family member forming part of the diplomatic envoy's household who is subject to any such charges and is present in the United States at the time such accreditation is sought." Diplomatic Note from the U.S. Mission to the United Nations, to the Permanent Missions to the United Nations (Jan. 13, 2016), available at <https://usun.usmission.gov/wp-content/uploads/sites/296/hc-01-16.pdf> (last visited Dec. 10, 2020).
- ⁹⁹ "New indictment filed against Indian diplomat Devyani Khobragade in U.S. visa-fraud case," *Washington Post*, (March 14, 2014), available at https://www.washingtonpost.com/world/asia_pacific/new-indictment-filed-against-indian-diplomat-devyani-khobragade-in-us-visa-fraud-case-2014/03/14/0074dd80-abb0-11e3-adbc-888c8010c799_story.html (last visited Sept. 25, 2020); A. Southall, "Diplomat From India Is Indicted Again Over Housekeeper," *N.Y. Times* (March 15, 2014) available at <http://www.nytimes.com/2014/03/15/world/asia/diplomat-from-india-is-indicted-again-over-housekeeper.html> (last visited Sept. 25, 2020).
- ¹⁰⁰ "Devyani Khobragade Appointed India's Next Ambassador To Cambodia," NDTV (Oct. 2, 2020) available at <https://www.ndtv.com/india-news/devyani-khobragade-appointed-indias-next-ambassador-to-cambodia-2304071> (last visited Dec. 10, 2020).
- ¹⁰¹ Vienna Convention on Diplomatic Relations Art. 37(1) ("members of the family of a diplomatic agent forming part of his household shall, if they are not nationals of the receiving State, enjoy the privileges and immunities [of the diplomatic agent] specified in articles 29 to 36."), available at https://legal.un.org/ilc/texts/instruments/english/conventions/9_1_1961.pdf (last visited Sept. 25, 2020).
- ¹⁰² Vienna Convention on Diplomatic Relations Art. 39(2), available at https://legal.un.org/ilc/texts/instruments/english/conventions/9_1_1961.pdf (last visited Sept. 25, 2020).
- ¹⁰³ *Id.* (specifically limiting residual immunity to "member[s] of the mission.").
- ¹⁰⁴ *Swarna v. Al-Awadi*, 622 F.3d 123, 134 (2d Cir. 2010).
- ¹⁰⁵ 8 U.S.C. § 1375c(a)(2); 9 FAM 41.21 N6.9a.
- ¹⁰⁶ *Id.*
- ¹⁰⁷ 8 U.S.C. § 1375c(a)(3) (2020).
- ¹⁰⁸ A. Ramchandani, "Diplomats Are Getting Away with Abusing Their Children's Nannies," *The Atlantic* (May 21, 2018), available at <https://www.theatlantic.com/business/archive/2018/05/diplomats-abuse-domestic-workers/559739/> (last visited Sept. 30, 2020).
- ¹⁰⁹ "US suspends visas for Malawi diplomats' domestic workers," British Broadcasting Corporation (June 21, 2019), available at <https://www.bbc.com/news/world-africa-48724294> (last visited Oct. 11, 2020). Please see 2020 *Trafficking in Persons Report: Malawi*, available at <https://www.state.gov/reports/2020-trafficking-in-persons-report/malawi/>, for more details regarding this case.
- ¹¹⁰ U.S. Department of State, Office of the Chief of Protocol, *October 2015: Diplomatic Note on Launch of In-Person Registration*, (Oct 21, 2015), available at <https://2009-2017.state.gov/documents/organization/248679.pdf> (last visited Mar. 15, 2021).
- ¹¹¹ U.S. Department of State, Office of the Chief of Protocol, *Diplomatic Circular Note, September 16, 2009* (Sept 16, 2009). See also: U.S. Government, *Petition No. P-1481-07, Domestic Workers Employed by Diplomats, Response of the United States of America* (May 4, 2016), at 37, available at <https://www.aclu.org/legal-document/iachr-petition-domestic-workers-us-govt-response> (last visited Jan. 20, 2021).
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- ¹¹⁵ *Id.* at 5.

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- ¹¹⁸ U.S. Department of State, *2019 Trafficking in Persons Report: United States*, available at <https://www.state.gov/reports/2019-trafficking-in-persons-report-2/united-states/> (last visited Jan. 20, 2021).
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- ¹³¹ *U.S. v. Bakilana*, 1:10-cr-00093 (LMB) (E.D. Va. Oct. 12, 2010); *Kiwanuka v. Bakilana*, 833 F. Supp. 2d 107 (D.D.C. 2012).
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- ¹³⁴ Domestic Workers' Bill of Rights, 2010 N.Y. Sess. Laws 1313 (McKinney) (codified at N.Y. Exec. Law §§ 292, 296-b; N.Y. Lab. Law §§ 2, 160, 161, 170, 651; N.Y. Workers' Comp. § 201) (As of 2010, domestic workers in New York have enhanced protections, including a statutorily-defined workweek of eight hours per day and 44 hours per week for live-in workers, time-and-a-half overtime pay, at least three vacation days each year, temporary disability benefits and opportunities to raise claims involving discrimination and sexual harassment).
- ¹³⁵ 18 U.S.C. §§ 1595, 1589.
- ¹³⁶ 45 C.F.R. Part 1611 (Financial Eligibility), Part 1626 (Restrictions on Legal Assistance to Aliens).
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- ¹³⁸ 8 U.S.C. § 1375c(c)(1), (2).
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- ¹⁴⁰ 8 U.S.C. § 1375c(c)(1), (2) (applies to A-3/G-5 workers with regard to civil actions alleging "a violation of any of the terms contained in the contract or violation of any other Federal, State, or local law in the United States governing the terms and conditions of employment").
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- ¹⁴² 8 U.S.C. § 1375c(c)(1), (2).
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¹⁴⁷ U.S. Department of State, *Nonimmigrant Visas Issued by Classification (Including Border Crossing Cards: Fiscal Years 2016-2020)*, available at <https://travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2020AnnualReport/FY20AnnualReport-TableXVB.pdf> (last visited Feb. 9, 2021).

¹⁴⁸ There are organizations that work to facilitate the pursuit of legal remedy for those aggrieved who are no longer residing in the U.S. See for example Justice in Motion, at <https://www.justiceinmotion.org/> and Centro de los Derechos del Migrante, at <https://cdmigrante.org/>.

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¹⁵² B. Grow, “Strauss-Kahn case raises issue of abuse by diplomats in the U.S.,” *Reuters* (May 18, 2011), available at <https://www.reuters.com/article/strausskahn-diplomats/strauss-kahn-case-raises-issue-of-diplomat-abuse-in-u-s-idINN1820517120110518> (examining several of the 11 civil cases and one criminal case concerning abuse of domestic workers brought against foreign diplomats from 2005 to 2010); S. Fitzpatrick, “Diplomatic Immunity at Issue in Domestic-Worker Abuse Cases,” *Washington Post* (Sept. 20, 2009), available at

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at https://www.montgomerycountymd.gov/COUNCIL/Resources/Files/agenda/cm/2006/060516/20060516_hhs01.pdf (domestic workers not paid overtime in violation of local law); Domestic Workers United and DataCenter, *Home is Where the Work Is: Inside New York’s Domestic Work Industry* (July 14, 2006) available at <https://www.datacenter.org/reports/homeiswheretheworkis.pdf> (survey of New York City domestic workers revealed that 48% of live-in workers reported at least one type of abusive behavior by their employer in the past twelve months, and of those workers 37% described abuse such as yelling, threatening, or insults, and 1% reported physical abuse by their employers) (last visited Sept. 25, 2020), at 21.

¹⁵³ Human Rights Watch, *Hidden in the Home: Abuse of Domestic Workers with Special Visas in the United States* (June 2001), available at <https://www.hrw.org/reports/2001/usadom/> (last visited Sept. 25, 2020).

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¹⁵⁵ L. Luxner, “Oppressed Nannies: Department of State Orders Embassies to Clean up Their Act,” *The Washington Diplomat* (2010), available at <https://washdiplomat.com/oppressed-nannies-state-department-orders-embassies-to-clean-up-their-act/> (last visited Sept. 25, 2020) (noting that “many incidents of abuse by foreign diplomats here likely remain unreported because their victims are too frightened or intimidated to complain, especially because diplomatic immunity is involved”).

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¹⁶⁶ *Id.*

¹⁶⁷ ACLU, *Observations to IACHR Replying to US Government about Trafficking of Domestic Workers by Diplomats*, (June 7, 2019), available at <https://www.aclu.org/legal-document/observations-iachr-replying-us-government-about-trafficking-domestic-workers> (last visited Jan. 20, 2021).

¹⁶⁸ J. Chuang, *Achieving Accountability for Migrant Domestic Worker Abuse*, 88 NORTH CAROLINA LAW REV. 1627 (2010), at 1649.

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ *Id.* at 1650 (emphasis in original).

¹⁷² *Id.* at 1651.

¹⁷³ *Id.* at 1652, citing to U.S. Department of State, Report to Congress Regarding the “William Wilberforce Trafficking Victims Protection Act of 2008,” 4 (2009); See 8 U.S.C. 1375c(d)(2).

¹⁷⁴ *Id.* at 1653.

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ National Domestic Workers Alliance, *Beyond Survival*, available at <https://www.domesticworkers.org/beyond-survival> (last visited Sept. 25, 2020).

¹⁷⁹ *Kiwanuka v. Bakilana*, 833 F. Supp. 2d 107 (D.D.C. 2012) (Tanzanian G-5 worker sued World Bank employer).

¹⁸⁰ *Mazengo v. Mzengi*, 542 F. Supp. 2d 96, 97–98, 100 (D.D.C. 2008).

¹⁸¹ ACLU, “Domestic Workers Who Accused Diplomats of Human Trafficking Settle With Kuwaiti Government,” Press Release (February 15, 2012), available at <https://www.aclu.org/press-releases/domestic-workers-who-accused-diplomats-human-trafficking-settle-kuwaiti-government#:~:text=WASHINGTON%20%E2%80%93%20The%20Kuwaiti%20government%20agreed,and%20unde r%20slavery%20like%20conditions> (last visited Sept. 25, 2020).

¹⁸² *Sabbithi, et al., v. Al Saleh, et al.: Complaint and Jury Demand, Case No. 07-CV-00115* (D.D.C. filed Jan. 17, 2007), available at <https://www.aclu.org/legal-document/sabbithi-et-al-v-al-saleh-et-al-complaint-and-jury-demand> (last visited Sept. 25, 2020).

¹⁸³ F. Langfitt, “Servants: Diplomat Held Us as Suburban ‘Slaves,’” National Public Radio, available at <https://www.npr.org/templates/story/story.php?storyId=7626754> (last visited Sept. 25, 2020); *Carazani v. Zegarra, Complaint Case No. 1:12-cv-00107-CKK* (D.D.C. filed Jan. 23, 2012).

¹⁸⁴ S. Birnbaum, “Diplomats may be using their immunity to abuse domestic workers,” The World (August 8, 2017), available at <https://theweek.com/articles/714784/diplomats-may-using-immunity-abuse-domestic-workers> (last visited Oct. 13, 2020).

¹⁸⁵ “US suspends visas for Malawi diplomats’ domestic workers,” British Broadcasting Corporation (June 21, 2019), available at <https://www.bbc.com/news/world-africa-48724294> (last visited Oct. 11, 2020).

¹⁸⁶ U.S. Department of Justice, *Former Moroccan Diplomat And Two Others Charged In White Plains Federal Court With Visa Fraud Conspiracy*, U.S. Attorney’s Office, Southern District of New York (December 12, 2019), available at <https://www.justice.gov/usao-sdny/pr/former-moroccan-diplomat-and-two-others-charged-white-plains-federal-court-visa-fraud> (last visited Oct. 13, 2020).

¹⁸⁷ Compare 8 C.F.R. §§ 214.2(a)(5)(ii)(D) and (g)(5)(ii)(D) (One condition of employment authorization for some A and G dependents is that the proposed employment is not “in an occupation determined by the Department of Labor... to be one for which there is an oversupply of qualified U.S. workers in the area of proposed employment.” While some family members of diplomats may not displace U.S. workers, there is no such prohibition for A-3 and G-5 domestic workers.).