



# Visa Pages:

## U.S. TEMPORARY FOREIGN WORKER VISAS

---

### A-3 AND G-5 VISAS

Updated Dec. 2015

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.

## TABLE OF CONTENTS

<b>I. A-3 AND G-5 VISAS .....</b>	<b>3</b>
<b>II. A-3 AND G-5 HIRING PROCESS .....</b>	<b>4</b>
A. Steps for Employers .....	4
B. Steps for Workers.....	5
<b>III. A-3 AND G-5 WORKERS IN THE U.S. – DATA .....</b>	<b>8</b>
A. Number of A-3 and G-5 Workers in the U.S.....	8
B. A-3 and G-5 Worker Demographics .....	10
C. Employer Demographics.....	18
<b>IV. A-3 AND G-5 WORKERS’ RIGHTS IN THE U.S. ....</b>	<b>19</b>
A. Employment Contract Required.....	19
B. A-3 and G-5 Workers and the Fair Labor Standards Act (FLSA) .....	20
<b>V. ENFORCEMENT .....</b>	<b>20</b>
A. Diplomatic Immunity .....	21
B. U.S. Department of State – Suspension Authority .....	24
C. U.S. Department of Justice .....	24
D. U.S. Department of Homeland Security .....	25
E. Private Litigation .....	25
<b>VI. A-3 AND G-5 WORKERS – ISSUES.....</b>	<b>27</b>
A. History of Abuse .....	27
B. Trafficking .....	27
C. Displacement of U.S. Workers.....	29

## I. A-3 AND G-5 VISAS

A-3 and G-5 nonimmigrant visas are specifically for domestic worker employees of foreign diplomats and international officers. 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 allows entry for the attendants, servants, and personal employees of a diplomat or foreign government official.<sup>1</sup> The G-5 visa is designated for attendants, servants, and personal 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."<sup>2</sup> Both visas are initially valid for up to three years, and may be extended in two-year increments.<sup>3</sup> However, the U.S. Department of State (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.<sup>4</sup> Extensions are available for both visas.<sup>5</sup> There is apparently no maximum number of years an individual may work with either an A-3 or a G-5 visa.

There is no annual cap. Even so, the number is relatively small compared to other nonimmigrant work visas. In 2012, less than 2,000 new visas were issued for both groups of workers combined. Most A-3 and G-5 workers are from Asia and Africa. The Philippines is the country that sends the most workers to the United States on A-3 and G-5 visas.

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 and Victims Protection Act. DOS thereafter implemented guidelines for its consular officials specifically addressing protections for A-3 and G-5 visa applicants.<sup>6</sup> These include, for example, a mandatory employment contract with various terms requiring, for example, that the employer pay a required wage and all transportation costs.

While having an employment contract in place prior to starting a job benefits foreign workers generally, once A-3 and G-5 workers are in the U.S. there is no system in place to make sure their employers are complying with the contract terms. DOS is charged with oversight; however, to date, the agency has avoided any role in contract enforcement. Further complicating the issue, many employers of A-3 and G-5 workers are diplomats often protected by diplomatic immunity, limiting the ability to seek redress for contract violations in U.S. courts.<sup>7</sup> One government official has even noted that "[t]here is no way any [nonimmigrant domestic workers] are being paid" the prevailing wage.<sup>8</sup> 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.

## II. A-3 AND G-5 HIRING PROCESS

Unlike with 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 or the U.S. Department of Homeland Security. Rather, the employer finds the prospective domestic worker usually in the worker's country of origin, they sign an employment contract, and 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 and 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. 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. The U.S. Department of Homeland Security's Customs and Border Protection unit 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

Not much is known about how employers select domestic workers for jobs in the United States or if recruiting agencies are involved. Diplomat and international employers may find their domestic workers in their home countries. 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 the U.S. Department of Labor or the U.S. Department of Homeland Security (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.<sup>9</sup>

Employers are required to pay for the domestic worker's transportation to and from the United States.<sup>10</sup> The A-3 and G-5 visas are only available for domestic workers whose employers are nonimmigrants. If the diplomat employer is actually a legal permanent resident in the U.S., then the domestic worker is not entitled to an A-3 or G-5 visa but rather must qualify for another type of temporary work program, such as an H-2 nonimmigrant visa for temporary work.<sup>11</sup>

#### **DIGGING DEEPER: EMPLOYER SUFFICIENT FUNDS**

If the A-3 or G-5 employer does not carry the diplomatic rank of Minister or higher or the equivalent, the employer must prove possession of sufficient funds to pay the wage promised in the employment contract.<sup>12</sup> The employer will have to provide this proof with the worker's visa application.

#### **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.<sup>13</sup> Attendants are paid from the public funds of a foreign government or international organization.<sup>14</sup> This is the only difference.

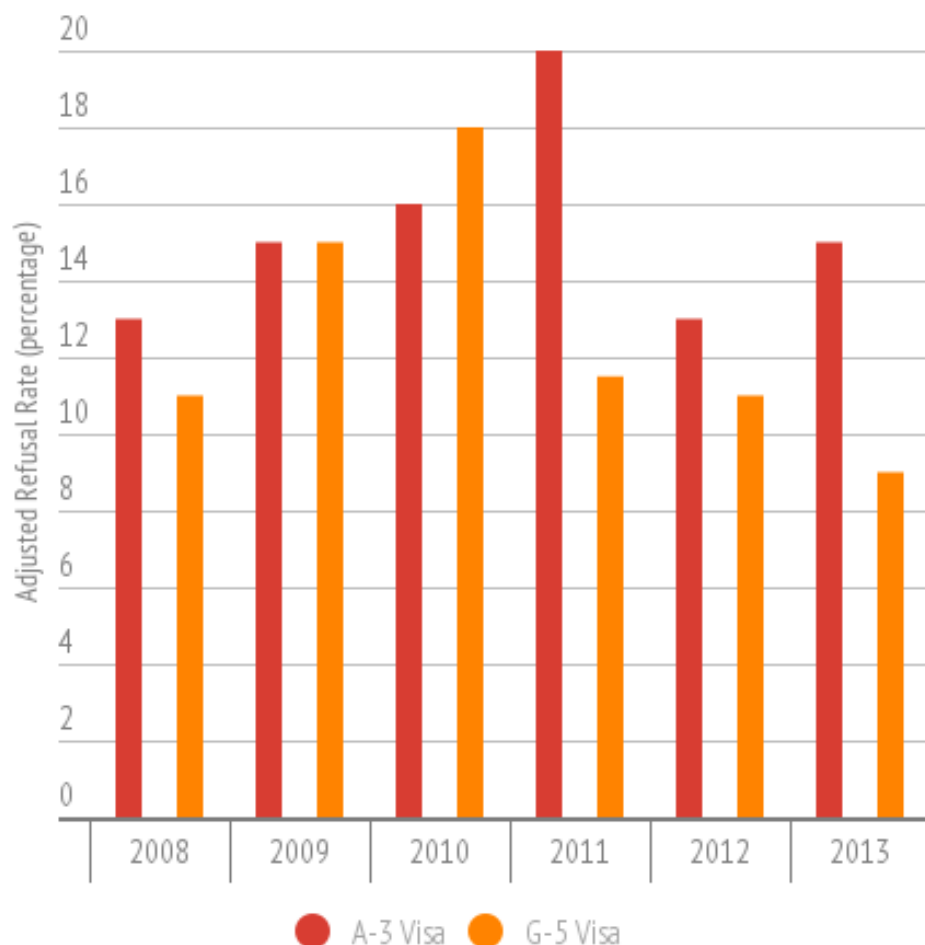
## B. STEPS FOR WORKERS

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. There are no visa fees.<sup>15</sup> 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.<sup>16</sup> At the interview, the applicant brings a printed out 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.<sup>17</sup> Consular officials must scan the employment contract into the electronic application record of the worker.<sup>18</sup>

Unlike with most other nonimmigrant work visas, A-3 and G-5 applicants do not have to show nonimmigrant intent, i.e., they do not need to show ties to a residence abroad.<sup>19</sup> The applicants do have to show that they are in fact intending to work in the U.S. as domestic workers for the specific diplomat employers, and not trying to come to the U.S. for another type of career.<sup>20</sup> 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.<sup>21</sup>

A-3 and G-5 visa applicants are subject to the normal grounds of refusal applicable to nonimmigrants in general.<sup>22</sup> The adjusted refusal rate for A-3 and G-5 visa applications was just above 10% in 2013 (with a rate of around 15% for A-3 visas and around 9% for G-5 visas) and has ranged between 11 and 20% since 2005.<sup>23</sup>

### A-3/G-5 Visas Approved by State Department with Refusal Rate



Sources: U.S. Department of State, Nonimmigrant Visa Statistics, NIV Workload by Category, 2006-2010, formerly available at [http://www.travel.state.gov/visa/statistics/nivstats/nivstats\\_4582.html](http://www.travel.state.gov/visa/statistics/nivstats/nivstats_4582.html).

U.S. Department of State, Nonimmigrant Visa Statistics, NIV Workload by Category, 2006-2013; 2014; 2015 <https://travel.state.gov/content/visas/en/law-and-policy/statistics/non-immigrant-visas.html>

Adjusted Visa Refusal Rate = (Refusal - Overcome) / ((Refusal-Overcome) + Issuances). See U.S. Department of State, Guidelines of the Visa Waiver Program, available at <http://www.travel.state.gov/pdf/refusalratelanguage.pdf> (June 2013).

#### 1. ANTI-TRAFFICKING BROCHURE AND EDUCATION

When workers apply for their visas, the consular officers should distribute an anti-trafficking brochure describing various work protections.<sup>24</sup> The information directs aggrieved workers to call 911, a toll-free hotline for victims of trafficking, or the U.S. Department of Justice. DOS must train its consular officers about the labor protections described in the brochure.<sup>25</sup>

#### 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-539](#) 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.<sup>26</sup> 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."<sup>27</sup>

### III. A-3 AND G-5 WORKERS IN THE U.S. – DATA

The exact number of A-3 and G-5 workers that are present in the United States at any given time is unknown. Both the U.S. Department of Homeland Security (DHS) and the U.S. Department of State (DOS) maintain data about them. In 2014, there were 1,846 new A-3 and G-5 visas issued.<sup>28</sup> 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 not published.

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

A-3/G-5 Numbers at a Glance

Agency	Data Collected	A-3	G-5	Date Range	Notes
U.S. Department of Labor	Nothing	-	-	-	-
U.S. State Department	Number visas actually issued to domestic workers at U.S. Consulates abroad	1135 visas granted	736 visas granted	FY 2013	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.
		1203 visas granted	643 visas granted	FY 2014	
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	1381 admissions counted	1137 admissions counted	FY 2013	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 1997-2014 NIV Detail Table, available at [http://travel.state.gov/visa/statistics/nivstats/nivstats\\_4582.html](http://travel.state.gov/visa/statistics/nivstats/nivstats_4582.html) (November 2015). U.S. Department of Homeland Security, Nonimmigrant Admissions by Class of Admission and Country of Citizenship: Fiscal Year 2013 (Supplemental Table 1), available at [www.dhs.gov/yearbook-immigration-statistics-2013-nonimmigrant-admission](http://www.dhs.gov/yearbook-immigration-statistics-2013-nonimmigrant-admission) (November 2015).



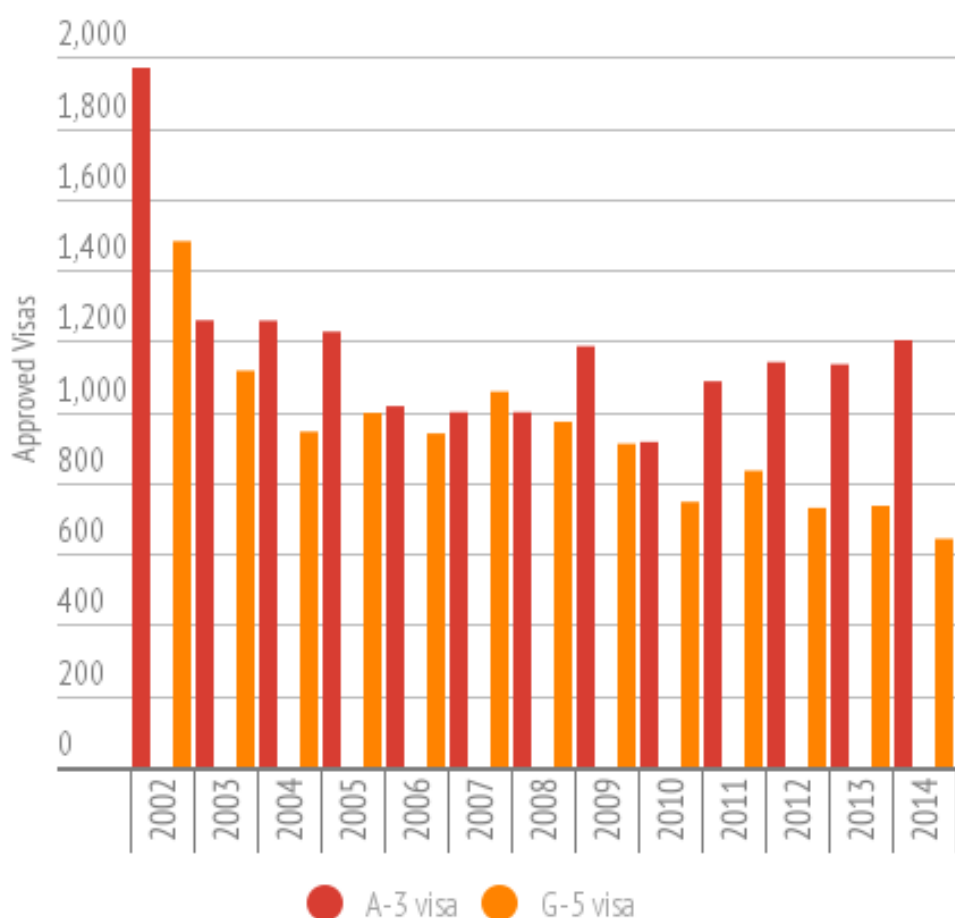
### 1. U.S. DEPARTMENT OF LABOR

The 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 2014, DOS issued 1,203 new A-3 and 643 new G-5 visas.<sup>29</sup> Since 2002, the visa numbers for both of these categories have declined.

A-3/G-5 Visas Approved by State Department



Source: U.S. Department of State, FY 1997-2014 NIV Detail Table, available at [http://travel.state.gov/visa/statistics/nivstats/nivstats\\_4582.html](http://travel.state.gov/visa/statistics/nivstats/nivstats_4582.html) (November 2015).

### 3. U.S. DEPARTMENT OF HOMELAND SECURITY

At the border or port of entry, DHS's subagency Customs and Border Protection (CBP), interviews workers who have received A-3 and G-5 visas and decides whether to grant

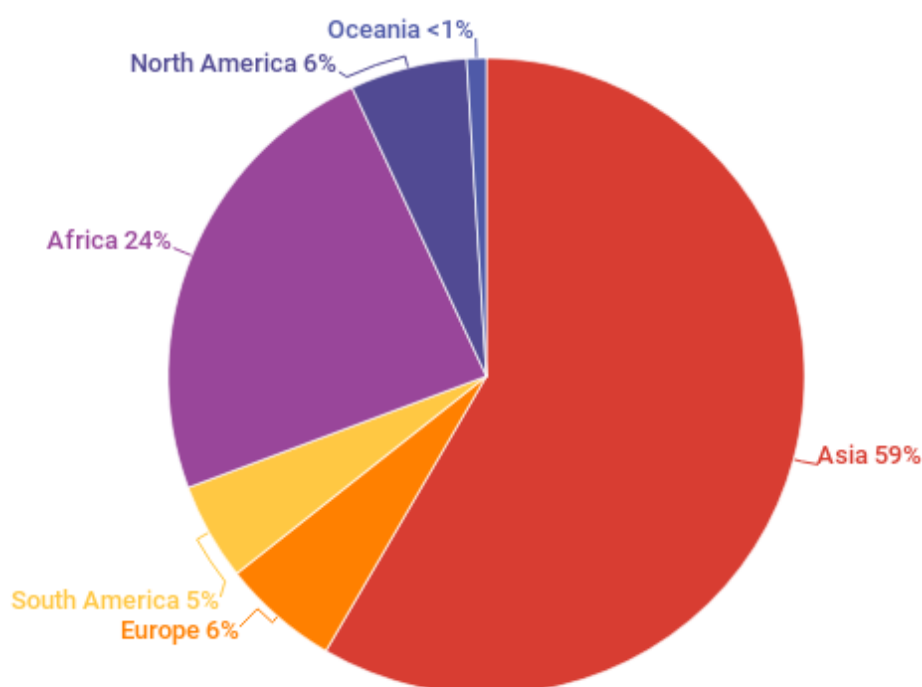
their admission. Unlike many of the other nonimmigrant work visa programs, USCIS has no role in the program. DHS annually publishes the number of admissions of nonimmigrants.<sup>30</sup> In 2013, there were 1,381 admission events for individuals with an A-3 visa and 1,137 admissions for individuals coming on a G-5 visa.<sup>31</sup> Each time a nonimmigrant worker enters the United States, the entry is counted as an admission. First and return entries are not distinguished; all are counted as separate admissions.<sup>32</sup> Departures are not always tracked.<sup>33</sup>

## B. A-3 AND G-5 WORKER DEMOGRAPHICS

### 1. NATIONAL ORIGIN

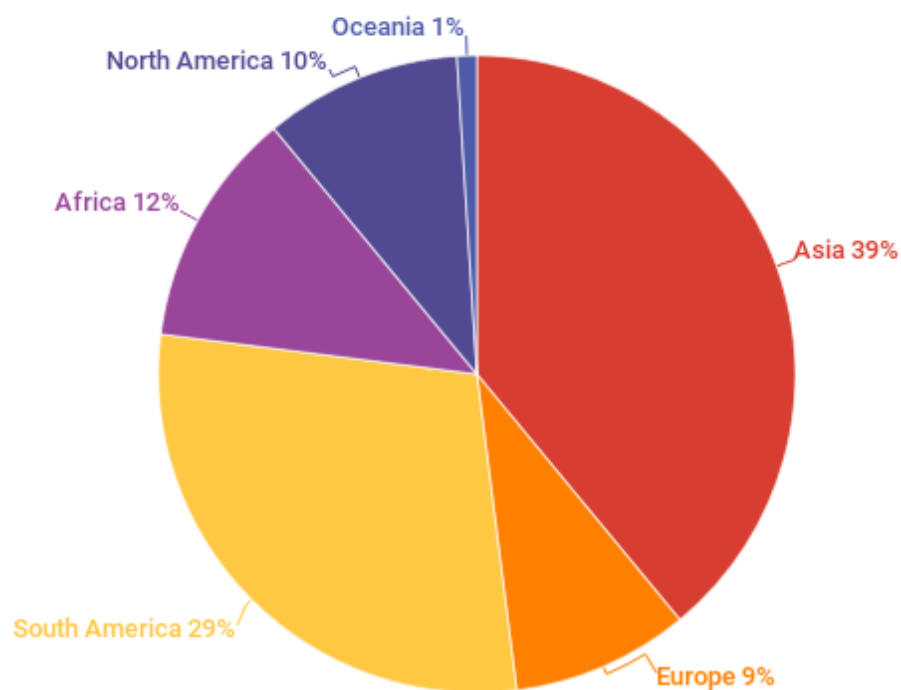
While most A-3 and G-5 workers consistently come to the U.S. from Asia and Africa, three of the top five countries for G-5 workers are from South America.

A-3 Sending Continents by Visas Issued - 2013



Source: U.S. Department of State, FY 1997-2014 NIV Detail Table, available at [http://travel.state.gov/visa/statistics/nivstats/nivstats\\_4582.html](http://travel.state.gov/visa/statistics/nivstats/nivstats_4582.html) (November 2015). Percentages are rounded to the nearest whole number.

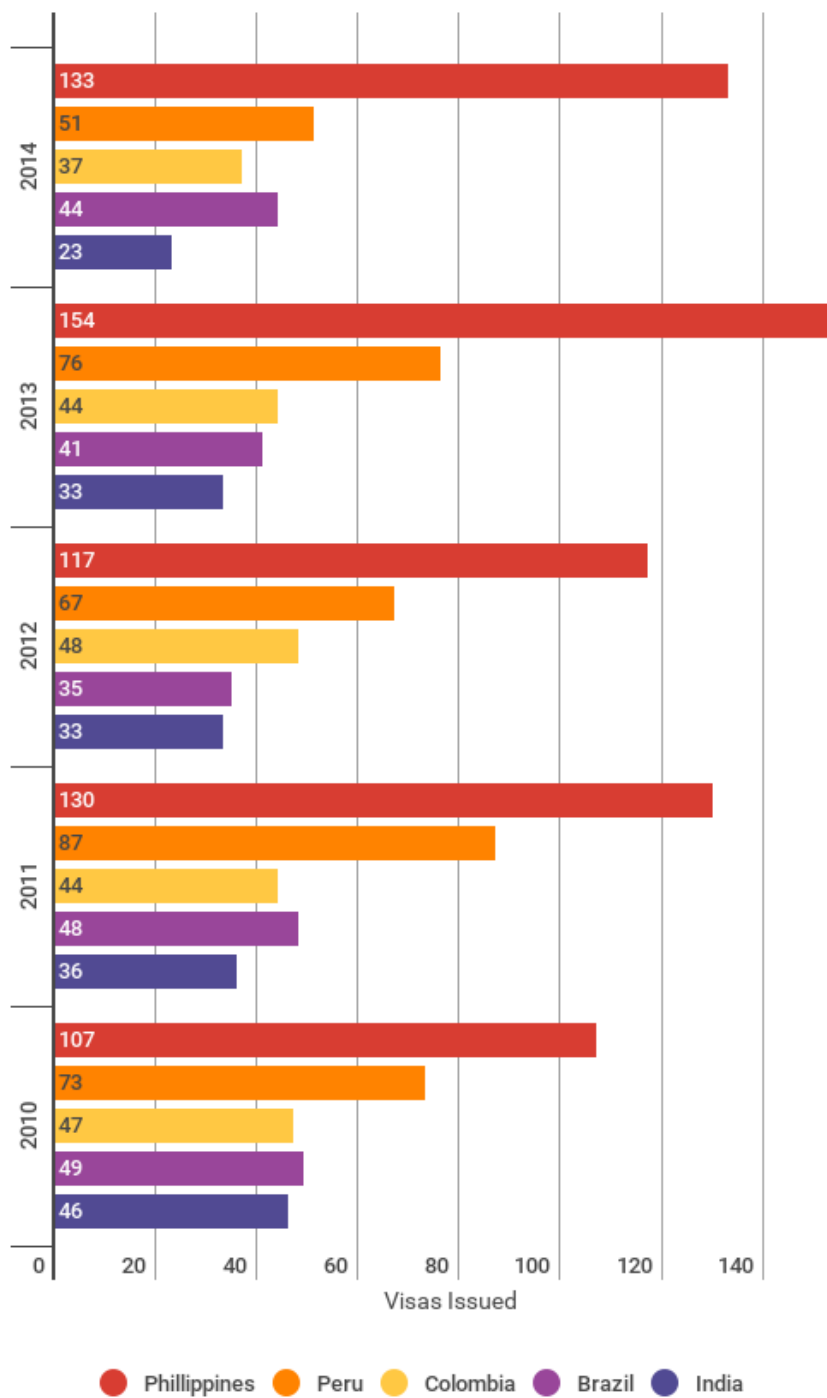
### G-5 Sending Continents by Visas Issued - 2013



Source: U.S. Department of State, FY 1997-2014 NIV Detail Table, available at [http://travel.state.gov/visa/statistics/nivstats/nivstats\\_4582.html](http://travel.state.gov/visa/statistics/nivstats/nivstats_4582.html) (November 2015). Percentages are rounded to the nearest whole number.

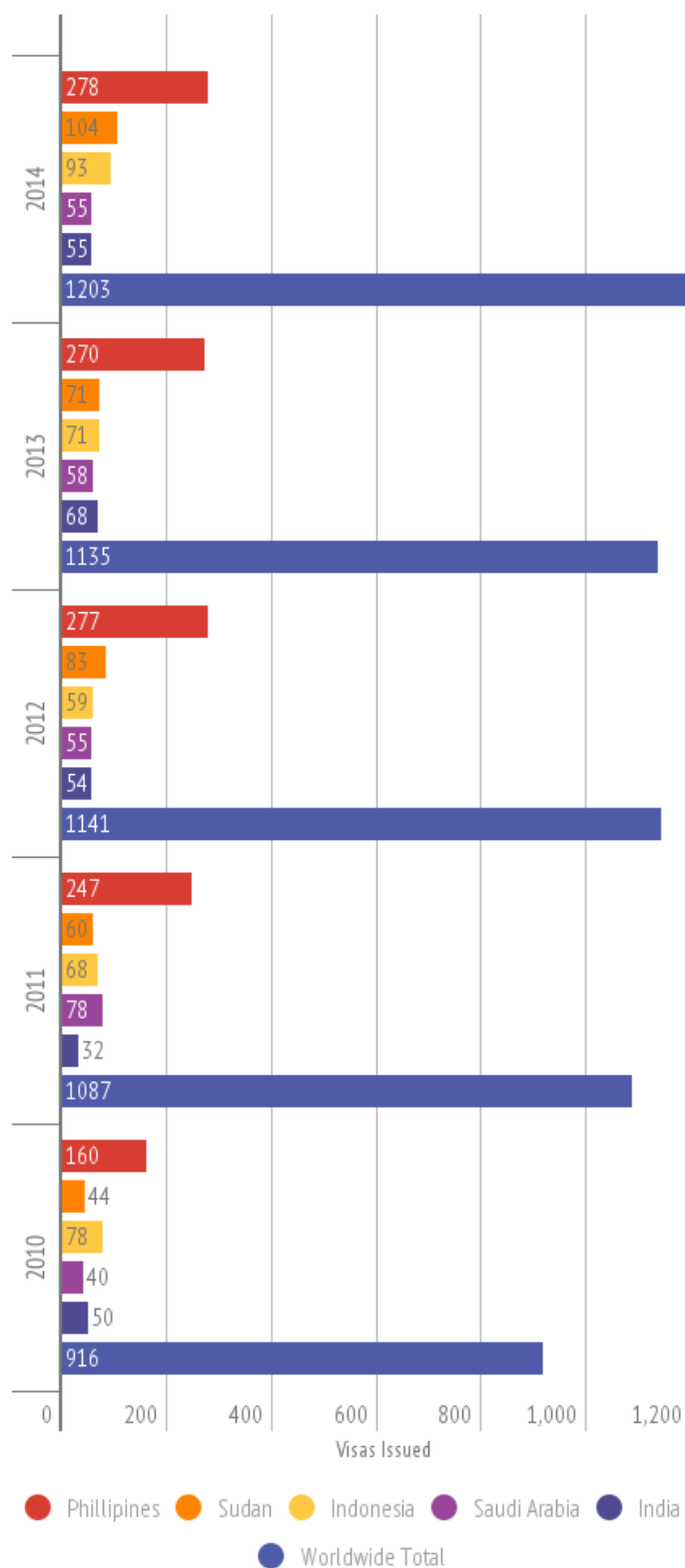
The top five sending countries for the G-5 visa have been consistent over the past seven years: Philippines, Peru, Colombia, Brazil and India. For new A-3 domestic workers, the top five sending countries have also remained the same: Philippines, Sudan, Saudi Arabia, Indonesia and India.<sup>34</sup>

Top Five Sending Countries: G-5 Visas Issued



Source: U.S. Department of State, FY 1997-2014 NIV Detail Table, available at [http://travel.state.gov/visa/statistics/nivstats/nivstats\\_4582.html](http://travel.state.gov/visa/statistics/nivstats/nivstats_4582.html) (November 2015).

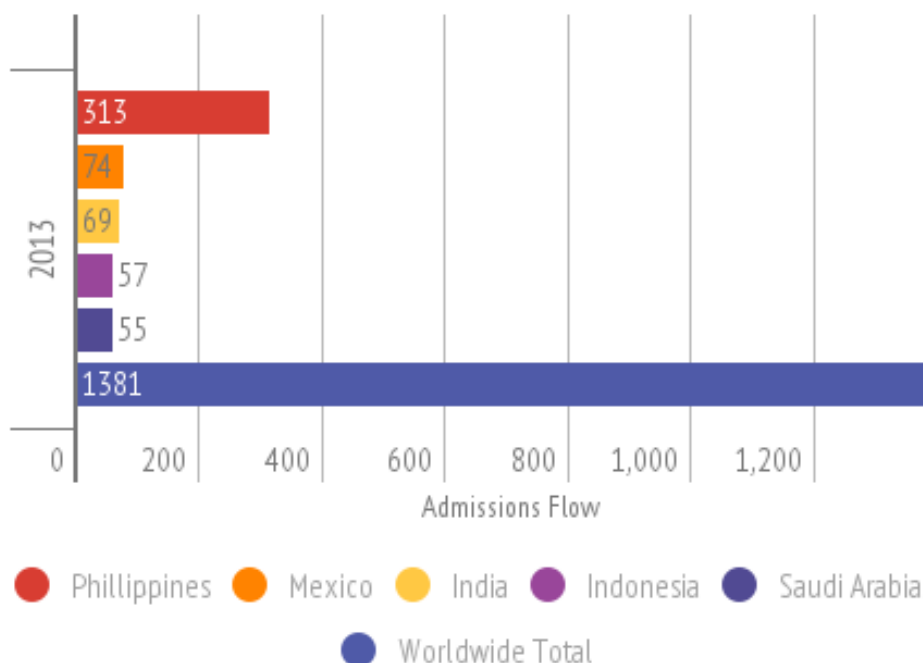
Top Five Sending Countries: A-3 Visas Issued



Source: U.S. Department of State, FY 1997-2014 NIV Detail Table, available at [http://travel.state.gov/visa/statistics/nivstats/nivstats\\_4582.html](http://travel.state.gov/visa/statistics/nivstats/nivstats_4582.html) (November 2015).

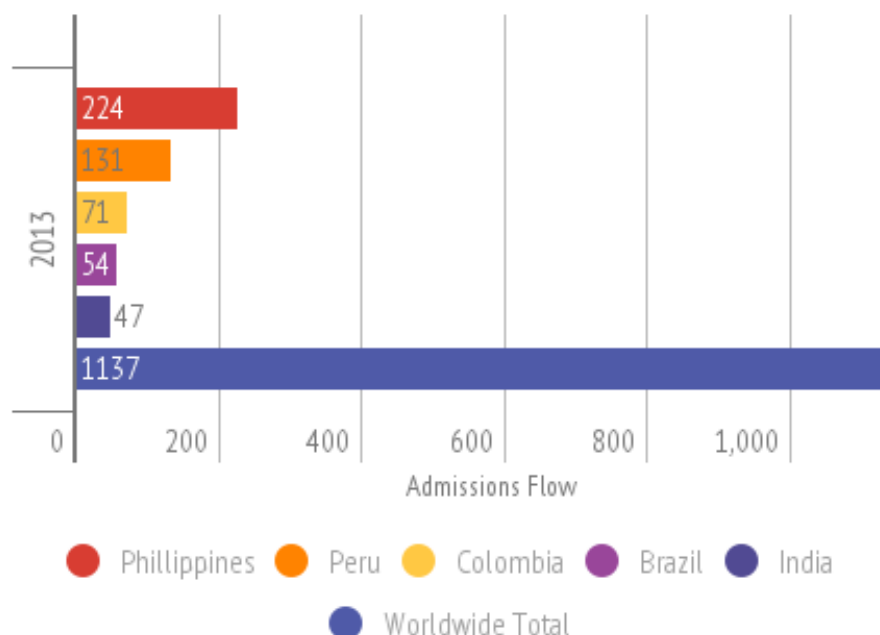
Based on admissions flow, the leading sending countries are the same for the most part.<sup>35</sup> However, A-3 workers from Mexico registered more admissions in 2013 than workers from Sudan. This is probably because A-3 workers from neighboring Mexico are more likely to return home during the year than workers from another continent.

Top Five Sending Countries: A-3 Workers Admissions Flow  
2013



Source: U.S. Department of Homeland Security, Nonimmigrant Admissions by Class of Admission and Country of Citizenship (Supplemental Table 1), available at <http://www.dhs.gov/yearbook-immigration-statistics-2012-nonimmigrant-admissions> and <http://www.dhs.gov/publication/yearbook-immigration-statistics-2013-temporary-admissions-nonimmigrants> (November 2015).

Top Five Sending Countries: G-5 Workers Admissions Flow  
2013



Source: U.S. Department of Homeland Security, Nonimmigrant Admissions by Class of Admission and Country of Citizenship (Supplemental Table 1), available at <http://www.dhs.gov/yearbook-immigration-statistics-2012-nonimmigrant-admissions> and <http://www.dhs.gov/publication/yearbook-immigration-statistics-2013-temporary-admissions-nonimmigrants> (November 2015).

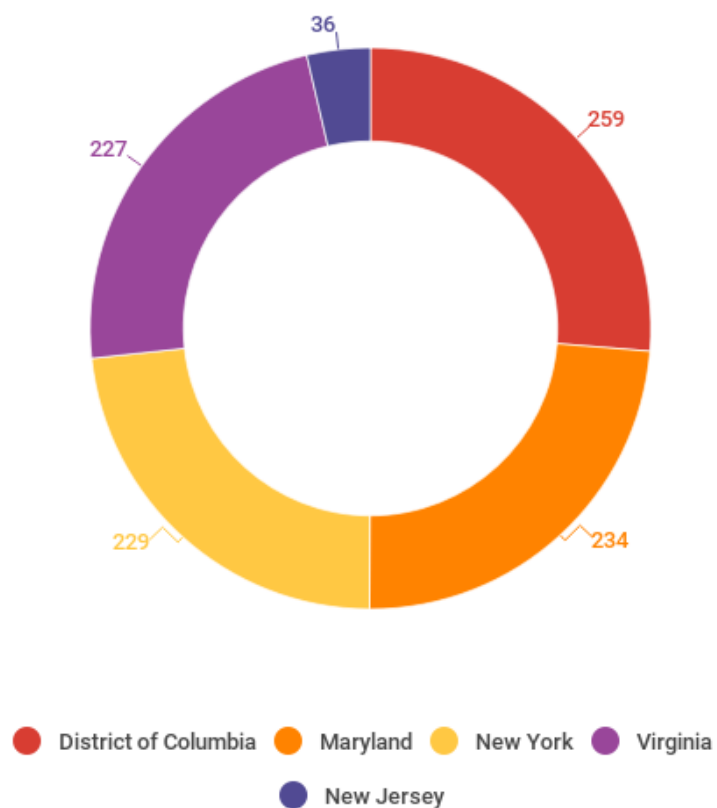
#### **DIGGING DEEPER: AGE AND GENDER DATA NOT AVAILABLE**

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.<sup>36</sup> 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 five destinations receiving the largest flow of A-3 workers are California, New York, the District of Columbia, Virginia, and Maryland. For G-5 workers, the most common destinations are DC, Maryland, New York, Virginia, and New Jersey.<sup>37</sup>

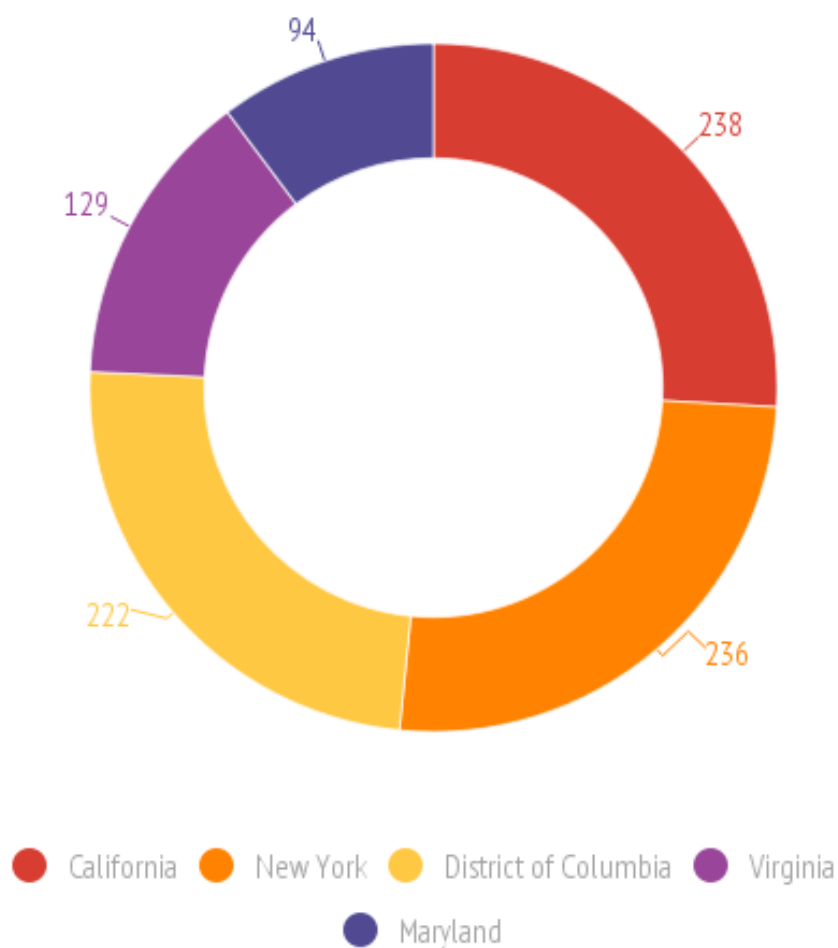
## A-3 Admissions by Top Five States - 2013



SOURCE: U.S. Department of Homeland Security, Nonimmigrant Admissions by Class of Admission and State or Territory of Destination (Supplemental Table 3), available at <http://www.dhs.gov/yearbook-immigration-statistics-2012-nonimmigrant-admissions> and <http://www.dhs.gov/publication/yearbook-immigration-statistics-2013-temporary-admissions-nonimmigrants> (November 2015).



## A-3 Admissions by Top Five States - 2013



Destination state for 174 A-3 admissions unknown.

SOURCE: Source: U.S. Department of Homeland Security, Nonimmigrant Admissions by Class of Admission and State or Territory of Destination (Supplemental Table 3), available at <http://www.dhs.gov/yearbook-immigration-statistics-2012-nonimmigrant-admissions> and <http://www.dhs.gov/publication/yearbook-immigration-statistics-2013-temporary-admissions-nonimmigrants> (November 2015).

## C. EMPLOYER DEMOGRAPHICS

Only 1 to 2% of diplomats employ A-3 or G-5 domestic workers.<sup>38</sup>

### Domestic Worker Comparison with Principal Visas

	A-3 visas	A-1 + A-2 visas	Comparison
2012	1141	10,857 + 99,573 = 110,430	1141/110,430 = 1%
2013	1135	10,574 + 95,994 = 106,568	1135/106568 = 1%
2014	1,203	10,612 + 101,436 = 112,048	1203/112048 = 1%

Source: U.S. Department of State, FY 1997-2014 NIV Detail Table, available at [http://travel.state.gov/visa/statistics/nivstats/nivstats\\_4582.html](http://travel.state.gov/visa/statistics/nivstats/nivstats_4582.html) (November 2015). Percentages have been rounded up to the nearest whole number.

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, just because the largest sending country for domestic workers is the Philippines 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 U.S. Department of State (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. A-3 and G-5 workers may be protected by federal and state wage and hour and discrimination laws. Whether specific statutes or common law rights apply to any given worker will depend on the facts of each particular situation. Furthermore, A-3 and G-5 workers have special problems enforcing their rights due to diplomatic immunity, which oftentimes shields their employers from criminal prosecution and civil process in U.S. courts.

### 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.<sup>39</sup> The contract must be written in English, and if the worker does not understand English, in a language understood by the worker.<sup>40</sup> 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.<sup>41</sup> 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.<sup>42</sup> Because of diplomatic immunity issues, whether and when an employment contract is enforceable depends on the particular situation.

#### 1. TRAVEL EXPENSES PAID BY EMPLOYER

The employer must pay the A-3 and G-5 worker's inbound travel expenses and outbound travel back to the worker's country of normal residence at the termination of the assignment.<sup>43</sup>

#### 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.<sup>44</sup> Even though employers are not required to seek a prevailing wage determination from the U.S. Department of Labor (USDOL), they do have to check the [USDOL database](#) that breaks down prevailing wage statistics by occupation and metropolitan area.<sup>45</sup>

#### 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.<sup>46</sup> Neither may employers withhold wages for meals.<sup>47</sup> Deductions from wages for any other expenses, such as the provision of medical care, medical insurance, or travel are also prohibited.<sup>48</sup>

#### 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 90 days of employment, all wage payments must be made by check or by electronic transfer to the domestic worker's bank account."<sup>49</sup> Additionally, neither the employers, nor their family members "should have access to domestic workers' bank accounts."<sup>50</sup>

### 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.”<sup>51</sup>

## B. A-3 AND G-5 WORKERS AND THE FAIR LABOR STANDARDS ACT

All domestic workers are entitled to an hourly minimum wage and protection from retaliation under the Fair Labor Standards Act (FLSA).<sup>52</sup> Many private household employers are exempt from FLSA’s overtime requirements when domestic workers live in their employer’s home.<sup>53</sup> 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.<sup>54</sup>

### 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.<sup>55</sup> The amount of sleeping time, mealtime and other periods of complete freedom from all work tasks is generally not included as time worked.<sup>56</sup> 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: 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.<sup>57</sup> Neither does OSHA.<sup>58</sup> 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,<sup>59</sup> the Americans with Disabilities Act<sup>60</sup> or the Family Medical Leave Act.<sup>61</sup> State discrimination laws, however, may provide protection for domestic workers in many instances.

#### **DIGGING DEEPER: EXTRA 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 additional requirements on their employees who employ G-5 workers. 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.<sup>62</sup> The World Bank further requires that employers provide medical insurance to G-5 workers.<sup>63</sup> 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 employers defending breach of employment contract lawsuits. G-5 workers may be able to raise internal administrative claims with the international organization, such as the IMF or World Bank itself, but those remedies do not offer any legitimate prospect of redress or effective deterrence.

## V. ENFORCEMENT

Even though the U.S. Department of State (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 ability for individual workers to sue their employers to enforce the regulations, 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 the U.S. Department of Labor in the application process, its enforcement authority with regard to A-3 and G-5 workers is almost nonexistent. 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. However, under the principles of diplomatic and consular immunity, many employers are protected from being sued or prosecuted in U.S. courts. In general, though, once the employers are no longer occupying their diplomatic posts, they are no longer immune from lawsuits brought by former A-3 and G-5 workers.<sup>64</sup>

### A. DIPLOMATIC IMMUNITY

According to the [Vienna Conventions on Diplomatic](#) and [Consular Relations](#) and U.S. law, [diplomatic and consular immunity](#) protects [certain foreign nationals](#) from being taken to court in the United States. 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 254b or 254c of this title, 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.<sup>65</sup>

This immunity exists “not to benefit individuals but to ensure the efficient performance of the functions of diplomatic missions as representing States.”<sup>66</sup> High-ranking diplomats and diplomatic-level staff of missions to international organizations have virtually complete civil and criminal immunity.<sup>67</sup> DOS’s Office of Protocol regularly [publishes a list](#) of the diplomatic staff and their family members. Consular employees, however, have a more limited immunity. They are only immune from jurisdiction for “acts performed in the exercise of consular functions.”<sup>68</sup>

When the U.S. government wants to prosecute a criminal case against a diplomat, DOS can request that the foreign government waive immunity.<sup>69</sup> 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 default judgment is entered, the employer may raise a claim of immunity at that time.

### 1. COMMERCIAL ACTIVITIES EXCEPTION 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.”<sup>70</sup> In other words, allowing cases against diplomats for commercial disputes. However, courts have held that disputes involving the employment of a domestic worker are not commercial in nature.<sup>71</sup> Instead, “[d]ay-to-day living services. . . . are incidental to daily life.”<sup>72</sup> Therefore, aggrieved A-3 and G-5 workers will not be able to get around their employer’s claim of immunity with this exception.<sup>73</sup>

### 2. CONSULAR IMMUNITY LIMITED TO OFFICIAL DUTIES

Employers who work for certain international organizations or consuls have more limited immunity than diplomats. In other words, 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.<sup>74</sup> 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.<sup>75</sup> 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.<sup>76</sup>

### 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 key question is whether there is residual diplomatic immunity.<sup>77</sup> This defense for former diplomats is limited to acts committed in the course of being “a member of the mission.”<sup>78</sup> 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.<sup>79</sup>

For example, 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.<sup>80</sup> 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.<sup>81</sup> 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 that domestic worker met the family's private needs and was not there to assist with “mission-related functions.”<sup>82</sup> 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.<sup>83</sup>

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.<sup>84</sup>

#### 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 Sangeeta Richards, her live-in domestic employee.<sup>85</sup> Ms. Khobragade allegedly reported to the U.S. government that she was paying Richards \$9.75 an hour as a housekeeper, but 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 in 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.<sup>86</sup> She was eventually released and taken back to India. A federal judge dismissed the charges against her, accepting her claim of diplomatic immunity but reserving the right of prosecutors to seek a new indictment. In March 2014, she was re-indicted by a New York grand jury, but it appears unlikely that she will ever be extradited to face the charges.<sup>87</sup> The issue of diplomatic immunity ultimately tends to prevent domestic employees of U.S. diplomats such as Sangeeta Richards from having legal recourse to defend their basic employment rights.



### **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.<sup>88</sup> However, residual immunity applies only to a person who was “a member of the mission.”<sup>89</sup> In other words, 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.’<sup>90</sup> 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.”<sup>91</sup>

### **DIGGING DEEPER: U.S. DEPARTMENT OF STATE INTERVENTION WHEN DIPLOMATIC IMMUNITY INVOKED**

Workers with A-3 and G-5 visas may report complaints to the DOS when their private claims are blocked by diplomatic immunity.<sup>92</sup> The worker must notify the agency’s Office of the Protocol in writing with “satisfactory evidence” that the diplomat owes a debt of civil liability, that the worker provided notice to the employer about the issue and there was no result, and that immunity would bar civil litigation.<sup>93</sup> If all three hurdles are met, then DOS may intervene if it so chooses.

## **B. U.S. DEPARTMENT OF STATE – SUSPENSION AUTHORITY**

The Trafficking Victims Protection Act provides DOS with the authority to suspend the issuance of A-3 or G-5 visas for any country upon finding “credible evidence” that at least one employer has “abused or exploited” a worker and that the diplomatic mission or international organization “tolerated” such conduct.<sup>94</sup> The duration of the suspension is such period “as the Secretary determines necessary.”<sup>95</sup> 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.<sup>96</sup> However, even though there have been documented cases of abuse involving diplomats from Kuwait and Tanzania, for example, the Department of State has yet to issue a suspension order.<sup>97</sup>

### **DIGGING DEEPER: U.S. DEPARTMENT OF STATE’S LAX OVERSIGHT**

Some claim that DOS has been unresponsive to complaints of abuse and requests for remedial help on behalf of A-3 and G-5 workers.<sup>98</sup> In the 2010 Trafficking in Persons report, DOS claimed it “worked with civil society to establish an intake mechanism for such cases to be reported.”<sup>99</sup> However, in 2011, the agency informed Congress that it did not plan to implement any enforcement procedures to investigate or remedy domestic workers who claim their rights have been violated.<sup>100</sup>

## **C. U.S. DEPARTMENT OF JUSTICE**

The U.S. Department of Justice (DOJ) has encountered significant obstacles to investigating and prosecuting diplomats with immunity. Between 2005 and 2008, DOJ conducted 19 trafficking investigations on behalf of domestic workers, but they did not result in any indictments against a foreign diplomat.<sup>101</sup> Subsequently, only one report has surfaced of DOJ prosecuting a criminal case against a Tanzanian World Bank economist who had partial immunity against claims brought by her G-5 visa housekeeper.<sup>102</sup>



## D. U.S. DEPARTMENT OF HOMELAND SECURITY

The U.S. Department of Homeland Security's (DHS) enforcement role is not directed towards A-3/G-5 worker cases in particular. However, DHS does focus some attention 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](#). 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 it appears this rarely happens. If a worker did file such a complaint against a diplomat, the odds are that USDOL would not be able 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, the U.S. Government Accountability Office found that when asked, USDOL could only identify one investigation of an alleged violation.<sup>103</sup>

## E. PRIVATE LITIGATION

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. workers. 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.<sup>104</sup> The Trafficking Victims Protection Act allows workers to sue their "traffickers" in federal court to recover damages and fees.<sup>105</sup> However, because diplomatic immunity shields most A-3 and G-5 employers from prosecution or civil action, the chances of practical success while the employer is in the United States are limited. The problem of diplomatic immunity compounds the standard access to counsel issues faced by most nonimmigrant workers. However, 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.

### 1. ACCESS TO COUNSEL

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 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.

### 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.<sup>106</sup> 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.<sup>107</sup>

## 2. DEFERRED ACTION WHEN ENFORCING CIVIL RIGHTS

A-3 and G-5 workers who file a civil claim against their employer concerning the terms and conditions of their employment can now 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.”<sup>108</sup> This right to deferred action and employment authorization for aggrieved A-3 and G-5 workers was created by the 2008 reauthorization of the Trafficking Victims Protection Act.<sup>109</sup> However, the right does not just apply when trafficking is alleged. Rather, it applies in any civil case the worker brings against his or her employer alleging violations of employment terms.<sup>110</sup> If the A-3 or G-5 worker does not pursue claims against their former employer, the government may terminate his or her lawful immigration status.<sup>111</sup>

### 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.<sup>112</sup> This means that an aggrieved A-3 or G-5 worker may stay in the United States 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 United States after their employment ends.

## VI. A-3 AND G-5 WORKERS – ISSUES

As the U.S. Department of State (DOS) has noted, U.S. law has often viewed domestic work “as something other than regular employment.”<sup>113</sup> Many domestic workers legitimately fear retaliation if they complain about working conditions and there are few effective legal options to hold foreign diplomats accountable. A-3 and G-5 workers cannot raise many of the traditional federal remedies open to other low-wage workers in the U.S. due in part to diplomatic immunity and various exemptions in federal employment and civil rights law.

### 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. In 1996, DOS announced concern about continuing problems with diplomat employers who underpay wages, confiscate passports, and even imprison workers.<sup>114</sup> Since then, numerous independent investigations have uncovered cases where A-3 and G-5 workers suffer unpaid wages, intimidation, retaliation, sexual harassment, and even violence.<sup>115</sup> 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.<sup>116</sup>

The [U.S. Government Accountability Office](#) 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.”<sup>117</sup> Indeed, [exploited domestic workers](#) often fear reporting their diplomat and international employers to the authorities.<sup>118</sup>

### 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. Indeed, there have been several trafficking cases brought in federal court.<sup>119</sup> For example, one worker received a million dollar default judgment in a case brought against her Tanzanian diplomat–employer for subjecting her to involuntary servitude and forced labor.<sup>120</sup> 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.<sup>121</sup> 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.<sup>122</sup> 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 threatened when she asked about her wages.<sup>123</sup>

### DIGGING DEEPER: CRITICISM OF ENFORCEMENT SCHEME WITH REGARD TO TRAFFICKING

While initiatives enacted in 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.<sup>124</sup> A specific concern is DOS’s focus on preventing future problems rather than providing relief for trafficking victims.<sup>125</sup> 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.<sup>126</sup> 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.”<sup>127</sup>

Likewise, DOS has been reluctant to 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.<sup>128</sup> 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.”<sup>129</sup>

Another critique is that DOS does not use its power to publically “name, shame and deter” diplomat employers known to have trafficked their domestic workers.<sup>130</sup> For example, the agency has the power to request that a country waive the offending diplomat’s immunity and if it declines, DOS may mark the offending diplomat as a ***persona non grata***.<sup>131</sup> Furthermore, the agency could request that the other country prosecute the diplomat under its own laws or compensate the domestic worker directly.<sup>132</sup> However, despite doing so in other contexts, DOS has rarely if ever “declared a diplomat–trafficker ***persona non grata*** or requested that the sending State waive immunity or provide an ***ex gratia*** payment to a victim.”<sup>133</sup>

### 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 and technical employees	Immunity only extends to acts performed in the exercise of official duties	Yes
G diplomats and 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 and staff	Immunity only extends to acts performed in the exercise of consular functions	Immunity only protects official acts
Visa Category	Immunity from civil jurisdiction	Immunity from criminal prosecution
A diplomats	Yes	Yes
A administrative and technical employees	Immunity only extends to acts performed in the exercise of official duties	Yes
G diplomats and senior officers	Yes	Yes

Source: 2 FAM 230, Immunities and Liabilities of Foreign Representatives and Officials of International Organizations in the United States, Dec. 14, 2006, available at <http://www.state.gov/documents/organization/84395.pdf> (defining different levels of immunity for different foreign nationals working in the U.S. and possible exceptions to immunity, for instance, in emergency situations).

## C. DISPLACEMENT OF U.S. WORKERS

The regulations do not set up any system to evaluate whether A-3 and G-5 workers will displace U.S. workers.<sup>134</sup> 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

- <sup>1</sup> 8 U.S.C. § 1101(a)(15)(A)(iii).
- <sup>2</sup> 8 U.S.C. § 1101(a)(15)(G)(v).
- <sup>3</sup> 8 C.F.R. § 214.2(a)(1), (g)(1); 9 FAM 41.112 Exhibit I.
- <sup>4</sup> 9 FAM 41.112 N2.6.
- <sup>5</sup> 8 C.F.R. § 214.2(a)(1), (g)(1); FAM (a) and (b).
- <sup>6</sup> The extensive DOS guidelines for A-3 and G-5 domestic workers are found in 9 FAM 41.21 N6.
- <sup>7</sup> 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.
- <sup>8</sup> A. Sukthankar, Global Workers Justice Alliance, Visas, Inc.: Corporate Control and Policy Incoherence in the U.S. Temporary Foreign Labor System, p. 21 (2012).
- <sup>9</sup> U.S. Department of State, *Visas for Diplomats and Foreign Government Officials*, available at [http://travel.state.gov/visa/temp/types/types\\_2637.html](http://travel.state.gov/visa/temp/types/types_2637.html), and *Visas for Employees of International Organizations and NATO*, available at [http://travel.state.gov/visa/temp/types/types\\_2638.html](http://travel.state.gov/visa/temp/types/types_2638.html) (last visited October 2013).
- <sup>10</sup> 9 FAM 41.21 N6.4b(6).
- <sup>11</sup> 9 FAM 41.21 N6.1.
- <sup>12</sup> 9 FAM 41.21 N6.4e (pertains to A-3 employers and G-5 employers who have a G-4 visa).
- <sup>13</sup> 22 C.F.R. § 41.21(a)(4); 9 FAM 41.21(4).
- <sup>14</sup> 22 C.F.R. § 41.21(a)(2); 9 FAM 41.21(2).
- <sup>15</sup> U.S. Department of State, *Visas for Diplomats and Foreign Government Officials*, available at [http://travel.state.gov/visa/temp/types/types\\_2637.html](http://travel.state.gov/visa/temp/types/types_2637.html) (November 2015). Individuals who establish entitlement to an official visa classification (such as A and G) are exempt from paying visa fees.
- <sup>16</sup> 9 FAM 41.21 N6.2b; 9 FAM 41.21N6.8-2b. 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 41.21 N3.
- <sup>17</sup> Id. ("You may not issue or renew an A-e, G-5, or NATO-7 visa unless the visa applicant has executed a contract with the employer or prospective employer containing detailed provisions.").
- <sup>18</sup> 9 FAM 41.21 N6.4a.
- <sup>19</sup> 9 FAM 41.21 N6.2d; see also 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).
- <sup>20</sup> 9 FAM 41.21 N6.2a ("However, if a consular officer believes that an applicant is presented as a domestic employee for someone in A-1 or A-2 status, but will actually work as a computer consultant for a private company, then the A-3 visa should be denied.").
- <sup>21</sup> 9 FAM 41.21 N6.3a.
- <sup>22</sup> 9 FAM 41.21 N6.3b.
- <sup>23</sup> U.S. Department of State, Nonimmigrant Visa Statistics, *NIV Workload by Category, 2006-2015*, available at [http://www.travel.state.gov/visa/statistics/nivstats/nivstats\\_4582.html](http://www.travel.state.gov/visa/statistics/nivstats/nivstats_4582.html) (November 2015). Adjusted Visa Refusal Rate = (Refusal – Overcome) / ((Refusal-Overcome) + Issuances).
- <sup>24</sup> 9 FAM 41.21 N6.2c; see 9 FAM 41.21 N6.8 for further information about this pamphlet and education required.
- <sup>25</sup> 8 U.S.C. § 1375c(b)(3); 9 FAM 41.21 N6.8-2.
- <sup>26</sup> U.S. Department of Homeland Security, USCIS, Form I-539 Instructions, available at <http://www.uscis.gov/sites/default/files/files/form/i-539instr.pdf>.
- <sup>27</sup> 9 FAM 41.21 N6.8-2b Note.
- <sup>28</sup> U.S. Department of State, *FY 1997-2014 NIV Detail Table*, available at [http://travel.state.gov/visa/statistics/nivstats/nivstats\\_4582.html](http://travel.state.gov/visa/statistics/nivstats/nivstats_4582.html) (November 2015).
- <sup>29</sup> Id.
- <sup>30</sup> U.S. Department of Homeland Security, *Table 25, Nonimmigrant Admissions by Class of Admission: FY 2004 to 2013*, available at <http://www.dhs.gov/yearbook-immigration-statistics-2013-nonimmigrant-admissions> (November 2015).
- <sup>31</sup> Id.
- <sup>32</sup> Telephone and email correspondence with Office of Immigration Statistics employees, U.S. Department of Homeland Security (2011, 2013).
- <sup>33</sup> Ted 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...>.
- <sup>34</sup> U.S. Department of State, *FY 1997-2014 NIV Detail Table*, available at [http://travel.state.gov/visa/statistics/nivstats/nivstats\\_4582.html](http://travel.state.gov/visa/statistics/nivstats/nivstats_4582.html) (November 2015).
- <sup>35</sup> U.S. Department of Homeland Security, *Nonimmigrant Admissions by Class of Admission and Country of Citizenship: Fiscal Year 2013 (Supplemental Table 1)*, available at <http://www.dhs.gov/yearbook-immigration-statistics-2013-nonimmigrant-admissions> (November 2015).



<sup>36</sup> U.S. Department of Homeland Security, *Nonimmigrant Admissions by Class of Admission and State or Territory of Destination* (Supplemental Table 3), available at <http://www.dhs.gov/publication/yearbook-immigration-statistics-2013-temporary-admissions-nonimmigrants> (November 2015).

<sup>37</sup> *Id.*

<sup>38</sup> U.S. Department of State, *FY 1997-2014 NIV Detail Table*, available at [http://travel.state.gov/visa/statistics/nivstats/nivstats\\_4582.html](http://travel.state.gov/visa/statistics/nivstats/nivstats_4582.html) (November 2015).

<sup>39</sup> 8 U.S.C. § 1375c(b); 9 FAM 41.21 N6.4.

<sup>40</sup> 9 FAM 41.21 N6.4a.

<sup>41</sup> 9 FAM 41.21 N6.4b.

<sup>42</sup> 8 U.S.C. § 1375c(b)(2)(A); 9 FAM 41.21 N

<sup>43</sup> 9 FAM 41.21 N6.4b(6).

<sup>44</sup> 9 FAM 41.21 N6.4b(3).

<sup>45</sup> *Id.* ("Information on the prevailing wage statistics by occupation and metropolitan area is available on the Department of Labor's Online Wage Library & Data Center website.").

<sup>46</sup> 9 FAM 41.21 N6.3a(3).

<sup>47</sup> *Id.*

<sup>48</sup> *Id.* See also 9 FAM 41.21 N6.3(a)(3) ("Although the employer is not required to pay for medical insurance, the employer is responsible for ensuring that the employee does not become a public charge while in his or her employ.").

<sup>49</sup> 9 FAM 41.21 N6.4b(5).

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> 29 C.F.R. § 552.102(a); see also 29 U.S.C. § 215(a)(3)(protection from retaliation); see also U.S. Department of Labor, WHD, *Fact Sheet #79: Private Homes and Domestic Service Employment Under the Fair Labor Standards Act (FLSA)* (Sept. 2013), available at <http://www.dol.gov/whd/regs/compliance/whdfs79.pdf>.

<sup>53</sup> *Id.*; 29 U.S.C. § 213(b)(21); see U.S. Department of Labor, WHD, *Fact Sheet #79B: Live-in Domestic Service Workers Under the Fair Labor Standards Act (FLSA)* (Sept. 2013), available at <http://www.dol.gov/whd/regs/compliance/whdfs79b.pdf>.

<sup>54</sup> See 78 Fed. Reg. 60453 (Oct. 1, 2013); see U.S. Department of Labor, WHD, *Fact Sheet #79E: Joint Employment in Domestic Service Employment Under the Fair Labor Standards Act (FLSA)* (June 2014), available at <http://www.dol.gov/whd/regs/compliance/whdfs79e.htm>.

<sup>55</sup> 29 C.F.R. § 552.110(b); see 78 Fed. Reg. 60453 (Oct. 1, 2013). see U.S. Department of Labor, WHD, *Fact Sheet #79C: Recordkeeping Requirements for Individuals, Families, or Households Who Employ Domestic Service Workers Under the Fair Labor Standards Act (FLSA)* (Sept. 2013), available at <http://www.dol.gov/whd/regs/compliance/whdfs79c.htm>.

<sup>56</sup> 29 C.F.R. § 785.23. U.S. Department of Labor, WHD, *Fact Sheet #21: Recordkeeping Requirements under the Fair Labor Standards Act (FLSA)* (July 2008), available at <http://www.dol.gov/whd/regs/compliance/whdfs21.htm>.

<sup>57</sup> 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.").

<sup>58</sup> 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").

<sup>59</sup> 42 U.S.C. § 2000e(b).

<sup>60</sup> 42 U.S.C. § 12111 sec. 5(A).

<sup>61</sup> 29 C.F.R. § 552.109(a).

<sup>62</sup> The World Bank, *World Bank Group Code of Conduct Regarding Employment of G5 Domestic Employees* (2009), available at [http://irispublic.worldbank.org/85257559006C22E9/DOC\\_VIEWER?ReadForm&I4\\_...](http://irispublic.worldbank.org/85257559006C22E9/DOC_VIEWER?ReadForm&I4_...) and International Monetary Fund, *Conduct of Staff Members: Treatment of G5 Domestic Employees*, Order No. 33, Annex V (Oct. 15, 2009), available at <http://www.imf.org/external/hrd/pdf/2011/gao33.pdf>.

<sup>63</sup> *Id.*

<sup>64</sup> M. Vandenberg and A. Levy, *Human Trafficking and Diplomatic Immunity: Impunity No More*, 7 INTERCULTURAL HUM. RTS. L. REV. 77, 79-81 (2012) ("It is now possible to hold diplomats accountable. It only takes competent counsel and a significant amount of time.").

<sup>65</sup> 22 U.S.C. § 254d.

<sup>66</sup> Vienna Convention pmbl. cl. 4; see also 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.").

<sup>67</sup> Vienna Convention on Diplomatic Relations, Art. 31(1), Apr. 18, 1961, 23 U.S.T. 3227; International Organizations Immunities Act, 22 U.S.C. § 2881.

<sup>68</sup> Vienna Convention on Consular Relations, Art. 43(1), Apr. 24, 1963, 21 U.S.T. 77.

<sup>69</sup> 2 FAM 232.5.

<sup>70</sup> Vienna Convention on Diplomatic Relations, Art. 31(1)(c).

<sup>71</sup> See, e.g., *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).

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> 2 FAM 232.2 and 232.3(b), Immunities and Liabilities of Foreign Representatives and Officials of International Organizations in the United States, (Dec. 14, 2006) available at <http://www.state.gov/documents/organization/84395.pdf>.

<sup>75</sup> *Park v. Shin*, 313 F.3d 1138 (9th Cir. 2002).

<sup>76</sup> *Id.* at 1143.

<sup>77</sup> M. Vandenberg and A. Levy, *Human Trafficking and Diplomatic Immunity: Impunity No More*, 7 INTERCULTURAL HUM. RTS. L. REV. 77, 79-81, 90-91 (2012).

<sup>78</sup> Vienna Convention on Diplomatic Relations, Art. 39(2).

<sup>79</sup> *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).

<sup>80</sup> *Swarna v. Al-Awadi* 622 F.3d 123 (2d Cir. 2010).

<sup>81</sup> *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.”)

<sup>82</sup> *Id.* at 135-38.

<sup>83</sup> *Id.* at 138.

<sup>84</sup> See also *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).

<sup>85</sup> 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/>

<sup>86</sup> U.S. Department of Justice, *Statement of Manhattan U.S. Attorney Preet Bharara on U.S. v. Devyani Khobragade* (Dec. 18, 2013), available at <http://www.justice.gov/usao/nys/pressreleases/December13/KhobragadeStatement.php>

<sup>87</sup> Washington Post, *New indictment filed against Indian diplomat Devyani Khobragade in U.S. visa-fraud case* (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](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); A. Southall, *Diplomat From India Is Indicted Again Over Housekeeper*, New York Times (March 15, 2014) available at <http://www.nytimes.com/2014/03/15/world/asia/diplomat-from-india-is-indicted-again-over-housekeeper.html>.

<sup>88</sup> 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.”).

<sup>89</sup> Vienna Convention on Diplomatic Relations Art. 39(2).

<sup>90</sup> *Id.* (specifically limiting residual immunity to “member[s] of the mission.”).

<sup>91</sup> *Swarna*, 622 F.3d at 134.

<sup>92</sup> 2 FAM 234.2(b).

<sup>93</sup> *Id.* There is no mention of when the worker must give notice or what form the notice must take.

<sup>94</sup> 8 U.S.C. § 1375c(a)(2); 9 FAM 41.21 N6.9a.

<sup>95</sup> *Id.*

<sup>96</sup> 8 U.S.C. § 1375c(a)(3).

<sup>97</sup> U.S. Department of State, *Trafficking in Persons Report 2010*, at 343, available at <http://www.state.gov/documents/organization/142984.pdf>.

<sup>98</sup> American Civil Liberties Union, *Letter to Secretary of State Clinton*, at 4, (March 20, 2009), available at [http://www.aclu.org/images/asset\\_upload\\_file64\\_40038.pdf](http://www.aclu.org/images/asset_upload_file64_40038.pdf).

<sup>99</sup> U.S. Department of State, *2010 Trafficking in Persons Report, Country Narratives: United States*, available at <http://www.state.gov/tip/rls/tiprpt/2010/142761.htm>.

<sup>100</sup> J. Chuang, *Achieving Accountability for Migrant Domestic Worker Abuse*, 88 NORTH CAROLINA LAW REV. 1627, at 1652 (2010), citing to U.S. Department of State, Report to Congress Regarding the “William Wilberforce Trafficking Victims Protection Act of 2008,” at 4 (2009). See 8 U.S.C. 1375c(d)(2).

<sup>101</sup> GAO-08-892 at 12.

<sup>102</sup> B. Grow, *Strauss-Kahn case raises issue of abuse by diplomats in the U.S.*, Reuters (May 19, 2011), available at <http://www.reuters.com/article/2011/05/18/us-strausskahn-diplomats-idUST...>



<sup>103</sup> U.S. Government Accountability Office, *U.S. Government's Efforts To Address Alleged Abuse Of Household Workers By Foreign Diplomats with Immunity Could Be Strengthened*, GAO-08-892, at 16, (July 29, 2008), available at <http://www.gao.gov/new.items/d08892.pdf>.

<sup>104</sup> See, e.g., New York Department of Labor, Domestic Workers' Bill of Rights, available at <http://www.labor.ny.gov/sites/legal/laws/domestic-workers-bill-of-rights...> (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).

<sup>105</sup> 18 U.S.C. §§ 1595, 1589.

<sup>106</sup> 45 C.F.R. Part 1611 (Financial Eligibility) and Part 1626 (Restrictions on Legal Assistance to Aliens).

<sup>107</sup> 45 C.F.R. § 1626.2 et seq (2014); Legal Services Corporation, *Program Letter 14-3* (Oct. 29, 2014) and *Program Letter 05-2* (Oct. 6, 2005).

<sup>108</sup> 8 U.S.C. § 1375c(c)(1), (2).

<sup>109</sup> M. Vandenberg and A. Levy, *Human Trafficking and Diplomatic Immunity: Impunity No More*, 7 INTERCULTURAL HUM. RTS. L. REV. 77, 96-97 (2012).

<sup>110</sup> 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").

<sup>111</sup> 8 U.S.C. § 1375c(c)(1)(C).

<sup>112</sup> 8 U.S.C. § 1375c(c)(1), (2).

<sup>113</sup> U.S. Department of State, *2010 Trafficking in Persons Report*, p.32.

<sup>114</sup> U.S. Department of State, *Circular Diplomatic Note*, at 5 (May 20, 1996), available at

<http://www.state.gov/documents/organization/32298.pdf>.

<sup>115</sup> See, e.g., B. Grow, *Strauss-Kahn case raises issue of abuse by diplomats in the U.S.*, Reuters (May 19, 2011) available at <http://www.reuters.com/article/2011/05/18/us-strausskahn-diplomats-idUST...> (examining several of the 11 civil cases and one criminal case concerning abuse of domestic workers brought against foreign diplomats from 2005 to 2010); Washington Post, *Diplomatic Immunity at Issue in Domestic-Worker Abuse Cases* (Sept. 20, 2009) available at <http://www.washingtonpost.com/wp-dyn/content/article/2009/09/19/AR200909...> E. Keyes, *Casa of Maryland and the Battle Regarding Human Trafficking and Domestic Workers' Rights*, 7 U. MD. L.J. RACE, RELIGION, GENDER & CLASS 14, (May 14, 2008) available at <http://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?article=1025...> A. Bernhardt, S. McGrath, & J. DeFilippis, *Unregulated Work in the Global City: Employment and Labor Law Violations in New York City* (2007), available at [http://www.brennancenter.org/dynamic/subpages/download\\_file\\_49436.pdf](http://www.brennancenter.org/dynamic/subpages/download_file_49436.pdf); Montgomery County Council, *Working Conditions of Domestic Workers in Montgomery County, Maryland* (2006) available at [http://www.montgomerycountymd.gov/content/council/pdf/REPORTS/domestic\\_w...](http://www.montgomerycountymd.gov/content/council/pdf/REPORTS/domestic_w...) (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*, at 21, (July 14, 2006) available at <http://www.domesticworkersunited.org/media/files/266/homeiswheretheworki...> (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).

<sup>116</sup> 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/>.

<sup>117</sup> U.S. Government Accountability Office, *U.S. Government's Efforts To Address Alleged Abuse Of Household Workers By Foreign Diplomats with Immunity Could Be Strengthened*, GAO-08-892, at 17 (July 29, 2008) available at <http://www.gao.gov/new.items/d08892.pdf>

<sup>118</sup> *Oppressed Nannies: Department of State Orders Embassies to Clean up Their Act*, The Washington Diplomat (2010) (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").

<sup>119</sup> See, e.g., *Kiwanuka v. Bakilana*, 833 F. Supp. 107 (D.D.C. 2012) (Tanzanian G-5 worker sued World Bank employer).

<sup>120</sup> *Mazengo v. Mzengi*, 542 F. Supp. 2d 96, 97–98, 100 (D.D.C. 2008).

<sup>121</sup> American Civil Liberties Union, *Domestic Workers Who Accused Diplomats of Human Trafficking Settle With Kuwaiti Government*, Press Release (February 15, 2012), available at <https://www.aclu.org/womens-rights/domestic-workers-who-accused-diplomat...>

<sup>122</sup> *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/files/images/humanrights/asset\\_upload\\_file802\\_28028...](https://www.aclu.org/files/images/humanrights/asset_upload_file802_28028...)

<sup>123</sup> *Carazani v. Zegarra*, Complaint (<http://www.npr.org/templates/story/story.php?storyId=7626754>), Case No. 1:12-cv-00107-CKK (D.D.C. filed Jan. 23, 2012).

---

<sup>124</sup> J. Chuang, *Achieving Accountability for Migrant Domestic Worker Abuse*, 88 NORTH CAROLINA LAW REV. 1627, at 1649 (2010).

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

<sup>127</sup> *Id.* at 1650 (emphasis in original).

<sup>128</sup> *Id.* at 1651.

<sup>129</sup> *Id.* at 1652, citing to U.S. Department of State, Report to Congress Regarding the “William Wilberforce Trafficking Victims Protection Act of 2008,” at 4 (2009). See 8 U.S.C. 1375c(d)(2).

<sup>130</sup> *Id.* at 1653.

<sup>131</sup> *Id.*

<sup>132</sup> *Id.*

<sup>133</sup> *Id.*

<sup>134</sup> 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.