

DIPLMATIC IMMUNITY



Recently there have been many cases around the world of diplomats and their staff engaging in trafficking and abuse of domestic workers. However, due to the concept of diplomatic immunity they have been able to escape prosecution. “diplomatic immunity” protects diplomats and their staff from just about any act, as long as it is not hostile to the country they reside in.

While the United States does have multiple policies geared towards punishing violators of human trafficking laws, our country has yet to prosecute. It is important moving forward that the United States and nations across the world who have taken pledges to decrease human trafficking incidents, take these violations seriously and act accordingly.

WHAT IS DIPLOMATIC IMMUNITY?

Diplomatic Immunity is principle of United States and international law that protects certain acts of diplomats and their staff. The acts range in relation to the level of rank that each person retains. If a member of the diplomatic staff, or any category below, commits a crime that falls under each one's relative immunity, the United States will petition the home country to relieve the diplomat or staff member of that immunity. If so, the person will be prosecuted under whatever law they broke. However, if not the United States has no course of legal action, and usually will revoke the person's position in the United States, and bar their re-entry.

WHEN AND WHY WAS DIPLOMATIC IMMUNITY CREATED?

Policy regarding diplomatic immunity derives itself from the Vienna Convention of 1961. The purpose of the Vienna Convention is to properly layout all of the protections and rights granted to diplomatic personnel when in another host country. The convention protects diplomatic personnel in almost every category from tax protection to diplomatic immunity from certain crimes to the right to display national flags on transportation vehicles.

- **There are four categories of people set up by the Vienna Convention:**
 - 1st category- Members of the diplomatic staff (and the diplomat). These people enjoy immunity in its most widely known manner. Civil and criminal recusal, with few exceptions most related to monetary transactions.
 - 2nd category- These people are the administrative and technical staff of the diplomatic staff. They also receive a broad amount of benefits, but mostly civil immunity, and the acts must be done in the course of their work.
 - 3rd category- Members of the service staff that share category two's benefits
 - 4th category- diplomatic servants that no longer share any immunity.
- **It is also important to note that immunities granted to those above do not apply to consular officers**

HOW DO DIPLOMATS BRING DOMESTIC WORKERS TO THE U.S.?

Diplomats are given A-1 or A-2 visas in order to engage in official government activities in a foreign nation. In order to properly reside in a foreign nation many diplomatic personnel are given the chance to bring “personal employees, attendants, domestic workers, or servants” on A-3 visas, as long as they fulfill all parts of the application process.

This includes, an interview at their home embassy. It also requires proof that the applicant will receive a fair wage that is comparable to that of a similar work in the United States.



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HAS IMMUNITY EVER BEEN WAVED?

Only once. On January 3, 1997 Georgy Makharadze, a diplomat for the nation of Georgia was involved in a five-car car crash in Kensington, Maryland that killed a Maryland teenager. It was soon found that Makharadze was intoxicated and his government made the difficult choice to waive his immunity and grant the United States the ability to prosecute.

While they have only once waived immunity so that abusive Diplomats have been able to face criminal prosecutions, attorneys for trafficking survivors have successfully won civil suits against employers.

In 2007, a Tanzanian diplomat living in Maryland, Alan Mzengi, was accused of imprisoning and mistreating the domestic worker in his home, forcing her to work and stripping her of her passport and identification in order to prevent her from leaving. With the help of an attorney, the worker filed a successful civil lawsuit, which was finally paid in 2013.

WHAT CONSEQUENCES DO DIPLOMATS FACE IF THEY ABUSE OR TRAFFIC DOMESTIC WORKERS?

According to the Trafficking Victims Protection Act: The Secretary of State may suspend the entire country’s mission or organization from the ability to receive A-3 visas for any period of time

However, the State Department has yet to apply this provision and has not suspended any countries to date.

WHAT RESOURCES ARE AVAILABLE TO DOMESTIC WORKERS WHO HAVE BEEN TRAFFICKED BY DIPLOMATS?

Diplomatic Security Services (a section of the State Department) can investigate the case and certify victims.

Workers filing a civil complaint against their trafficker are eligible for continued presence, to stay in the US to pursue justice. This is important because even if criminal charges can’t be brought against the diplomat because of immunity, civil claims can.

Trafficked domestic workers who worked for Diplomats are permitted to apply for a T visa. The T visa is a visa category set aside for victims of human trafficking, that allows victims to remain in the United States in order to properly seek legal action.

FOR MORE INFORMATION AND ASSISTANCE

For more information, to get help, or to meet other domestic workers, contact your local NDWA affiliate:

MORE ABOUT DIPLOMATIC IMMUNITY

- <http://www.state.gov/documents/organization/150546.pdf>
- <http://www.aclu.org/womens-rights/aclu-applauds-passage-human-trafficking-legislation>
- <http://www.aclu.org/human-rights-immigrants-rights-womens-rights/domestic-workers>

SOURCE:

- What is it? (“Diplomatic Immunity.” West’s Encyclopedia of American Law, edition 2, 2008. The Gale Group 19 Jun. 2013 <http://legal-dictionary.thefreedictionary.com/Diplomatic+Immunity>)
- http://travel.state.gov/visa/temp/types/types_2637.html#over
- <http://articles.latimes.com/1997/dec/20/news/mn-531>
- <http://www.cnn.com/WORLD/970112/georgia.diplomat/index.html>
- <http://www.casademaryland.org/index.php>
- <http://www.uscis.gov/portal/site/uscis/menuitem.ebb1d4c2a3e5b9ac89243c6a7543f6d1a/?gnextoid=02ed3e4d77d73210VgnVCM100000082ca60aRCRD&vgnnextchannel=02ed3e4d77d73210VgnVCM100000082ca60aRCRD>