

On embassy row, a fraying veil of immunity for traffickers

Foreign missions in the US that abuse their domestic staff are increasingly being held to account under anti-trafficking laws. Part 9 in a series on solutions to labor trafficking.

By [Stacy Teicher Khadaroo, Staff writer](#) December 21, 2015



Julie Jacobson/AP

NEW YORK—Vishranthamma Swarna labored 17 hours a day, seven days a week for four years, she said, in the New York home of a Kuwaiti diplomat posted to the United Nations.

According to her 2006 lawsuit, she was usually locked in, with no privacy and no private communications with her husband and five children back in India; she was physically and psychologically abused by the diplomat and his wife, and was paid about \$200 per month, one-tenth of what she had been promised. Two years into her service, the diplomat, Badar Al-awadi, began raping her, she alleged in court documents.

In June of 2000, her employers left her passport out, so she took it, along with a Bible and photos of her children, and fled. A taxicab driver took her to a temple for refuge. After connecting with support groups, she managed to stay in the US and pursue legal redress, starting with a 2002 lawsuit.

A decade after she fled, Ms. Swarna's case against Mr. Al-awadi and his wife reached the US Second Circuit Court of Appeals – a watershed in the fight to hold foreign diplomats accountable for what activists call modern-day slavery.

The upshot of the appeal court's decision: Diplomatic immunity is no longer an invincible shield. Swarna's case set a precedent that lawyers have been using ever since to strengthen civil lawsuits, which provides some measure of justice for victims and deterrence to would-be traffickers.

Claims of diplomatic immunity in the US and many other countries have long been used by unscrupulous employers to abuse domestic workers with impunity. In some cases, allegations fit the definition of trafficking under US law.

The Swarna case clarified that interactions with domestic servants aren't generally part of a diplomat's official functions, so immunity expires when the person leaves a diplomatic post, opening the door to civil lawsuits.

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“What we play with the diplomats is a waiting game: We wait for them to leave and then we sue them,” says Martina Vandenberg, founder and president of The Human Trafficking Pro Bono Legal Center in Washington. “The risk associated with abusing, raping, holding your domestic worker in forced labor ... has increased exponentially. The level of US government scrutiny ... has also increased, and the consequences at a diplomatic level can be devastating.”

Criminal prosecutions of alleged traffickers of domestic workers are rare. It can be difficult to build a case that will convince a jury, and sometimes victims don't want to testify. Immunity claims only make that path more difficult.

[A 2008 GAO report found 42 cases of alleged abuse](#) against domestic workers of diplomats and employees of foreign organizations in the US between 2000 and 2008. During that period, the US issued nearly 18,000 visas for such workers. However, the report noted that the actual amount of abuse was likely higher. These workers, it said, “are among the most vulnerable who enter our borders legally. They are often poor, uneducated, and unfamiliar with their rights under US law.”

Civil suits have become a beacon of hope, bringing some justice to survivors and boosting public awareness and prevention efforts.

About 25 federal civil cases have been brought against diplomats or employees of foreign organizations in the US through the 2003 civil provision of the Trafficking Victims Protection Act. This represents one-sixth of the trafficking cases brought under that provision, according to the database kept by Ms. Vandenberg's legal center.

These workers account for such a large fraction of the civil lawsuits for several reasons. They are particularly vulnerable because if they leave their employer they lose their legal immigration status. They are often in big cities such as Washington and New York, so if they escape, an experienced cadre of pro bono attorneys is ready to assist them.

Amendments to the US law in 2008 also made such suits more likely by allowing trafficking victims of diplomats and employees of international organizations to pursue civil lawsuits without fear of deportation. [\[Read the sidebar on the legal reform here.\]](#)



Ambassador of the Philippines to United Nations Lauro L. Baja Jr. speaks to reporters on Oct. 23, 2003. He was later accused of trafficking a domestic worker from the Philippines; the case was settled out of court.

David Karp/AP/File

Before survivors are able to bring suits, they often need a supportive community of advocates to help them get on their feet.

After alleged trafficking by Lauro Baja Jr., a former Filipino ambassador to the UN, Filipina domestic worker Marichu Baoanan sought assistance from Damayan Migrant Workers Association, an advocacy group in New York. Only when she had been reunited with family members through a special visa process did [she feel safe to sue Mr. Baja and his wife and adult daughter.](#)

After a federal court in Manhattan ruled in 2009 that Mr. Baja was not immune, he and the other defendants reached a confidential settlement with Ms. Baoanan.

“The fact that her employer was not able to use diplomatic immunity is huge,” says Grace Chang, a professor at the University of California in Santa Barbara who studies trafficking. Media coverage of the case in the US and the Philippines brought a new understanding that domestic workers weren’t just being underpaid, but sometimes virtually enslaved.

At that time, Swarna’s case was working its way through the appeals process.

In Baoanan and Swarna’s case, judges ruled that “residual immunity” – a more limited protection from US laws that diplomats can retain even after they’ve left their posts – didn’t apply to how they treated their household workers and couldn’t shield them from these civil suits. It was a major breakthrough in the battle to hold diplomats accountable.

The 2010 Swarna decision set a precedent that is binding in the Second Circuit, covering Connecticut, New York State, and Vermont. Other courts around the country also look to that case and may follow suit.

The defendants ultimately settled in 2011, but denied any wrongdoing. The New York law firm that represented them, Shearman & Sterling LLP, declined to comment.



Devyani Khobragade, center, in Mumbai, India, on March 12, 2014, Ms. Khobragade, then deputy consul general for India in New York, was arrested in 2013 on charges of fraudulently obtaining a work visa for her housekeeper and lying about the employee's pay. Rajanish Kakade/AP

Swarna was happy with the confidential outcome, and has been able to raise two children in the US, one of who is currently in college, says Amy Rudd, a Dechert LLP attorney who represented her.

Swarna remains “the flagship case for human trafficking victims’ rights,” Ms. Rudd says.

About 6 out of 10 civil cases against diplomatic or foreign-employee defendants have eventually been resolved out of court. At least two civil cases against diplomatic defendants have resulted in public judgments upward of \$1 million in favor of the plaintiff – one in the District of Columbia and one in New York.

It's not always possible to collect judgments, since they are sometimes entered in default against defendants who have left the US.

But because of such precedents, and increased pressure from the US government, “we have cases now that settle even before we file them, and that used to almost never happen,” Vandenberg says.

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