



Rights of vulnerable immigrants

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IMMIGRATION: NAVIGATING A COMPLEX SYSTEM

VULNERABLE
POPULATIONS

Kamaljit K. Lehal
Barrister & Solicitor
Lehal Law Corporation

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VULNERABLE POPULATIONS

**WOMEN
FLEEING
VIOLENCE**

**FOREIGN
WORKERS
BEING ABUSED**

WOMEN FLEEING VIOLENCE

Women who want to leave an abusive relationship must be prepared to embark through a complicated set of systems and overcome many hurdles:

- Criminal justice system
- Family court system
- Ministry of Children and Families

LEAVING AN ABUSIVE RELATIONSHIP WITH IMMIGRATION ISSUES INVOLVED

Women who leave an abusive relationship and have immigration issues enter an even more complex system. A system that for the most part acts within its own silo.

One of the most common scenarios that I see in this area is immigrant women fleeing violence who are either out of status or have precarious status.

OUT OF STATUS OR PRECARIOUS STATUS

In a relationship
with a Canadian
Citizen or
permanent resident.

May or may not
have children.

Under a removal
order or threat of
removals.

OUT OF STATUS WOMEN

Other concerns are:

A common control tactic used by the spouse of the out of status woman is to claim he has a spousal application underway but delay completion of the paperwork, or if the paperwork is submitted to threaten withdrawing it if the spouse decides to leave or report the abuse.

Withdrawal of a spousal sponsorship can occur any time up until a decision is made.

OUT OF STATUS WOMEN

How do we help
out of status women
navigate through
the systems?

Really the only
option is a TRP
application and an
H & C application.

STANDARD PROCESS

Traditionally the options available to such victims was:

- TRP
- H & C application

Concerns with:

- Lengthy processing times
- Lack of supports
- Removals process

OUT OF STATUS WOMEN: EXPEDITED TRP

- July 2019 expedited process announced for victims of family violence for both TRP and H & C applications.
- “FV” coding was established for victims of family violence in Canada that were out of status:
<https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/temporary-residents/permits/family-violence.html>

EXPEDITED TRP OVERVIEW

No fee for the initial application.

Can apply for an initial fee-exempt Open Work Permit at the same time.

Can apply for Interim Federal Health Program coverage.

For individuals subject to a removal order CBSA is instructed to consult IRCC before taking action.

EXPEDITED TRP OVERVIEW CONT'D

- TRPs are to be issued in accordance with subsection 24(1) of the Immigration and Refugee Protection Act (IRPA) as well as Ministerial Instructions in subsection 24(3) of IRPA.
- Individuals who do not meet the requirements of IRPA or who are inadmissible may be issued a TRP to allow them to enter or remain in Canada if it is justified in the circumstances.
- Officer is to balance the objectives of IRPA to meet Canada's social, humanitarian and economic commitments, while maintain health and security of Canadians.

EXPEDITED TRP - ELIGIBILITY

The foreign national is physically located in Canada and experiencing abuse from their spouse or common-law partner while in Canada.

Seeking PR is contingent upon remaining in a genuine relationship in which there is abuse and the relationship with the abusive partner is critical for the continuation of the individual's status in Canada.

EXAMPLES OF ELIGIBLE SCENERIOS

1. Foreign national is an applicant of the family class or spouse or common-law partner in Canada class (SCLPC class) who have either already left their sponsor, due to abuse, or not yet left their sponsor, due to fear of losing their immigration status.

2. Foreign national cannot be assessed for permanent residence because their sponsor (abusive spouse/partner) has **withdrawn** their family class SCLPC sponsorship application.

3. Foreign national has been **mised** and made to believe by their abusive spouse/partner that their family class or SCLPC class PR application has been submitted and is in process when, in fact, no application has been submitted.

4. Foreign national is a temporary resident intending to apply for PR through a genuine relationship that has become abusive, but who many not yet have an application in process.

EXPEDITED TRP FOR CHILDREN

- Dependent foreign national children of victims of violence (must be in Canada) are also eligible for a family violence TRP.

OTHER EXAMPLES OF ELIGIBILITY

Other cases that may be eligible:

- For abuse raised in the context of other immigration classes officers must assess the allegations and determine appropriate course of action – use discretion to assess whether a TRP is warranted.
- One year bar to access a TRP under subsection 24(4) of IRPA (regarding a foreign national whose claim for refugee protection has not been allowed) does not bar an officer from issuing a TRP for a victim of family violence.

INELIGIBILITY FOR EXPEDITED TRP

- **Ineligible individuals:**
 - Those seeking refugee protection.
 - Those granted refugee protection and reside in Canada as protected persons with no intention of seeking PR status.

OUT OF STATUS WOMEN: EXPEDITED TRP

Foreign nationals in Canada who are victims of family violence may request an assessment for a TRP by:

-contacting the IRCC Client Support Centre (CSC) at 1-888-242-2100 (the teletypewriter [TTY] number is 1-888-576-8502)

- filling out and submitting the [web form](#)
- inquiring at a local IRCC office
- submitting a TRP application, including through an authorized representative

TRENDS IN EXPEDITED TRP DECISION MAKING

Anecdotal feedback that:

- Subsequent TRPs are being refused because the victim is no longer considered to be in abusive circumstances.

- The eligibility criteria have been different in individual cases.

- The expedited H & C may be processed quicker than the expedited TRP.

Recent Federal Court decision that finds that the expedited TRPs are structured to allow victims time and stability to apply for PR, where applicable. (*AB v. Canada (Citizenship and Immigration)*, 2021 FC 714 (CanLII)).

OUT OF STATUS WOMEN AND H & C APPLICATION

Simultaneous with the expedited TRP application an H & C application can be made.

The same “FV” coding is applied.

ONUS IN H & C APPLICATIONS

Onus on foreign national to set out the humanitarian and compassionate evidence in support of their request for an exemption under section 25.1 of IRPA.

- Reference to “unusual and undeserved or disproportionate hardship” justifying granting of relief under s.25(1).
- *Leading case of Kanthasamy v Canada (Minister of Citizenship and Immigration), 2015 SCC 61, sets out a test of:*
 - “decision makers must determine whether, having regard to all of the circumstances, including the exceptional nature of H&C relief, decent, fair-minded Canadians would find it simply unacceptable to deny the relief sought.” (Para 63).

H & C FACTORS

Aside from the standard factors such as establishment in Canada, evidence on the following will be important:

- Family violence
- Best interests of the child(ren)
- Circumstances in home country.
- Financial Ability

OUT OF STATUS WOMEN: EVIDENCE OF FAMILY VIOLENCE

The evidence to support either an expedited H & C application can consist of:

- Police reports
- Criminal and family court documents
- Letters, statements or reports from victim, witness assistance programs, shelters, medical doctor, counselor, friends, family, other witnesses.
- Assessments by a psychiatrist, psychologist, therapist, counsellor or other healthcare professional.
- Photos
- Emails and text messages.

OUT OF STATUS WOMEN: EVIDENCE OF ABUSE

Abuse can take many forms:

- Physical abuse, including assault and forcible confinement.
- Sexual abuse, including sexual contact without consent.
- Emotional and Psychological abuse, including threats and intimidation.
- Financial abuse, including fraud and extortion;
- Neglect: the failure to provide the necessities of life, such as food, clothing, medical care or shelter and any other omission that results in a risk of serious harm.

A helpful resource is OB 480 which was actually created to address the conditional permanent resident category.

H & C: EVIDENCE OF BEST INTERESTS OF THE CHILD

Unfortunately, in abusive relationships children are not immune from being abused also and will also have witnessed abuse of their parent.

Important to obtain reports from any counsellors or support workers involved in assisting the child. Also school records and reports from teachers.

H & C: EVIDENCE OF CIRCUMSTANCES BACK HOME

Ability to find housing in home country.

Ability to obtain counselling and supports in home country.

Family support.

- Are there circumstances of no family support due to dishonor and shame?
- Are there other circumstances that prevent the return home?

H & C: EVIDENCE OF FINANCIAL ABILITY

As in all H & C applications applicants have to show they have the financial resources to support their stay in Canada pursuant to s.39 of *IRPA*.

However, for victims of family violence, officers have the discretion to waive the requirement that an applicant cannot resort to social assistance.

Evidence	School	Be
Evidence submitted on H&C factors can continue to be updated until a decision is made	This can include updated country conditions; health records or reports; school records; community involvement	Any material change needs to be reported

**H & C
EVIDENCE:
KEEP IT
CURRENT**

H & C: DECISIONS

- Recent H&C decisions involving family violence:
 - *Titova v. Canada (Citizenship and Immigration)*, 2021 FC 654 (CanLII) - court upheld H & C refusal finding that officer did consider abuse but because only been in Canada two years she could return home and while her spousal application was withdrawn and her spouse had financially abused, she was able to return to her home country.
 - *AB v Canada (Citizenship and Immigration)*, 2021 FC 714 (Can LII) - court allowed appeal of an H & C refusal finding that the decision made a factual error on the psychological evidence and also failed to properly consider BIOC.
 - “The officer did not appear to handle the H&C application with the attention and compassion that ought to have been provided to the applicant, a victim of spousal abuse who was deprived of the opportunity to become a permanent resident as a result of the termination of an abusive relationship.” (Para 30).

H & C: DECISIONS

Jackson v. Canada (Citizenship and Immigration), 2022 FC 83 (CanLII)

- Case involves a mother of three Canadian children ages 8, 6 and 2.
- Mother suffered a violent attack in her home country as well as an abusive relationship in Canada.
- She was diagnosed with PTSD and psychiatrist said it would be detrimental for the Applicant to return to her home country.
- Officer found that mother could return to her home country with the children or leave them with the father even though in the latter scenario the children would be greatly negatively impacted.
- Court held:
 - "...the officer did not consider the submission and evidence of the impact on the children of being raised by a mother being returned to face trauma that led to her PTSD...the officer was much quicker to discount the importance of her physical presence.

RECONSIDERATIONS AND JUDICIAL REVIEW

- An officer does have discretion to reconsider a refusal to grant an H&C exemption
- However, guidance given to officers is that this should only be done in exceptional cases
- Grounds for reconsideration could be:
 - A breach of natural justice
 - A clerical error
 - New evidence that is material and reliable
- A reconsideration can take place even if there is pending litigation in Federal Court

FOREIGN WORKERS



FOREIGN WORKERS

Foreign workers come to Canada with the hopes of working and providing for their family.

They also come with the hope of taking a path towards PR status.

Unfortunately there are many reports of abuse of foreign workers which has prompted steps to be taken by the federal government to counter the exploitation.

FOREIGN WORKERS: FEDERAL GOVERNMENT ANNOUNCEMENTS MAY 2019

Announcement that government of Canada taking action to help vulnerable workers.

31 May 2019

4 June 2019

Effective June 4, 2019 migrant workers with employer specific work permit and are in an abusive job situation will be able to apply for an open work permit.

FOREIGN WORKERS WHAT IS ABUSE?

- Physical harm
- Forcing you to work in a way that's unsafe or puts your health at risk
- Unsafe or unsanitary living conditions in employer-provided housing.
- Sexual touching that you did not agree to
- Making unwanted sexual comments to you
- Controlling where you can go
- Stealing from you
- Stopping you from seeing friends or co-workers
- Taking some or all of the money you are paid
- Threats, insults and intimidation
- Forcing you to commit fraud
- A third party charging you fees for a job or making promises that aren't real
- Also see: [https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/temporary-residents/foreign-workers/vulnerable-workers.html#examples of abuse risk](https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/temporary-residents/foreign-workers/vulnerable-workers.html#examples%20of%20abuse%20risk)

FOREIGN WORKERS: THINGS TO NOTE

There are no fees for this application: **FEE EXEMPT**

The open work permit is a **ONE TIME ONLY** under the vulnerable persons category

The expectation is that the worker will find a new employer who will support a work permit during the validity of the open work permit

ELIGIBILITY

The foreign worker is inside Canada.

They have a valid employer-specific work permit.

- A work permit with the employer's name on it and is not expired.

Are being abused or at risk of being abused in relation to your job in Canada.

FOREIGN WORKERS: HOW TO APPLY FOR OPEN WORK PERMIT

Must be done on-line

Need to upload all evidence of abuse in **ONE** document in the “Client Information” field under “Optional Documents”

MUST include as evidence a letter to describe your situation and the abuse you’re facing or at risk of facing.

- Recommendation to use:
 - Letter of Explanation – Open Work Permit for Vulnerable Workers [IMM 0017] (PDF, 1.8 MB)

Further details about the process can be found at:

<https://www.canada.ca/en/immigration-refugees-citizenship/services/work-canada/permit/temporary/vulnerable-workers.html>

FOREIGN WORKERS: WHAT EVIDENCE CAN BE USED TO PROVE ABUSE?

- A letter, statement or report from an abuse support organization, medical doctor, health care professional, etc.,
- A sworn statement, also known as an affidavit, from yourself
- A copy of an official report you submitted to an enforcement agency, such as a police or Canada Border Services Agency report
- A copy of an official complaint submitted to a provincial enforcement agency, such as an Employment Standards Branch
- A victim impact statement
- Email messages
- Photos showing injuries or working conditions
- Witness testimony

FOREIGN WORKERS: WHAT HAPPENS AFTER YOU APPLY?

After the application is received at the local office CIC will contact the worker within 5 business days to let you know what to do next.

The worker may be asked to attend an interview.

After you get your open work permit CIC may contact the employer to perform an inspection.

EMPLOYERS FOUND NON- COMPLIANT

Note there are a list of employers that have been non-compliant in meeting their responsibilities as an employer under the Temporary Foreign Worker Program or International Mobility Program.

- <https://www.canada.ca/en/immigration-refugees-citizenship/services/work-canada/employers-non-compliant.html>

Non-compliance can result in:

- A monetary penalty.
- A ban from hiring temporary workers.

FAMILY MEMBERS OF FOREIGN WORKERS

Family members who come with a foreign worker to Canada may also be eligible for an open work permit if the foreign worker's application is approved.

They must complete their own application but submit it with the foreign worker's application.

FOREIGN WORKERS: OTHER REMEDIES

Temporary Resident Permit with request for an open work permit

Humanitarian and Compassionate (“H & C”) application for permanent resident status requesting expedited first stage approval which will allow the ability to apply for an open work permit.

- These applications are complex

FOREIGN WORKERS: EXPEDIENCY IS WELCOMED

The federal changes in favor of foreign workers were very much needed

The system before that was complex (aside from the BC Pilot project which could only be launched by a community organization)

- Had to try and get a TRP under the criteria of Victim of Trafficking in Persons (“VTIP”) and request an open work permit with that application.
 - Would have to show evidence such as the employer:
 - Being in control of the passport
 - Being in control of worker’s comings and goings
 - Abusive work conditions
 - Requiring the worker to pay for matters that normally an employer is required to

However, since the new federal regime provides for only a one time open work permit the worker needs to find another employer if the worker wants to continue to remain in Canada working.

SUMMARY REGARDING VULNERABLE PERSONS

Women in abusive relationships who are also involved with immigration issues have a complex system to navigate. There are options are an expedited TRP and H & C applications.

Foreign workers also face exploitation and have the ability to escape their abusive circumstances by way of an open work permit.

Additional Resources

Migrant Workers Program, MOSAIC

Provide free emergency support and support with immigration processes to Temporary Foreign Workers with closed work permits from any industries

- Services available to anyone in BC; main offices are in Vancouver/Burnaby and Surrey area but offer in person support through their partnership with 22 other agencies located all over BC
- Services can be delivered in English, French, Spanish, Cantonese, Mandarin, Portuguese, and Tagalog. Interpretation support in over 50 languages is available upon request
 - Email: migrantworkers@mosaicbc.org
 - Phone number: (236) 889-8541, (604) 218-7347, (604) 365-5369 and (236) 889-4115 (Zoom, WhatsApp text & video, text, iMessage & FaceTime are also available)
 - Website: <https://www.mosaicbc.org/services/settlement/migrant-workers/>

Dignidad Migrante Society

Provide 37 different services to Temporary Foreign Workers across BC and Canada.

- Services include:
 - representation in WSBC and ESB claim, including appeals at the EST or WCAT-WSBC.
 - help to vulnerable workers to apply for Open Work Permit
 - help to apply for benefit like CPP-OAS, EI
 - run 20 different workshops for TFWs about rights and benefit, Income tax, Medical insurance, Open Work permit, etc.
 - help with emergency and submit HR complaints
- Email: info@dignidadmigrantesociety.org
- Phone number: 778-791-3419, 778-683-3419, 778-536-3419, 604-754-3419
- Website: www.dignidadmigrantesociety.org