



Temporary Resident Permits: Limits to protection for trafficked persons

In May 2006, the Canadian government issued guidelines for temporary resident permits (TRPs) for trafficked non-citizens. This represented an important step towards recognition of the protection needs of trafficked persons, and TRPs remain the main avenue to protection offered under Canada's immigration legislation.¹ However, experience has shown that, even with the TRPs, there are continuing gaps in access to protection and rights for trafficked persons.

Granted by Citizenship and Immigration Canada (CIC), a permit offers trafficked persons:

- > A "reflection period" of 180 days, during which they may remain in Canada;
- > Access to health care through the Interim Federal Health (IFH) Program, including medical and social counselling during this time;
- > The right to apply for a work permit.

Following the 180 day period, an immigration officer may extend the permit depending on the circumstances of the individual case.

Despite the introduction of TRP guidelines,² trafficked persons continue to fall through the cracks. This paper examines these shortcomings, which may be summarized as follows:

- > Access to TRPs is limited in practice, and now in law;
- > When trafficked persons do receive TRPs, their rights are restricted;
- > Options for receiving permanent protection are uncertain;
- > Trafficked persons continue to be detained and deported.

A further concern is that guidelines do not have the force of law and may be changed or dropped as easily as they are adopted. The lack of a clear and permanent policy on offering protection to trafficked persons has led to gaps in protection and inconsistency, particularly because the guidelines are often interpreted quite narrowly.

Without an approach that is consistently sensitive to the various realities of trafficked persons, it has been challenging to extend protection to people in the full range of trafficking situations.

The recent closing of many local CIC offices has also reduced the human resources and expertise available both to organizations serving trafficked persons and to survivors of trafficking themselves.

Barriers to Access to the TRP

Discretion and inconsistency

In some cases, immigration officers have appeared reluctant to issue TRPs to trafficked persons. The guidelines offered by the TRP Manual give discretion to individual officers, which appears to be used inconsistently across the country.

- > There is little consistency across regions concerning who should be granted an interview with CIC, or who should be identified as trafficked and issued a TRP.

- > There have been significant delays in obtaining a TRP, sometimes taking several weeks. The nature of the trauma and abuse suffered by a survivor of trafficking, as well as the need to provide for themselves, makes this delay a hardship on trafficked persons.

¹ Trafficked persons may also seek to regularize their status through other means, including refugee claims, applications for humanitarian and compassionate consideration and pre-removal risk assessments.

² The guidelines are incorporated into Citizenship and Immigration Canada's Operational Manual IP 1, Temporary Resident Permits, cic.gc.ca/english/resources/manuals/ip/ip01-eng.pdf

- > There have been cases deemed to be “too late” to consider issuing a TRP. However trafficked persons face many different circumstances, which may affect when they come forward and whether they still require the reflection period to determine what to do next. The consequences of being trafficked are often long-lasting. A person who has been trafficked may continue for some time afterwards to be in a precarious situation in Canada and be unable to re-establish themselves in safety in their home country. Delays in coming forward are often related to their situation of trafficking, which leaves them without access to information concerning their options for protection and their rights, and often in poor physical and mental health.
- > In some cases it is difficult even to get an interview. Officers have instead recommended other measures as recourses to regularize trafficked persons’ immigration status.³
- > In some instances, people have been identified as survivors of trafficking by community groups but CIC has not issued them a TRP; some have been given removal orders and have been deported. There seems to be a discrepancy between how CIC identifies trafficking and how communities identify and understand it.

In one case, a woman who had been abused was able to reach a local walk-in CIC office and told the immigration officer that she wanted to return home. The officer identified indicators of trafficking in the woman’s story and issued her a TRP.

On the other hand, a lawyer who represented a trafficked person was advised by an immigration official to have her client make a refugee claim. The official was reluctant to schedule an interview for a TRP.

³ Trafficked persons can and do claim refugee status; in some cases their situation corresponds to the refugee definition and they may be recognized as a refugee. Some trafficked persons, however, do not meet the refugee definition, which was not designed to address their situation. The refugee claim also in some regards offers less access to services than a TRP. Furthermore, recent changes to immigration and refugee policy have created new barriers for trafficked persons to access status in Canada, leaving them even more vulnerable.

Involvement of law enforcement

The TRP operational manual indicates that issuing a TRP does not depend upon cooperation with police or upon the legal standing and criminal investigation of a case. The manual does however require that Royal Canadian Mounted Police (RCMP) or Canada Border Services Agency (CBSA) be consulted before a TRP is issued.

In the experience of some CCR members, TRPs are not generally issued unless there is a police investigation or criminal prosecution under way. TRPs may also not be renewed at the end of legal proceedings.

Some trafficked persons feel that they put themselves at risk by speaking to law enforcement officials. The involvement of the RCMP or CBSA in the TRP interview process therefore has deterred some trafficked persons from applying for TRPs.

An immigration officer identified a person as having been trafficked and told the person that they would be issued a TRP. The police subsequently decided not to pursue any charges and about a week later CIC denied a TRP.

People without status risk deportation by coming forward

Information acquired by CIC during interviews may be shared with CBSA. This causes people without status to be vulnerable to deportation if their case is not deemed to have enough elements to be considered trafficking and to merit a TRP. This deters people from reporting possible cases of trafficking.

Some temporary foreign workers have been hesitant to report possible cases of trafficking for labour exploitation as they have no guarantee that their information will not be shared with CBSA. The Temporary Foreign Worker Program is employer-specific; therefore workers who are deceived into working outside of their contracts’ terms of conditions face arrest and removal. The same applies to people who attempt to escape exploitative conditions by finding alternative work. Workers in such situations who have been trafficked may not come forward because they fear they will be deported.

Narrow interpretation of the definition of ‘coercion’

In evaluating applicants for a TRP, immigration officers do not always take into account forms of coercion beyond physical violence. In practice, traffickers often rely on a convergence of mid-level control tactics, including economic intimidation, threat to have a person deported, threat to shame the person, and a threat to target family members.⁴

Long-term TRPs

Following the 180-day period, a trafficked person may apply for a longer-term TRP, at which point the facts and risks are re-assessed and the “best course of action” considered for the long term.⁵ To be eligible for a longer-term permit, the guidelines direct immigration officers to consider whether:

- > It is reasonably safe and possible for the victims to return to and to re-establish a life in the country of origin or last permanent residence;
- > The victims are needed and willing to assist authorities in an investigation and / or in criminal proceedings of a trafficking offence;
- > Any other reason the officer may judge relevant.

Priority given to cooperation factor

Although cooperation in law enforcement efforts is only one of the grounds identified for granting a long-term permit, it is often given priority over safety and risk considerations. Including cooperation in the factors puts pressure on trafficked persons to cooperate and may lead to cooperation becoming a de facto requirement. Indeed, experiences with some cases suggest that this is a tendency.

Requiring cooperation is inconsistent with government policy indicating that “victims of trafficking are not required to testify against their trafficker to gain temporary or permanent resident status”.⁶

⁴ Canadian Council for Refugees, National Forum and Workshop on Trafficking: Forum and Workshop Report (Montreal: February 2013) p. 13, ccrweb.ca/files/trafficking-forum-report-2012.pdf.

⁵ *IP 1 Temporary Resident Permits*.

⁶ “Protection and assistance for victims of human trafficking,” Citizenship and Immigration Canada, bit.ly/Vkwsdq

A person issued a trafficking TRP was later denied a permit renewal shortly after the criminal justice proceedings had ended. The immigration officer decided the person no longer needed a permit.

Decisions regarding safety and ability to re-establish in country of origin

The determination of whether a survivor of trafficking continues to need protection in Canada does not always seem to fully take into account “apparent risks in the consideration of the circumstances” of the survivor, as is directed by the operational guidelines.⁷ There are no clear criteria to guide an officer in determining whether a trafficked person faces risks to her safety in the country of origin. Similarly, immigration officers may need guidance to understand the long-term consequences of trafficking, and how they impact survivors’ ability to re-establish their lives in the home country.

In some cases decisions to deny a long-term permit have been made without officers clearly considering the impact that being trafficked in Canada has had and what it would mean for their lives if they returned to their country of origin.

A woman interviewed to renew her TRP was not asked any questions to establish whether it would be difficult or unsafe for her to return to her country. No consideration was given to the physical and mental health support that the woman may have needed in the long-term in order to be able to re-establish a sense of safety and reconstruct her life.

Loss of status and uncertainty: TRP may compromise a person’s longer-term status in Canada

Where a trafficked person already has an immigration status, such as Temporary Foreign Worker, Live-in Caregiver, or visitor status, the person will either have to renounce their current legal status or wait until it expires in order to be considered for a TRP, with no guarantee that they will be issued one. In some cases, CIC has been prepared to carry out an interview in advance, but the TRP itself is not issued until the person is out of

⁷ *IP 1 Temporary Resident Permits*.

status. In some cases, this means that a trafficked person must make a difficult choice between a 180-day TRP (with no guarantees of extending their stay in Canada beyond that) or remaining on a visa with longer term potential rights in Canada (such as Live-in Caregiver, which is a pathway to permanent residence, or a TFW visa which may be valid for a longer period than 180 days).

Bars on access to TRPs under amendments to the Immigration and Refugee Protection Act (IRPA)

Under amendments to IRPA that came into effect in 2012, people whose refugee claims have been rejected, withdrawn or abandoned are now barred from applying for a TRP for 12 months following the rejection of the claim or the determination that the claim was withdrawn or abandoned.⁸

Experience has shown that some traffickers force their victims to make a refugee claim, which is then withdrawn or abandoned, or force them to make a refugee claim that is destined to fail. This facilitates traffickers' ability to threaten and control victims. Under the new rules, if such people subsequently escape their traffickers, they won't be able to apply for a TRP.

Furthermore, the law now bars TRP applications for at least 5 years for "designated foreign nationals".⁹ There is real risk that trafficked persons might be among groups designated by the Minister of Public Safety, since one of the grounds for designation is that the group's irregular arrival is undertaken by or for a criminal organization.¹⁰ A group of exploited people being brought into Canada by an organized group of traffickers would meet this criterion – if the group is designated, the trafficked persons are denied access to the TRP, even though it is the only recourse designed for them.

Limited Rights under the TRP

No Right to Family Reunification

There is no consistent policy regarding the issuance of TRPs to family members of survivors of trafficking in Canada and abroad. Family members in Canada may be and have been deported.

⁸ Immigration and Refugee Protection Act (IRPA) 24(4).

⁹ IRPA 24(5).

¹⁰ IRPA 20.1

Temporary Resident Permits: Limits to protection

A group of Thai women were trafficked into Canada to work at a food plant. The workers were identified as trafficked and were given TRPs; however, some women returned home because they could not be reunited with their children in Canada. One of them was a key witness to abuses suffered – if she had been available, further prosecution might have been possible.

A woman from Mexico trafficked into Canada to work in the same food plant was given a TRP; however her children were living in unsafe conditions back home. She was told that she would have to wait 5 years to apply for permanent residence and then sponsor her children. Unable to be reunited with and to care for her children, she returned home, even though she would face the risk of retribution from her traffickers.

A woman from Thailand was recognized as trafficked and received a TRP. Her Canadian-born baby was able to remain in Canada; however, her husband did not receive a TRP as he wasn't considered a required witness in Canada and was deported. This separation broke the family apart and had great psychological consequences on the woman and her child.

Barriers to Health Care Coverage

Health care coverage is limited to individual survivors of trafficking and is not extended to family members in Canada. Moreover, following the 180-day reflection period, trafficked persons are often denied health care coverage while immigration officers determine whether the person continues to require protection or not.

Uncertain Prospects after the TRP

The conditions and time required to attain permanent residence have not always been clearly articulated

Immigration officers have been providing inconsistent information regarding the amount of time required for trafficked persons to receive permanent residence, with some TRP holders being told that they could apply for permanent residence after 3 years (rather than the 5 years set out in the Regulations). This affects the way survivors of trafficking plan for their life and move towards recovery and stability.

A group of Thai workers trafficked for labour exploitation had valid status as Temporary Foreign Workers. At the time their TRPs expired some were within the 90-day grace period to restore their status as TFWs. CIC informed the workers that survivors of trafficking could apply for permanent residence after 3 years with a TRP. This influenced the workers' decision not to pursue their status as foreign workers, in order to be eligible to apply for a TRP.

After 2 years, the workers were informed that they must wait for 5 years on a TRP before they could apply for permanent residence. They were also told that their TRPs would not be renewed, as the police investigation had concluded, and they were deemed to have had sufficient time to recover. They would therefore have to leave Canada. Had the workers known this in advance, they might have chosen to maintain their status as temporary workers for 4 more years.

Based on the timeframe of three years originally indicated by the immigration officers, many survivors, particularly those who had crimes committed against them, had already begun to plan for their life in Canada, making the news that they would need to leave Canada more difficult to receive.

Fees for re-issuing TRPs and for H&C applications

Trafficked persons are exempt from the initial application fees that are usually charged for TRPs and work permits. This provision is welcome as it acknowledges that trafficked persons are in a precarious situation and have survived situations of exploitation. However, trafficked persons are not exempt from the fees charged to renew a TRP.

The \$200 fee to renew a TRP and charged per family member to apply for a TRP is unreasonable, as is the \$550 cost of humanitarian and compassionate applications for trafficking survivors and their families. These fees fail to recognize the reality of trafficked persons by disregarding their unstable financial status. It is unrealistic to expect that a survivor of trafficking will have earned enough after 180 days to pay the fees required.



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Conclusion: Making protection accessible to trafficked persons

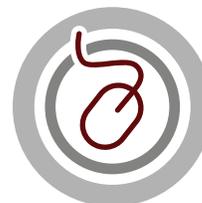
TRPs are an important tool that responds to the right of trafficked persons to access status and assistance.

The inconsistency in the issuing and administration of permits across the country is one of the key barriers to the effectiveness of TRPs, causing the treatment of survivors of trafficking to vary greatly across regions and both between and within agencies.

A periodic evaluation of the TRP procedure to review the implementation and effectiveness of TRPs across the country would be particularly valuable in order to assess how the protection of and assistance to trafficked persons may be better enhanced through TRPs. It is unclear whether such an assessment has been carried out in the past.

Finally, in face of existing restraints to human and financial resources, creating opportunities for open dialogue between agencies, notably CIC and CBSA, and organizations serving trafficked persons is ever more necessary to improve responses to trafficked persons and to examine possibilities for improving their access to short-term and stable long-term protection.

Despite the many positive features of TRPs, given their shortcomings the CCR continues to call for clearer statutory protection for trafficked non-citizens. This is the more urgent now that statutory bars on access to TRPs have been introduced.



For more information:
trafficking.ca

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