

Federal Court



Cour fédérale

**Date: 20250526**

**Docket: IMM-4781-24**

**Citation: 2025 FC 942**

**Toronto, Ontario, May 26, 2025**

**PRESENT: The Honourable Mr. Justice A. Grant**

**BETWEEN:**

**MARIA DE LOURDES TATIANA LOYOLA  
VENDRELL**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. OVERVIEW**

[1] The Applicant seeks judicial review of an Officer's decision to refuse her application for a Temporary Resident Permit. She had submitted this application under the Ministerial Instructions related to foreign nationals who are victims of family violence. For the following reasons, this application for judicial review will be granted. The Officer unreasonably concluded

that the Applicant was no longer in a situation of abuse and was not dependent on her spouse for her immigration status. This matter should be remitted to another decision-maker for redetermination.

## II. BACKGROUND

### A. *Facts*

[2] The Applicant, Maria de Lourdes Loyola Vendrell, is a citizen of Mexico. She entered Canada on a visitor visa in 2017 and returned to Mexico a number of times to avoid overstaying her status. She re-entered most recently in February 2023.

[3] In September 2018, the Applicant began a relationship with Alexander Lopera. They were married in November 2018. After the wedding, Alexander began abusing Ms. Vendrell physically, emotionally, sexually, and financially, in a pattern of coercive control. Notably, Mr. Lopera frequently used the Applicant's lack of status in Canada to intimidate and control her. He expressed that Ms. Vendrell was "nothing" without him, that she was in Canada all alone, and that he would have her deported. When Ms. Vendrell eventually demanded a divorce because of the serious abuse, he refused and stated he would have an ex-partner, who worked for the Ontario Provincial Police, report her to Immigration, Refugees, and Citizenship Canada [IRCC].

[4] Mr. Lopera's serious physical abuse also resulted in police intervention. On one occasion, he choked the Applicant while she was in the shower. He told her he knew how to hurt people without leaving any marks because he used to be in the army. She was able to free herself and

call the police, who took Mr. Lopera to the police station, where they laid charges against him. After this incident, when Mr. Lopera got angry, he would blame the Applicant for these charges.

[5] On another occasion Mr. Lopera threw Ms. Vendrell down a set of stairs. On another he again choked her, holding her underwater in a hot tub. Ms. Vendrell was convinced he was trying to kill her. Once again, the police intervened. According to Ms. Vendrell, Mr. Lopera was issued a restraining order after this incident, which he violated two weeks later, after telling her that he had been living in his truck, and that he would be moving back into their home. Having nowhere else to go, the Applicant remained in the home and was again victimized by his violence.

[6] As is often the case in situations of intimate partner violence, there were periods of calm interspersed between the violent events. Mr. Lopera would apologize for his behaviour and communicate that he wanted things to be better. According to the Applicant, this is why she remained in the relationship, hoping that he would “work on his issues.” While things would temporarily improve, the threats and violence continued.

[7] At one point after Mr. Lopera moved back into their home, the Applicant told him that she wanted a divorce. He again got angry and threatened to have her deported. He said he was not going to divorce her, and as noted above, that he was going to have his ex-wife report her to immigration.

[8] As a result, Ms. Vendrell returned to Mexico from October 2022 to February 2023. She then returned to Canada, as noted, in February 2023, to start divorce proceedings. Following her

return, the Applicant did not see Mr. Lopera frequently. From May 2023 until October 2023, however, he would call the Applicant, despite her request that he refrain from doing so. He also continued to refuse to sign divorce papers.

[9] In August 2023, Ms. Vendrell applied for a Temporary Resident Permit, under the Ministerial Instructions related to foreign nationals who are victims of family violence [TRP or TRP-FV]. She was interviewed in respect of this application on October 31, 2023. In the interview, the Applicant stated that she was not currently at risk. She also stated, however, that Mr. Lopera continued to call her, against her wishes. She shared her suspicions that he was tracking her movements and was following her. She noted that in that same month she had run into him at the grocery store, where he joked about the brakes on her car failing.

[10] In November 2023, IRCC sent the Applicant a refusal letter. She filed an application for leave and judicial review. In January 2024, IRCC offered to settle this matter, and the application was subsequently reconsidered.

B. *Decision under Review*

[11] IRCC once again refused Ms. Vendrell's application in February 2024, which gives rise to this application for judicial review.

[12] The Officer considered Ms. Vendrell's application as against the Ministerial Instructions established under s.24(3) of the IRPA, which require officers to consider various factors in assessing whether a foreign national is a victim of family violence. The Officer accepted that the

Applicant experienced family violence and abuse during her marriage to Mr. Lopera, from January 2019 until she left Canada in October 2022. However, the Officer found that Ms. Vendrell was not eligible for a TRP-FV, because she: a) failed to demonstrate that she continued to experience family violence from her spouse since October 2022 or continues to experience abuse, and b) does not seek permanent residence status that depends on her staying in a genuine relationship with her abuser, nor is her relationship with her abuser critical for the continuation of her status in Canada.

[13] In coming to that conclusion, the Officer noted that Ms. Vendrell has been residing separate and apart from Mr. Lopera since her return to Canada; that she had had some contact with him including unwanted phone calls, but no physical encounters; and that there is no evidence that an application for permanent residence was ever submitted. The Officer additionally noted that during her relationship with her abuser, a spousal sponsorship was never discussed.

[14] The Officer acknowledged that Ms. Vendrell wishes to stay and establish herself in Canada, following her divorce from Alexander. The Officer also acknowledged her explanation that she needs to be in Canada to finalize her divorce, as she is struggling to find legal counsel who will accept a Legal Aid certificate and does not want to have to contact Mr. Lopera on her own, given the history of abuse. However, the Officer concluded that Ms. Vendrell failed to demonstrate that she would not be able to complete the divorce proceedings from Mexico, as she is resourceful and has knowledge of immigration requirements.

[15] Finally, the Officer concluded that although there is some degree of hardship anticipated in having to leave Canada, Ms. Vendrell holds a valid passport and temporary resident visa, and therefore can travel to and from Canada, as well as applying for a work permit from outside Canada if she wishes to pursue employment.

### III. ISSUES and STANDARD OF REVIEW

[16] The Applicant argues that the decision under review was unreasonable, primarily because the Officer erred in assessing the issue of ongoing abuse, pursuant to Ministerial Guidelines.

[17] The parties do not dispute that the standard of review is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 23 [*Vavilov*]. In conducting a reasonableness review, a court “must consider the outcome of the administrative decision in light of its underlying rationale in order to ensure that the decision as a whole is transparent, intelligible and justified” (*Vavilov* at para 15). It is a deferential standard, but remains a robust form of review and is not a “rubber-stamping” process or a means of sheltering administrative decision-makers from accountability (*Vavilov* at para 13).

### IV. LEGAL FRAMEWORK

[18] Temporary Resident Permits may be issued to individuals who are inadmissible or who do not meet the requirements of the *Immigration and Refugee Protection Act* [IRPA], authorizing their entry or continued presence in Canada.

[19] TRPs are governed by s.24 of the IRPA, which states that:

**24 (1)** A foreign national who, in the opinion of an officer, is inadmissible or does not meet the requirements of this Act becomes a temporary resident if an officer is of the opinion that it is justified in the circumstances and issues a temporary resident permit, which may be cancelled at any time.

[20] As alluded to above, the Minister may provide specific instructions to officers considering TRP applications, pursuant to subsection 24(3) of the *Act*:

**(3)** In applying subsection (1), the officer shall act in accordance with any instructions that the Minister may make.

[21] One area in which the Minister has decided to issue instructions relates to situations of family violence. The objective of these instructions is to “provide protection to vulnerable foreign nationals who are victims of family violence or impacted by it, by regularizing their status in Canada”: *Ministerial Instructions 30 (MI30): Ministerial Instructions pursuant to subsection 24(3) of the Immigration and Refugee Protection Act concerning foreign nationals who are victims of family violence*.

[22] The Instructions go on to state that, in assessing whether a foreign national is a victim of family violence, officers shall consider the following factors:

1. Whether the foreign national is physically located in Canada and experiencing abuse by their spouse or common-law partner while in Canada, including physical, sexual, psychological, or financial abuse, or neglect, and
2. Whether the foreign national is seeking permanent residence that is contingent on remaining in a genuine relationship in which there is abuse.

[23] The Instructions set out further factors to consider in assessing whether to issue a TRP:

- to provide a period of reflection for victims of family violence who are out of status to further consider their immigration options
- to allow victims of family violence to escape the influence of their abuser so that they can make an informed decision on a future course of action
- the individual's ties to Canada
- child custody or other family law related issue
- for any other purpose the officer may judge relevant to facilitate the protection of vulnerable foreign nationals who are victims of family violence

## V. ANALYSIS

[24] I find that the Officer erred in respect of both the finding that the Applicant was no longer experiencing violence, and the finding that her desire to obtain permanent residence was no longer dependent on her abuser.

### A. *Ongoing Abuse*

[25] The Applicant argues that the Officer erred in rejecting her application based on a finding that she was no longer in a situation of abuse. I agree. On the question of whether the Applicant was experiencing abuse at the time the application was determined, the Officer noted that there had been no recent "physical encounters" and concluded that:

Client has failed to demonstrate satisfactorily through sufficient supporting evidence, that she continued to experience family violence abuse from her spouse since 05oct2022, nor that she is currently experiencing abuse.



[26] With respect, this is a completely unreasonable conclusion. It is one that belies both the evidence provided by the Applicant, which was not doubted, and the evolution of our understanding of intimate partner violence. As I outlined above, while Ms. Vendrell had admirably taken steps to extricate herself from her abuser, the evidence before the Officer was that:

- i) her abuser continued to call her despite her requests that he stop, and despite an order prohibiting him from contacting her;
- ii) she suspected he was following and tracking her, and that he had made comments about her brakes failing in the days just before her TRP interview;
- iii) Mr. Lopera had gone back and forth about agreeing to a divorce, and had recently indicated that he will not sign the divorce papers;
- iv) Mr. Lopera would frequently use their relationship and the Applicant's lack of status as a tool to exert coercive control over the Applicant; and
- v) while Mr. Lopera had not been physically violent toward the Applicant in the months before the TRP interview, their relationship had frequently had periods of calm, followed by periods of violence.

[27] Given the above, there was simply no basis on which the Officer could reasonably conclude, at the time the decision was rendered, that the Applicant was no longer experiencing family abuse. Certainly, Ms. Vendrell's situation may have improved, but the information before the Officer was also clear that Mr. Lopera continued to be in touch with the Applicant, and that he continued to exhibit characteristics of coercive control right up to the month of the TRP interview. While not entirely clear, it may be that the Officer's findings were based on the fact that Mr. Lopera had not recently been physically abusive to the Applicant. Of course, this would

also be an unreasonable conclusion, as it would be contrary to both the Ministerial Instructions, and to our broad understanding that domestic abuse can take many forms.

[28] As a result, I find that the Officer's conclusion that the Applicant had failed to establish that she continued to experience family violence was unreasonable.

B. *The Contingency of the Applicant's Status in Canada*

[29] While the above finding is determinative of this application, I also have concerns with the Officer's finding that the Applicant's status in Canada did not, at the time of her application, depend on her relationship with her spouse.

[30] As noted above, the Ministerial Instructions require officers to consider whether the TRP applicant's relationship to the abusive spouse or common-law partner is critical to the continuation of the individual's status in Canada. Recall, as well, that this criterion is only one of the two factors set out in the Instructions for assessing whether an individual is a victim of family violence. I do not read this factor, in other words, as a hard pre-requisite to obtaining a TRP, but rather as a required consideration in evaluating the cohort of individuals who may benefit from the TRP-FV program. The separate set of factors that follow in the Instructions are those that should be considered in assessing whether to grant a TRP (see paragraphs 22-23 above).

[31] In this case, it appears that the Officer focused on the fact that the Applicant had already separated from her spouse and on her submission that she needed a TRP to give her time to

obtain her divorce. Based on these facts, the Officer reasoned that the Applicant did not require a TRP, because she could obtain the divorce from Mexico.

[32] However, this represents, at best, an incomplete reading of Ms. Vendrell's application. It is true that the Applicant indicated that she applied for the TRP, at least in part, to give her time to obtain a divorce from Mr. Lopera. She also indicated, however, that she wished to establish herself in Canada, and that she had no departure date in mind. She further indicated that when she came back to Canada, she wanted to remain here, and to take charge of her life. I note that these are precisely the kinds of reasons for seeking a TRP that are contemplated in the Ministerial Instructions, the first two of which are to:

- provide a period of reflection for victims of family violence who are out of status to further consider their immigration options; and to
- to allow victims of family violence to escape the influence of their abuser so that they can make an informed decision on a future course of action.

[33] With the above in mind, I find it problematic that an Officer would deny a TRP-FV application because an applicant has already taken steps to remove themselves from a violent situation. In this case, while the Applicant had separated from her spouse, the fact remained that her only clear path to stable status in Canada was through him. Refusing a TRP application because an applicant has removed herself from day-to-day violence incentivises victims to remain with abusers, which is contrary to the very purpose of the TRP-FV program. It is clear from the evidence that Ms. Vendrell had taken steps to free herself from Mr. Lopera, and that she applied for the TRP to give herself time to stabilize her situation through a divorce and to

consider her next steps. In my view, this objective was entirely in keeping with the TRP-FV program, and the Officer's finding to the contrary lacked adequate justification: *AB v Canada (Citizenship and Immigration)*, 2021 FC 714.

C. *Broader TRP Determination*

[34] As noted above, the TRP-FV process provides specific Ministerial Instructions to TRP applicants who have experienced family violence. Applicants use the same TRP application form, and the authority to grant the TRP remains the authority created under s.24(1) of the *Act*. In the materials submitted to the Court, and in oral argument, it became clear that one disagreement between the parties was whether, in TRP-FV cases, officers are obliged to consider the application as a general TRP, in addition to taking into account the factors specific to the TRP-FV Ministerial Instructions. The Applicant argues that they are, and that the Officer failed in this regard. The Respondent took the position that TRP-FVs are essentially a distinct form of application that should be assessed against their own criteria, as set out in the Ministerial Instructions.

[35] While, again, not necessary for the sake of this determination, I agree with the Applicant's position. I believe this is made clear by the language of s.24(3) of the IRPA which, as noted above, states: "In applying subsection (1), the officer shall act in accordance with any instructions that the Minister may make." Thus, it is clear that s.24(3) Ministerial Instructions are provided to assist officers "in applying" s.24(1) decisions, in particular circumstances where the Minister has decided to issue such instructions. Understood in this way, it is clear that TRP-FV applicants are also TRP applicants, who seek further consideration pursuant to the Instructions.

This being the case, I find that officers in such cases are obliged to turn their minds to broader TRP considerations prior to rejecting an application under the TRP-FV process.

[36] I draw support from this from the Officer's own reasons, which conclude as follows: "I am therefore not satisfied client meets the eligibility requirements of FV-TRP under A24(3). Further, I find no exceptional or compelling reasons exist to justify temporary stay or the issuance of a temporary resident permit, pursuant to A24(1)."

[37] The problem here, however, is that the Officer provided essentially no rationale for concluding that the Applicant was not eligible for a s.24(1) TRP, which attracts its own considerations, and is subject to its own Guidelines and binding jurisprudence. To this extent as well, I find that the Officer's decision was unreasonable.

## VI. CONCLUSION

[38] For the above reasons, I will grant this application for judicial review. The parties did not propose a question for certification, and I agree that none arises.

**JUDGMENT in IMM-4781-24**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is granted.
2. The matter is remitted to a different decision-maker for reconsideration in accordance with these reasons.
3. No question is certified for appeal.

"Angus G. Grant"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-4781-24

**STYLE OF CAUSE:** MARIA DE LOURDES TATIANA LOYOLA  
VENDRELL v THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** APRIL 8, 2025

**JUDGMENT AND REASONS:** GRANT J.

**DATED:** MAY 26, 2025

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