

## **CLAS CIRCULAR 2019/16**

**(14 October 2019)**

### **MINISTERS OF RELIGION: IMMIGRATION & VISA REQUIREMENTS**

#### **Disclaimer**

**CLAS is not qualified to advise on the legal and technical problems of members and does not undertake to do so. Though we take every care to provide a service of high quality, neither CLAS, the Secretary nor the Governors undertakes any liability for any error or omission in the information supplied.**

It would be very helpful if members could let us know of anything that appears to indicate developments of policy or practice on the part of Government or other matters of general concern that should be pursued.

<b>Immigration Guidance for Ministers of Religion .....</b>	<b>2</b>
Eligibility.....	2
Knowledge of English.....	2
Documents that must be provided.....	3
Family members .....	3
How long the process takes.....	3
<b>Consolidated Immigration Rules on Ministers of Religion .....</b>	<b>4</b>
Requirements for leave to enter as a minister of religion, missionary, or member of a religious order.....	4
Refusal of extension of stay as a minister of religion, missionary or member of a religious order.....	4
Indefinite leave to remain for a minister of religion, missionary or member of a religious order .....	4
176-SD: Specified documents.....	5
Refusal of indefinite leave to remain for a minister of religion, missionary or member of a religious order.....	5
General requirements for indefinite leave to remain .....	5
Attributes for Tier 2 (Ministers of Religion) Migrants .....	8

## Immigration Guidance for Ministers of Religion

For information

### Eligibility

Government guidance states that applicants must:

- have a certificate of sponsorship for the job – applicants can only use their certificate of sponsorship reference number once and must use it three months after receiving it;
- prove their [knowledge of English](#);
- have personal savings to support themselves when in the UK;
- show that they may travel, as well as their travel history over the last 5 years; and
- provide tuberculosis test results, [if required](#).

Applicants must have £945 in their bank account for 90 days before the application date, unless they have either a fully approved ('A-rated') sponsor who can cover their costs in the UK, or Tier 2 visa if applying from within the UK.

### Knowledge of English

Applicants can prove their knowledge of English by passing [an approved English language test](#) with at least CEFR level B2 in reading, writing, speaking and listening, or having an academic qualification that was taught in English and is recognised by [UK NARIC](#) as being equivalent to a UK bachelor's degree, master's degree or PhD.

Applicants will not need to prove their knowledge of English if they are a national of one of the following countries:

- Antigua and Barbuda
- Australia
- the Bahamas
- Barbados
- Belize
- Canada
- Dominica
- Grenada
- Guyana
- Jamaica
- New Zealand
- St Kitts and Nevis
- St Lucia
- St Vincent and the Grenadines
- Trinidad and Tobago
- USA.

## Documents that must be provided

When applying, an applicant will need to provide:

- a certificate of sponsorship reference number;
- proof of [knowledge of English](#);
- a bank or building society statement or letter that shows that the applicant has enough [personal savings](#);
- a current passport or travel document to prove that the applicant can travel – and an applicant will need a blank page in his or her passport for a visa;
- expired passports or travel documents if the applicant needs them to show his or her travel history; and
- tuberculosis test results if the applicant is from a [listed country](#).

## Family members

Until 31 October at any rate (who knows what will happen after that date?), an applicant's family members ('dependants') must apply to join or remain with the applicant in the UK if they are from outside the [European Economic Area \(EEA\) or Switzerland](#). A 'dependant' is any of the following:

- the applicant's partner;
- the applicant's child under 18; and/or
- the applicant's child *over 18* if he or she is currently in the UK as a dependant.

Each dependant must have £630 available to them, whether they apply separately or not. This is in addition to the £945 that applicants must have to support themselves. Applicants must be able to prove that they have the money and that it has been in their (or a dependant's) bank account for at least 90 days before applying.

## How long the process takes

Once they have applied, applicants can stay in the UK until they have received a decision, ***as long as they applied before their last visa expired***. Decisions are usually made within eight weeks of the application date if they use the standard service or within five working days if using the priority service. If applicants use the super-priority service a decision will be made by the end of the next working day after the UKVCAS appointment (if the appointment is on a weekday) or two working days after the UKVCAS appointment if an appointment is at the weekend.

[Source: Home Office, 7 October]

## Consolidated Immigration Rules on Ministers of Religion

For information

The following extract is the rules relating to ministers of religion and similar immigrants. *Because of various deletions, the numbering is not consecutive.*

### Requirements for leave to enter as a minister of religion, missionary, or member of a religious order

169. For the purposes of these Rules:

- (i) a minister of religion means a religious functionary whose main regular duties comprise the leading of a congregation in performing the rites and rituals of the faith and in preaching the essentials of the creed;
- (ii) a missionary means a person who is directly engaged in spreading a religious doctrine and whose work is not in essence administrative or clerical;
- (iii) a member of a religious order means a person who is coming to live in a community run by that order.

170. Deleted on 27 November 2008 by paragraph 39 of Statement of Changes HC 1113 except insofar as relevant to paragraph 176 AND 177.

### Refusal of extension of stay as a minister of religion, missionary or member of a religious order

175. An extension of stay as a minister of religion, missionary or member of a religious order is to be refused if the Secretary of State is not satisfied that each of the requirements of paragraph 173 or 174A is met.

### Indefinite leave to remain for a minister of religion, missionary or member of a religious order

176. Indefinite leave to remain may be granted, on application, to a person admitted as a minister of religion, missionary or member of a religious order provided the applicant:

- (i) has spent a continuous period of 5 years lawfully in the United Kingdom in this capacity; and
- (ii) has met the requirements of paragraph 173 or 174A throughout the 5 year period; and
- (iii) is still required for the employment in question as certified by the leadership of the congregation, the employer or the head of the religious order to which the applicant belongs; and

- (iv) has demonstrated sufficient knowledge of the English language and sufficient knowledge about life in the United Kingdom, in accordance with Appendix KoLL; and
- (v) does not fall for refusal under the general grounds for refusal; and
- (vi) is not in the UK in breach of immigration laws except that, where paragraph 39E of these Rules applies, any current period of overstaying will be disregarded; and
- (vii) provides the specified documents in paragraph 176-SD to evidence the reason for the absences set out in paragraph 128A [*for which, see below*].

### **176-SD: Specified documents**

The specified documents referred to in paragraph 176(vii) are:

- (a) A letter from the leadership of the congregation, the employer or the head of the religious order to which the applicant belongs, detailing the purpose and period of absences in connection with the employment, including periods of annual leave.
- (b) Where the absence was due to a serious or compelling reason, a personal letter from the applicant which includes full details of the reason for the absences and all supporting documents in relation to those reasons - e.g. medical certificates, birth/death certificates, information about the reasons which led to the absence from the UK.

### **Refusal of indefinite leave to remain for a minister of religion, missionary or member of a religious order**

177. Indefinite leave to remain in the United Kingdom for a minister of religion, missionary or member of a religious order is to be refused if the Secretary of State is not satisfied that each of the requirements of paragraph 176 is met.

**Comment:** The reference in paragraph 176(ii) to having met 'met the requirements of paragraph 173 or 174A throughout the 5 year period' is slightly mystifying, since paragraphs 173 and 174A no longer appear to exist.

\*\*\*\*\*

**Paragraph 128A** – which appears to govern the entire process – is as follows:

### **General requirements for indefinite leave to remain**

128A. The following rules apply to all requirements for indefinite leave to remain in Part 5:

- (a) references to a "continuous period" of 5 years or 4 years "lawfully in the UK" mean, subject to paragraph (aa), residence in the United Kingdom for an unbroken period with valid leave, and for these purposes a period shall be considered unbroken where:

- (i) the applicant has not been absent from the UK for more than 180 days during any 12 month period in the continuous period, except that:

(1) any absence from the UK for the purpose of assisting with a national or international humanitarian or environmental crisis overseas shall not count towards the 180 days, if the applicant provides evidence that this was the purpose of the absence(s) and that their employer, if there was one, agreed to the absence(s) for that purpose; and

(2) for any absences from the UK during periods of leave granted under the Rules in place before 11 January 2018, the applicant must not have been absent from the UK for more than 180 days during each consecutive 12 month period, ending on the same date of the year as the date of the application for indefinite leave to remain.

(ii) the applicant has existing limited leave to enter or remain upon their departure and return, except that:

(1) where that leave expired no more than 28 days prior to a further application for entry clearance which was made before 24 November 2016 and subsequently granted,

(2) where, on or after 24 November 2016, the applicant makes a further application for entry clearance during the currency of continuing limited leave which is subsequently granted, or

(3) where, on or after 24 November 2016, the applicant makes a further application for entry clearance within 14 days of the applicant's leave expiring and the Secretary of State considers that there was a good reason beyond the control of the applicant or their representative, provided in or with the application for indefinite leave to remain, why the application could not be made during the currency of continuing limited leave, or

(4) where a successful application for entry clearance is made following the refusal of a previous application to which (2) or (3) otherwise applies, and the application was made within 14 days of that refusal (or the expiry of the time-limit for making an in-time application for administrative review, or any administrative review or appeal being concluded, withdrawn or abandoned or lapsing), that period spent without existing leave, pending the applicant's re-entry into the United Kingdom, shall be disregarded; and

(iii) the applicant has any previous period of overstaying disregarded where paragraph 39E of these Rules applies; and

(iv) the applicant has any previous period of overstaying between periods of leave disregarded where: the further application was made before 24 November 2016 and within 28 days of the expiry of leave; or the further application was made on or after 24 November 2016 and paragraph 39E of these Rules applied.

(aa) For the purposes of paragraph (a), time spent with valid leave in the Bailiwick of Guernsey, Bailiwick of Jersey or the Isle of Man may be included in the continuous period of 5 or 4 years residence in the UK, provided that:

(i) the leave granted in the Bailiwick of Guernsey, Bailiwick of Jersey or the Isle of Man was granted in a category equivalent to those specified in the indefinite leave to remain provisions in this Part; and

(ii) any period of leave granted in the Bailiwick of Guernsey, Bailiwick of Jersey or the Isle of Man as a work permit holder was for employment:

(a) in a job which appears on the list of occupations skilled to National Qualifications Framework level 3 or above, as stated in the Codes of Practice in Appendix J, or

(b) in a job which appears in the Creative Sector Codes of Practice in Appendix J, or

(c) as a professional sportsperson (including as a sports coach); and

(iii) in the case of leave granted in the Bailiwick of Guernsey, Bailiwick of Jersey and the Isle of Man as an overseas domestic worker in a private household, it was granted before 6 April 2012; and

(iv) the most recent period of leave in the relevant continuous period of 5 years or 4 years has been granted in the United Kingdom.

(b) Except for periods when the applicant had leave as a highly skilled migrant, a self-employed lawyer, leave granted under Part 6 of these rules or on the grounds of his UK Ancestry, and subject to paragraph (ba):

(i) the applicant must have been employed in the UK continuously throughout the five years, under the terms of his work permit or in the employment for which he was given leave to enter or remain, except that any breaks in employment in which he applied for leave as a work permit holder or as an employee under any provision of this section to work for a new employer shall be disregarded provided this is within 60 days of the end of his employment with his previous employer.

(ii) any absences from the UK must have been for a purpose that is consistent with the continuous permitted employment in (i), including paid annual leave or for serious or compelling reasons.

(ba) For the purposes of paragraph (b), continuous employment in the UK may include employment in the Bailiwick of Guernsey, Bailiwick of Jersey and the Isle of Man under the terms of his work permit or in the employment for which he was given leave to enter or remain, provided that the most recent work permit or period of leave was granted in the UK; and, in any such case, paragraph (b) shall apply to employment in

the Bailiwick of Guernsey, Bailiwick of Jersey and the Isle of Man in the same way as it applies to employment in the UK.

[Source: Home Office, 7 October]

**Finally:**

### **Attributes for Tier 2 (Ministers of Religion) Migrants**

85. An applicant applying for entry clearance or leave to remain as a Tier 2 (Ministers of Religion) Migrant must score 50 points for attributes (which a Certificate of Sponsorship provides).

88. In order to obtain points for sponsorship, the applicant will need to provide a valid Certificate of Sponsorship reference number in this category.

89. A Certificate of Sponsorship reference number will only be considered to be valid for the purposes of this sub-category if:

(a) the number supplied links to a Certificate of Sponsorship Checking Service entry that names the applicant as the Migrant and confirms that the sponsor is sponsoring him as a Tier 2 (Minister of Religion) Migrant, and

(b) the Sponsor is an A-rated Sponsor, unless:

(1) the application is for leave to remain, and

(2) the applicant has, or was last granted, leave as a Tier 2 (Minister of Religion) Migrant, and

(3) the applicant is applying to work for the same employer named on the Certificate of Sponsorship which led to his last grant of leave.

90. The sponsor must have assigned the Certificate of Sponsorship reference number to the migrant no more than 3 months before the application is made and the reference number must not have been cancelled by the Sponsor or by the United Kingdom Border Agency since then.

90A. The application for entry clearance or leave to remain must have been made no more than 3 months before the start of the employment as stated on the Certificate of Sponsorship.

91. The migrant must not previously have applied for entry clearance, leave to enter or leave to remain using the same Certificate of Sponsorship reference number, if that application was either approved or refused (not rejected as an invalid application, declared void or withdrawn).

92. in addition, the Certificate of Sponsorship Checking Service entry must:

(a) confirm that the applicant is being sponsored to perform religious duties, which:

(i) must be work which is within the Sponsor's organisation, or directed by the Sponsor's organisation,

(ii) may include preaching, pastoral work and non pastoral work,

(iii) must not involve mainly non-pastoral duties, such as school teaching, media production, domestic work, or administrative or clerical work, unless the role is a senior position in the Sponsor's organisation, and

(b) provide an outline of the duties in (a),

(c) if the Sponsor's organisation is a religious order, confirm that the applicant is a member of that order,

(d) confirm that the applicant will receive pay and conditions at least equal to those given to settled workers in the same role, that the remuneration complies with or is exempt from National Minimum Wage regulations, and provide details of the remuneration,

(e) confirm that the requirements of the resident labour market test, as set out in paragraph 92A below, in respect of the job, have been complied with, unless the applicant is applying for leave to remain and the Sponsor is the same Sponsor as in his last grant of leave,

(f) confirm that the migrant:

(i) is qualified to do the job in respect of which he is seeking leave as a Tier 2 (Minister of Religion) Migrant,

(ii) intends to base himself in the UK, and

(iii) will comply with the conditions of his leave, if his application is successful, and

(g) confirm that the Sponsor will maintain or accommodate the migrant.

92A. To confirm that the Resident Labour Market Test has been passed or the role is exempt from the test, and for points to be awarded, the Certificate of Sponsorship Checking Service entry must confirm:

(a) That the role is supernumerary, such that it is over and above the Sponsor's normal staffing requirements and if the person filling the role was not there, it would not need to be filled by anyone else, with a full explanation of why it is supernumerary; or

(b) That the role involves living mainly within and being a member of a religious order, which must be a lineage of communities or of people who live in some way set apart from society in accordance with their specific religious devotion, for example an order of nuns or monks; or

(c) That the Sponsor holds national records of all available individuals, details of those records and confirmation that the records show that no suitable settled worker is available to fill the role; or

(d) That a national recruitment search was undertaken, including the following details:

(i) Where the role was advertised, which must be at least one of the following:

(1) a national form of media appropriate to the Sponsor's religion or denomination,

(2) the Sponsor's own website, if that is how the Sponsor usually reaches out to its community on a national scale, that is where it normally advertises vacant positions, and the pages containing the advertisement are free to view without paying a subscription fee or making a donation, or

(3) Jobcentre Plus (or in Northern Ireland, JobCentre Online) or in the employment section of a national newspaper, if there is no suitable national form of media appropriate to the Sponsor's religion or denomination;

(ii) any reference numbers of the advertisements;

(iii) the period the role was advertised for, which must include at least 28 days during the 6 month period immediately before the date the Sponsor assigned the Certificate of Sponsorship to the applicant; and

(iv) confirmation that no suitable settled workers are available to be recruited for the role; or the applicant must be applying for leave to remain and the Sponsor must be the same Sponsor as in his last grant of leave.

[Source: Home Office, 7 October]