

Sponsor Licences for Baptist Churches Tier 2 Minister of Religion

This fact sheet has been provided by Truth Legal Solicitors LLP who specialise in immigration law, as well a wide range of legal services to businesses and individuals. This is not intended to be advice or a recommendation but to provide some guidance around sponsorship under the Tier 2 Minister of Religion category.

Sponsorship under Tier 2 Minister of Religion can be a confusing area. Here I provide some hopefully useful pointers for anyone charged with the task of navigating their Baptist church through this notoriously tricky area, including general sponsorship and how to apply for a sponsor licence.

Who needs a UKVI sponsor licence?

Any Baptist church which seeks to employ someone from outside of the EU as a 'religious worker' will need to hold a specific sponsor licence in order to sponsor the migrant. The specific Home Office department responsible for this is UK Visas and Immigration (UKVI).

Rejection and refusal rates for sponsor licence applications are high. Furthermore, your tribulations with UKVI do not necessarily end once you receive your licence: you must then ensure you have proper systems in place, on an on-going basis, to discharge your duties as a sponsor licence holder, or else risk enforcement action by UKVI.

UKVI regularly undertakes on-site inspections of religious organisations to ensure compliance, including unannounced visits. Enforcement action includes licence revocation, with the effect that any sponsored migrants have their contract of service terminated.

So it is important to understand how the sponsorship system works, a task not easy given the [207 page guidance](#) that sponsor licence holders are expected to be familiar with, as well other detailed guides which [relate specifically to the sponsor licence application](#) process and the [documents you are required to retain as part of your record keeping duties](#).

Difference between a Tier 2 and Tier 5 licence

There are two types of sponsor licences through which a church can sponsor a religious worker, both of which have titles which in typical UKVI fashion do not exactly trip off the tongue, namely *Tier 2 (Minister of Religion)*, and *Tier 5 (Temporary Worker) Religious Worker*.

The focus of this factsheet is the Tier 2 (Minister of Religion) category, but the key features of each are below. It is essential that you understand what is possible under each tier before you decide you apply. You can, and many Baptist churches do, apply for licences under both categories.

Tier 2 (Minister of Religion) – unique features

The Tier 2 (Minister of Religion) sponsor licence is primarily for individuals, such as ministers, who are coming to the UK to undertake preaching and pastoral work. However, this category can also be used for senior leadership or management roles within the organisation.

Migrants in this category can be granted an initial visa for three years, extendable to up to six years in total. After accruing five years in this category, the migrant can apply for indefinite leave to remain. Tier 2 sponsorship therefore offers a path to permanent settlement in the UK.

Tier 5 Religious Worker – unique features

Prior to a change in the law on 10 January 2019, ministers could come under either Tier 2 or Tier 5. However, ministers of religion are now specifically prevented from applying under Tier 5.

The Tier 5 route is for religious workers (excluding ministers) looking to work temporarily in the UK. Visas may be issued for up to two years. This category does not lead to settlement for the migrant.

The migrant cannot 'switch' from Tier 5 Religious Worker into the Tier 2 Minister of Religion category after two years and will generally be expected to return home. The Tier 5 route is therefore only of use to non-ministers coming to work for a church on a short-term basis.

Note also that, further to the changes in early 2019, there is now a 'cooling off' period for Tier 5 migrants. Any migrant previously sponsored under Tier 5 must wait 12 months from their visa expiring, before applying for a fresh Tier 5 visa (a similar provision already existed in respect of Tier 2).

As you can see, the Tier 5 model is fairly limited in its use, which is partly why I have chosen to focus this present fact sheet on the Tier 2 Minister of Religion category.

Process Overview - Tier 2 Minister of Religion

The sponsorship process is far from intuitive but it will help to understand some key concepts.

Resident labour market test

You can only hire a non-EU migrant if the position cannot be filled by a suitable 'settled worker'. Settled workers include UK nationals, EU nationals and their family members, and those with indefinite leave to remain.

UKVI guidance is clear that this principal applies to churches:

'Although not all religious occupations are 'jobs' in the traditional sense, this does not mean that the test does not apply. Any migrant you sponsor must not displace a suitable settled worker.'

You show no suitable settled worker is available by running a recruitment process in accordance with UKVI guidance, known as a resident labour market test (RLMT). There are certain situations where you will not need to run a RLMT, such as if the role is supernumerary (that is to say the role is over and above normal requirements and could not be filled by anyone else), or if the migrant will mainly live within a religious order.

Beware that the UKVI take this issue seriously. You will need to provide specific evidence to show you have conducted the RLMT when you apply for a certificate of sponsorship.

You must also keep an exacting record of this recruitment process on file, as part of your sponsorship duties. Be sure that, if you are inspected, evidence of the RLMT will be one of the first ports of call by UKVI.

You will need to consult [Appendix D](#) and the relevant sections of the [general guidance](#) in order to understand exactly how the RLMT must be conducted and which documents must be retained, but some key requirements are that you must:

- Advertise the job for at least 28 days.
- Advertise in a national media which is appropriate to your own denomination, for example, the Pastoral Vacancy List on The Baptist Union of Great Britain.
- Or alternatively you can advertise on you own website but only if this is how you normally reach out to your community on a national scale *and* is where you normally advertise vacant positions (it seems unlikely that an individual church's website will fit this criteria).
- Keep a copy of the advert as it appeared in the newspaper (if applicable).
- Or take 'screenshots' of the website hosting the advert. These must be taken on the date the advert goes live.
- Keep a record of interview notes which state the reason why a settled worker was not selected.

You can only select based on *essential criteria* as set out in the job specification. You cannot select a non-settled worker who scores higher in an interview compared to a settled worker, if the settled worker nonetheless satisfies the essential criteria.

This can create difficulties for churches which will select for the role on the basis of God's calling to be the minister.

It is therefore important to ensure your job specification is carefully worded. You will also need to keep a careful record of interview notes in order to justify your selection of a non-settled candidate.

Occasionally a brave soul looks to challenge the strictness of the rules around the RLMT in the higher courts, but they are generally given short shrift, as when a GP surgery sought to challenge the revocation of its sponsor licence on this precise, aforementioned issue.¹

A further crucial consideration when undertaking the RLMT is that information contained in the job advert, such as the job description, the terms and conditions including pay, must be an accurate portrayal of the migrant's actual work. This will be a key focus in any UKVI inspection.

Certificates of sponsorship

Once you have undertaken the RLMT then you can apply for a certificate of sponsorship (CoS). A CoS is a virtual document which you assign to the migrant, armed with which, the migrant can then apply for his or her visa.

It is possible to apply for a CoS *after* you have applied for a licence. However, in practice it is generally advisable to apply for a CoS at the same time that you apply for a licence. If you do not then UKVI are likely to reject or refuse your application on the basis that you have no apparent need for a licence.

¹ *R (Khan) v Secretary of State for the Home Department* [2018] EWHC 105 (Admin)

It is important to get your application right, as if your application is refused (rather than 'rejected') then there is a 'cooling off period' before you can reapply – usually six months, although longer in certain circumstances.

Applying for the licence

As I mentioned, it is generally advisable to apply for the licence *after* you have completed the RLMT and shown that your prospective migrant employee was the only suitable candidate.

The licence itself is valid for four years and can be renewed (and must be renewed if you are sponsoring migrants at the time your licence expires, otherwise any sponsored migrants will have their visas curtailed).

[Appendix A](#) is essential reading when preparing your Tier 2 Minister of Religion sponsor licence application. It sets out the precise documents and information required for the application.

In my view, in its guidance, UKVI does not impress the reality of the decision-making process on applicants – that it is not only the requested documentation which is mandatory but also all of the information they request, particularly around the RLMT and the nature of the business. So if you fail to provide *any* of the requested information it will likely lead to a rejection.

Assigning the CoS

Once you have been allocated a CoS then you will then need to assign it to the migrant. At the point of assignment you will have to give further evidence of how you conducted the RLMT.

At this point you must also input the migrant's start date of employment and this can only be changed in limited circumstances.

You must assign the CoS within six months of you starting the 28 day recruitment process of the RLMT. Overlooking this deadline can have serious consequences.

A company which had its sponsor licence revoked on the basis of failing to assign the CoS within six months (and therefore had to terminate the employment of its sponsored staff) sought to challenge this decision in the courts. As usual the High Court sided with UKVI,² no doubt emboldening UKVI to take enforcement action on this issue where it can.

Applying for the visa

The migrant must submit his/her visa application within three months of the CoS being assigned or else the CoS becomes invalid, and so if you miss this deadline you could be looking at starting the *whole process again, including the RLMT!*

The migrant can submit the visa application three months prior to his or her start date of employment (as stated when the CoS is assigned to the migrant). The migrant can come to the UK up to 14 days before the start date as stated on the CoS.

² *R (Sri Prathinik Consulting Limited) v Secretary of State for the Home Department* [2017] EWHC 3204 (Admin)

I have been instructed by religious organisations who have undertaken extensive recruitment processes and been nearing the point at which their minister of religion was to join them in the UK, only to fall victim to one of the myriad deadlines which relate to Tier 2 sponsorship.

I deal with the critical issue of timing and deadlines perhaps more clearly, in a separate blog post [here](#).

Costs

There are various costs associated with sponsorship under Tier 2 Minister of Religion. These are:

- The sponsor licence itself=£536
- The cost of one CoS=£199
- Visa application=£610 (if applying from outside the UK), or £704 from within the UK
- Immigration Health Surcharge (allows use of NHS)=£1,200

The costs of the licence and CoS must be borne by the employer. The visa and health surcharge fees are the responsibility of the migrant, although in practice these are often covered by the employer.

You can read more about the sponsorship process for Tier 2 Minister of Religion in my blog, [here](#).

This article was written by Louis MacWilliam, Head of Immigration at Truth Legal Solicitors: <https://www.truthlegal.com/meet-the-team/louis-macwilliam/>. If you have any queries on this or any other immigration matter please feel free to contact Louis on 01423 648 064 / 07720 593 913 or Louis@TruthLegal.com. Other legal services are available from at Truth Legal Solicitors: <https://www.truthlegal.com/> This fact sheet has been provided Truth Legal Solicitors who specialise in immigration law, as well a wide range of legal services to businesses and individuals. This is not intended to be advice or a recommendation but to provide some guidance around sponsorship under Tier 2 Minister of Religion. Further information about their immigration services faith-based organisations can be found at <https://www.truthlegal.com/immigration-solicitors/faith-based-immigration-services/> and information about immigration services for individuals can be found at <https://www.truthlegal.com/immigration-solicitors/immigration-for-individuals/> Truth Legal Solicitors is registered in England and Wales under company number 08031477 and has a registered office at 14 Victoria Avenue, Harrogate, HG1 1ED. Truth Legal Solicitors is authorised and regulated by the Solicitors Regulation Authority, number 568741.