

Notes from the Religious Workers Immigration Meeting

On 31 March 2012, we attended a meeting arranged by Religious Communities Leadership Forum (NZ Buddhist Council is a member) to provide members of religious communities information about the new rules for work and residence visas for religious workers that became effective on 7 November 2011.

Bruce Jenkins, Training and Development Officer for Immigration New Zealand attended the meeting to help explain the new policy and answer questions. Joan Buchanan started by saying how helpful Immigration New Zealand had been over the implementation and had met a number of times with her and representatives of the Catholic Church to discuss implementation of this new policy.

There were over 20 people present, mostly representing Buddhist organisations, but also including representatives of Jewish and Christian groups. Apologies were received from the Hindu and Muslim communities.

The following are some notes from the meeting.

There are two new visa types available for Religious Workers in New Zealand

1. Religious Worker **work visa** – a sponsored temporary entry class visa granted for two years, which can be extended for a further two years.
2. Religious Worker **residence visa** – an application can be made for this visa after a religious worker has held a Religious Worker work visa for at least three years.

The new policy includes a requirement that the religious worker is sponsored by a religious organisation. Previously an individual could apply independently if their religion and/or denomination was recognised in immigration policy, now the individual and the organisation sponsoring them must both submit an application for consideration.

The **individual** sponsored for a Religious Worker visa (work or residence) must:

1. Be of good character (i.e. police checks) and meet health requirements.
2. Be sponsored by a religious organisation registered as a charity by the New Zealand Charities Commission.
3. Provide evidence of suitable qualifications and/or experience of at least two years for the religious work they wish to be sponsored for.
4. Provide evidence of a genuine offer of religious work from the sponsoring organisation that meets Immigration New Zealand's definition for religious work (see below under Sponsoring Organisation).
5. Complete all necessary parts of the application form INZ 1015 (for a work visa) or INZ 1000 (for a residence visa).

Where the application is for **residence** the individual must also:

1. Be 55 years old or under at the time the application is submitted.
2. Be capable of a modest level of English, either by being from an English language background, holding an IELTS Certificate showing an 'Overall Band' score of Level 5 or higher in the General or Academic Module, or by providing other evidence of their English competency.
3. Have been in New Zealand for a minimum of three years on a Religious Worker work visa.

The **Sponsoring Organisation** must:

1. Be registered with the Charities Commission with a primary purpose of advancing religion.
<http://www.charities.govt.nz/setting-up-a-charity/charitable-purpose/examples/#advancement-of-religion>
2. Provide a description of the religious work for the individual in terms of one or more of the following primary roles:
 - teaching or guidance in religious scripture or philosophy,
 - leading religious practice, worship or prayer,
 - conducting religious initiations, ordination or ritual,
 - ministering or pastoral care,
 - roles of religious leadership in relation to any of the above
3. Explain how this role serves your community
4. Commit to and provide evidence of an ability to provide support for the necessities of life, including food, accommodation, health and clothing, as well as the costs of returning them to their home country if required, for the duration of the work visa(s) (for two years per visa), or in the case of residence, for five years from the date the visa is granted.
5. Complete all necessary parts of the sponsorship form INZ 1190.
6. Sponsoring organisations may also provide information showing how their organisation operates to support the religious worker, particularly if it is through a mechanism that may be considered unusual from an employment perspective.

Below are some points that were made in response to questions that may help to clarify some of these requirements. It is straightforward to make an application without paying a Licensed Immigration Adviser for their services.

- While you do not need to get professional advice to create or submit an application, if you do you must be sure that the person is:
 - a Licensed Immigration Adviser (you can check the register here: <http://www.iaa.govt.nz/adviser-register>), **or**
 - exempt from being licensed, for example, a family member, a lawyer or an immigration officer.
You can check who may be an exempt person here: <http://www.iaa.govt.nz/becoming-adviser/exempt.html>.
- The language requirement must be met for a residence visa, but is not required for a work visa. This reflects that you are likely to acquire a modest command of English during the minimum three years you are in New Zealand under a Religious Worker work visa.
- The need for the person, and the work they are to do, must be described in terms of the person completing the primary roles defined above. The primary roles must be their main purpose, meaning that this should take the majority of the time they dedicate to the religious work. While support roles may be undertaken by the individual for a limited period of their average working week, the application must be based on one or more of these primary roles.
- Secondary roles may include food preparation, support work, administration, maintenance of property or gardens, non-religious teaching and so on. Secondary roles must remain secondary (by time spent on them) for the full duration of a Religious Worker visa.

- You don't have to have a job contract, and you are not required to pay a set salary or wage for the services. However the undertakings made by both the individual and the sponsoring organisation when applying for the visa are legally binding obligations. If you are paying the religious worker a salary, wage or stipend you must also provide an employment agreement as evidence of a sponsoring organisation's compliance with employment law.
- Qualifications don't have to be recognised by NZQA, though these remain acceptable to support an application. Other qualifications may include:
 - an Ordination Certificate,
 - a formal letter from a religious institute setting out the training and practice that has been completed, or
 - a qualification certificate from a religious institute that is not on the NZQA register.
- To apply for a Religious Worker residence visa, the applicant must have held a Religious Worker work visa under the new or previous policy for at least three years. They cannot ordinarily apply while holding any other type of visa.
- Both the work and residence visas allow for multiple entry travel (unlimited entry to and from New Zealand) while the visas are valid.
- As long as an application for an extension to a **work visa** is lodged with Immigration New Zealand before the expiry of the existing visa, then an automatic interim visa will be granted allowing the applicant to remain in New Zealand while the application is being considered. You do not need to apply for the interim visa. <http://www.immigration.govt.nz/opsmanual/43636.htm>
- The above does **not** apply when making an application for **Permanent Residence**.
 - If you have lodged an application for a residence visa (you must already be on a work visa to do this), and your work visa is about to expire, you **MUST APPLY** for a further work visa valid for the full period that the residence application takes to be processed.
 - This must be accompanied with all the appropriate original documentation (if not already submitted), including police clearance, health, sponsorship, qualifications etc. as well as the fee of \$230.
 - If you have applied for residence then the health and police clearance documentation will still be valid - you don't have to source new ones.
 - Be sure to refer to your PR application and Client number when submitting the application for the extension to your work visa. (These will be at the top right of any correspondence from the Department).
 - The residence application may take up to nine months to be processed, but in most cases will be completed in less than three.
- Never allow a work visa to expire while the visa holder is in New Zealand. They must always be legally in New Zealand. This could damage chances for the individual to be granted a visa, or the sponsoring organisation to sponsor a religious worker in the future.
- There is no provision to apply for a residence visa under this policy from outside of New Zealand. This is to encourage continuity with the religious organisation the religious worker is sponsored by.
- The commitment to support a religious worker is an undertaking by the sponsoring organisation. You do not have to hand over any money, and you do not have to show that you have all the cash in the bank. You will have to show how you and your community will provide that support, either by providing evidence of financial stability,

letters of commitment, a history of providing such support or in some other way that is relevant for your community.

- While on a work visa or a residence visa, the individual is entitled to access publicly funded health and disability services. Find more information on the Ministry of Health's website here: <http://www.health.govt.nz/new-zealand-health-system/eligibility-publicly-funded-health-services/guide-eligibility-publicly-funded-health-services-0/work-visa-holder-eligible-be-nz-two-years-or-more>.
- If the individual is likely to study or do work outside the terms of their Religious Worker visa (e.g. undertake secondary tasks as their substantive role, or to work for a different organisation) they must apply for a Variation of Conditions from Immigration New Zealand. Information on applying for a Variation of Conditions is available on the Immigration New Zealand Operational Manual at W2.25.1 here: <http://www.immigration.govt.nz/opsmanual/i34391.htm>.
- **Always** be factually correct in all of your statements to Immigration New Zealand. Be sure that anyone who may be contacted in relation to the application (such as officers of your organisation, benefactors or referees quoted in the application) is aware of the facts. Answer all the questions, but do not feel obliged to volunteer additional information that is not asked for unless it clearly advances your case.

Further Information:

- A programme of training and education for immigration officers has been undertaken and is ongoing. If you find that your case officer does not seem to understand your needs, be persistent with the immigration officer, and ask to talk with the Branch Manager. Branch information is available on the Immigration New Zealand website here: <http://www.immigration.govt.nz/migrant/general/aboutnzs/contactus/>.

Exceptions

If your particular situation does not quite fit the requirements outlined above then there are a number of further steps you can take.

- If this is an application for a work visa, then the immigration officer is **required** to consider an 'exception to instructions' (the detail of this requirement is at E7.10(b) here: <http://www.immigration.govt.nz/opsmanual/i34351.htm>). They have the authority to make an exception to a particular instruction and grant a visa, taking into account the objectives of the relevant Religious Worker (and related) instructions and the situation and purpose of the person applying.
- If an immigration officer has still declined your application for work, and you are in New Zealand (onshore), you may apply to Immigration New Zealand (in writing - by letter or email) for a reconsideration of the reason to decline the work visa (see more information here at E7.35.1: <http://www.immigration.govt.nz/opsmanual/i43631.htm>). While not legally obliged to reconsider offshore declined applications for a temporary visa, immigration officers may do so if new and compelling information is promptly provided.
- Reconsideration of a residence decision by the above means is not available for Religious Workers.
- If you do not believe that the officer has followed the rules properly when processing or deciding a residence visa application, or you would like to appeal a decision to decline your residence application then you can appeal to the Immigration and Protection Tribunal.

Temporary entry class visa decisions can be appealed via a reconsideration, as above, and if that fails can appeal to INZ (within 42 days) - see E7.35.1 (i) here: <http://www.immigration.govt.nz/opsmanual/i43631.htm>.

Information on how to appeal is on the Ministry of Justice's website here: <http://www.justice.govt.nz/tribunals/immigration-protection-tribunal/how-to-make-a-claim>.

- The Immigration and Protection Tribunal may recommend that a decision is upheld, reversed, referred to the Minister of Immigration or otherwise changed. Decisions on residence applications by the Immigration and Protection Tribunal are made solely on the basis of the written information already available in the decision-making process, including the information on the approved appeal form.
- There is a subtle difference between an ‘exception to instructions’ and a ‘special direction’. The first is an exception to the immigration instructions written to implement this policy, including all instructions in the Immigration New Zealand Operational Manual relating to Religious Workers. As detailed above, immigration officers may only make exceptions to instructions involving temporary entry class visa applications. Exceptions to residence instructions must be made by the Minister of Immigration. The second, a special direction, is a specially delegated right to enable impediments imposed by immigration law to be overcome e.g. to waive lodgement requirements; or to allow an excluded person to be granted a visa, which can be applied by officials in Immigration New Zealand, delegated by the Minister of Immigration. More information on the instruments of delegation, and the areas where special direction may apply are available here:
<http://www.immigration.govt.nz/opsmanual/i41771.htm>.
- If you can see that a religious worker cannot meet all the criteria in residence instructions you can approach your local Member of Parliament for support in making an application to the Minister of Immigration to make an exception to instructions, or to seek a special direction. However, unless you have already followed the normal application and appeal process and been unsuccessful with this, it is unlikely that the Minister of Immigration will consider assisting with your application.

I offered our deep thanks and congratulated both Joan Buchanan and Bruce Jenkins for offering this opportunity, for the clarity of the presentation and for the time and care taken to respond to the many questions raised.

More information is available from the Immigration New Zealand website here for work visas:

<http://www.immigration.govt.nz/migrant/stream/work/worktemporarily/requirements/specialarrangements/ReligiousWorkers.htm>

And here for residence visas:

<http://www.immigration.govt.nz/migrant/stream/work/residencefromwork/howtoapply/stepforreligiousworkers/>

Hope this is helpful.

Simon Harrison
On behalf of New Zealand Buddhist Council