



WORLD SHIPPING COUNCIL
PARTNERS IN AMERICA'S TRADE

**COMMENTS OF
THE WORLD SHIPPING COUNCIL**

**BEFORE THE
DEPARTMENT OF STATE**

**IN THE MATTER OF:
DOCUMENTATION OF NONIMMIGRANTS UNDER THE IMMIGRATION
AND NATIONALITY ACT, AS AMENDED – ELIMINATION OF CREW LIST
VISAS**

[Public Notice 4654]

MAY 17, 2004

1. Introduction

The World Shipping Council (“the Council” or “we”) submits these comments in response to the Interim Final Rule (“Rule”) published by the Department of State (“State Department” or “the Department”) on March 18, 2004 (*69 Fed.Reg. 12797 et seq.*). By that Rule, the State Department makes final on an interim basis its proposal from December 13, 2002 (*67 Fed.Reg. 76711 et seq.*) to amend its current regulation at 22 CFR 41.42 to eliminate the crew list visa effective June 16, 2004. In a commendable step, the Department has asked for public comments by May 17 to allow it to review such comments to determine if any additional steps, including a possible extension of the effective date of the rule by 90 days, needs to be taken to ameliorate effects on the shipping industry.

The Council filed extensive comments on February 11, 2003, on the Department’s originally proposed rule to eliminate the crew list visa system. On September 4, 2003, we also filed comments on the related rule, which became effective on August 1, 2003, that eliminated the discretion of consular officers at U.S. diplomatic posts overseas to grant so-called “personal appearance waivers (PAWs)” to applicants of a number of visa categories, including crew list visas.

The members of the World Shipping Council, and the crews that operate their ships, continue to have a direct and substantial interest in this proceeding. While generally referring to the observations and comments made in the Council’s earlier submissions, we respectfully submit the comments below to address a number of specific issues arising from the Rule.¹

In the Federal Register notice, the Department discusses the possibility of extending the date for the new rule from June 16 up to and including September 16. The Council respectfully urges the Department to extend this date until October 26, 2004, in order: 1) to align the effective date of the Rule at issue with the statutorily prescribed effective date for the issuance of visas to the United States with biometric identifiers -- a requirement that the Department itself notes in the Supplementary Information to the Rule would mean that “crew list visas would necessarily be eliminated by that date”;² and 2) to provide time for the shipping industry and the Department and U.S. diplomatic missions abroad to fully accommodate to, and arrange for, a future system relying solely on individual visas for crewmembers on vessels calling at U.S. ports. We are concerned that such an orderly transition to an individual visa-only system may not be attainable with June 16 as the effective date.

¹ A list of the Council’s members is attached as Appendix A.

² *69 Fed.Reg. 12797.*

We discuss below issues and concerns that we believe still need to be addressed before the Rule should take effect and be implemented in an orderly fashion. We note that the issues we raise below, and which we believe should be considered before the implementation of the Rule commences, were either not addressed or – in the case of place of application – were only partially addressed in the Rule and its Supplementary Information.

We would, however, like to preface our ensuing comments by noting, and expressing our appreciation of, the Department’s recognition that visa application and issuance delays can have significant implications for the international shipping industry and seafarers, and that the Department, therefore, “is making and will continue to make every effort to ensure that applications made for crew visas will be processed expeditiously”.³ We in particular note, and welcome, the Department’s understanding that some U.S. consular posts may – as a result of the abolition of the crew list visa system – “see a significant increase in crew visas, and is prepared, if necessary, to increase staff to handle the additional workload”.⁴

2. Review of visa instructions to U.S. diplomatic missions abroad

In our earlier comments on the proposed rule to eliminate the crew list visa system, we noted that member companies of the Council report that some U.S. diplomatic missions abroad will not today, as a matter of policy, issue any individual seafarer visas. Also today, other U.S. diplomatic missions can only issue an individual visa to a seafarer if that seafarer is to meet the vessel in a U.S. port, but not if the seafarer is scheduled to meet the vessel, bound for the U.S., in a foreign port. Yet other U.S. diplomatic missions appear to be under instructions only to issue e.g., individual C1 visas⁵, but not D visas⁶, or vice versa, but not dual-purpose C1/D visas.

The rationale for such varying restrictions on the types of seafarer visas a diplomatic mission can issue is not apparent.

The Council therefore respectfully requests that the State Department use the extension period for the effective date of the Rule to review, and where necessary, amend its visa instructions to U.S. diplomatic missions abroad to allow them to issue individual C1/D visas to bona fide crew member applicants in as consistent a manner as possible. We would also respectfully request that the Supplementary Information to the final rule,

³ 69 *Fed.Reg.* 12798

⁴ *Ibid.*

⁵ A C1 visa permits the crew member to arrive in the U.S. (typically as an airline passenger) and request direct and immediate transit to the vessel. A C1 visa does not permit the crew member to apply for shore privileges.

⁶ A D visa permits the crew member to apply for shore privileges, and also permits the master or shipping agent to request discharge and repatriation of the crew member. The crew member is, however, not allowed to fly into the United States to sign onto a vessel. Dual-purpose C1/D visas, on the other hand, permit the bearer to arrive in the United in either the C1 or D classification.

once published, includes confirmation that such a review of the visa instructions to U.S. diplomatic missions has indeed been undertaken.

3. Place of issuance of visa should not matter

The Council proposed in its February 2003 submission that, in order to continue the manning and operational flexibility provided by the crew list visa system for internationally deployed vessels, a seafarer should be able to apply for an individual C1/D visa to the United States at any U.S. embassy or consulate abroad. Similarly, a seafarer should be allowed to pick-up the approved individual visa at another U.S. diplomatic mission than the one where the application was made. For example, a seafarer should be able to submit a visa application at the U.S. consulate general in Shanghai and then obtain the visa at the U.S. consulate in Kobe when the seafarer's vessel makes a call at that port en route to the west coast of the United States.

We appreciate that the Rule would allow for seafarers to apply for individual visas at any U.S. embassy and consulate that issues visas. We also welcome that the Department has stated that it will remind all U.S. visa-issuing diplomatic missions "of already existing regulations that they must accept applications from all persons physically present in a consular district, regardless of residence".⁷

We do not understand, however, why the Rule has not included the second component of our proposal, namely that the place of issuance should not matter either.

It is indisputable that visa application and issuance times at most U.S. diplomatic missions have increased since September 11 due to the need to effectively screen visa applicants in order to deny visas to undesirable individuals – an objective we agree with and support. The personal appearance requirement has added to those waiting times, as may this Rule regardless of the Department's welcome efforts to ensure expeditious processing of seafarers' visa applications.

It is likely that a seafarer, already employed on board a vessel deployed in international commerce, would not be able – while the vessel stays in a particular foreign port – to schedule an interview, travel to the nearest U.S. diplomatic mission, undergo the interview, wait until the visa is actually issued, and then travel back to the foreign port to meet his or her vessel before it embarks on its onward journey. Vessels, such as container ships deployed in international liner traffic, typically spend no more than 1-2 days in the same foreign port. The same problems may arise for a seafarer who has been signed on to a vessel on short notice, for example where a crewmember on that vessel needs to be replaced immediately because of a medical or family emergency.

It would be a most positive development, and reflective of the Department's stated recognition of the special operational characteristics of international shipping, if the final rule could be amended to allow for the issuance and pick-up of the approved visa at

⁷ 69 *Fed.Reg.* 12798.

another U.S. diplomatic mission than the one where the application and interview was undertaken.

We note in this regard that Section 303 (b) of the Enhanced Border Security and Visa Entry Reform Act of 2002 (Pub.L. 107-173) requires, effective October 26, 2004, that foreign aliens shall only be issued “machine-readable, tamper-resistant visas and other travel and entry documents that use biometric identifiers”. We understand that the Department for several months now has been equipping its diplomatic missions abroad with the necessary technology in order to meet the statutory requirement, and that many U.S. embassies and consulates are, in fact, already issuing visas to the United States with biometric identifiers, i.e., a digital photograph, and digital scans of the right and left index finger of the visa applicant. The biometric identifiers obviously serve to assist in the screening of visa applicants against government databases, and verify that the visa holder is bona fide during the US VISIT processing at the point of entry into the United States. At the same time, the biometric identifiers allow for expedited verification of the identity of the individual and prevent against identity theft.

Therefore, once the biometric identifiers have been captured at the U.S. diplomatic mission where the visa application was made, we can think of no security or visa integrity reason or concern why, once a visa has been granted, it could not be picked-up by the seafarer at a different U.S. diplomatic mission, as long as the seafarer can be verified by and at that mission through biometric identifiers or otherwise to be identical to the original visa applicant. Aligning the effective date of the Rule at issue with the October 26, 2004, effective date for the statutory requirement that visas to the U.S. include biometric identifiers would also for that reason and purpose seem appropriate.

4. “Invitation” letter from U.S. shipping agents as part of the visa application

It is our understanding that all U.S. diplomatic missions currently require that an application for an individual seafarer visa in addition to the personal application forms DS 156 and Supplemental DS 157 be accompanied by a copy of both the current employment contract and an “invitation” letter from the company and/or from the company’s agent in the United States, confirming employment. The “invitation” letter must indicate the crewmember’s position, intended vessel itinerary and projected length of time the vessel will spend in U.S. waters and ports.

At some diplomatic posts, the seafarer is also required, at the time of the application, to submit proof of qualifications (original diplomas and certificates) as well as the seafarer’s identification card (so-called “Seaman’s Book”); at other diplomatic posts, the seafarer may subsequently be asked to submit proof of qualifications.

We fully understand, and agree, that each visa applicant, including seafarers, be required to submit information necessary to undertake a comprehensive screening to eliminate the risk that undesirable persons be admitted to the United States. However, there does not seem to be a uniform and consistent policy as to whether proof of

qualifications should be submitted at the time of the visa application. We believe that the Department should establish clear and uniform guidelines in this regard. Thus, if the Department determines that submission of proof of a seafarer's qualifications as part of the visa application is necessary for the screening of seafaring visa applicants, it should instruct all U.S. diplomatic missions to require that proof of qualifications be submitted together with, and at the same time as, the other required information.

Having clear and uniform information requirements would help eliminating confusion on the part of the seafaring community about the individual visa application process, which to some seafarers is a new experience.

They should also provide for a more expedited visa application processing, in particular in those situations where a seafarer applies for a visa at a U.S. diplomatic mission that is not located in the seafarer's country of residence. As pointed out in 3. above, a seafarer may only have a very narrow time "window" within which to apply for a visa, i.e., while his or her vessel is staying in port. If the diplomatic mission subsequently determines that it needs proof of qualifications the vessel may already have left the port, forcing the seafarer to apply anew at the U.S. diplomatic mission near the port where the vessel next calls or – if no other foreign port calls are scheduled before arriving in the U.S. – resulting in the seafarer having no individual visa for entry to the United States.

Another issue not addressed in the Rule is what role, if any, the so-called "invitation" letters from U.S. shipping agents would play in the future. Members of the Council have, also very recently, informed us that U.S. diplomatic missions still require that such letters of "invitation" be submitted as part of the visa application process, and that the letters include information about expected ports of call in the United States, expected length of stay in U.S. waters and other voyage specific information.

A continuation of the requirement that "invitation" letters accompany the visa application may conflict with the stated objective of the Rule of providing for a process that would allow seafarers, who do not already have individual visas, to quickly obtain them. Specifically, the Supplementary Information expresses the hope "that shipping companies and unions will encourage their employees and members to obtain visas where there is a reasonable possibility that a crewman may be required to enter the U.S. at any time".⁸

There may be occasions, for example in regard to replacement crew members, where a "reasonable possibility" exists that a seafarer may be required to join a vessel "at any time" in the future, but no specifics can be provided at the time of the visa application as to which vessel, and the exact time, length and places of its calls in the United States, the seafarer may be employed. Thus, it would not be possible in such situations to accompany a visa application with an "invitation" letter from the U.S. shipping agent, at least not with all of the information elements that up till now have been required to be included in such letters. It should also be noted that seafarers, who sign on to work at

⁸ 69 *Fed.Reg.* 12798 (emphasis added).

bulk vessels, typically will not know their vessels' itineraries at the time of their employment as bulk vessels' voyages by definition are determined on a very short notice according to availability of bulk cargoes and their charterers' decisions.

We respectfully request that the Department in its final rule, once published, explicitly address the future role, if any, of "invitation" letters, and that all U.S. visa issuing diplomatic missions be instructed accordingly.

We would also in this context request that the Department remind the U.S. diplomatic missions of the Department's position that individual visas can be obtained when there is "a reasonable possibility", and not necessarily certainty, that the seafarer may need to enter the United States to seek shore leave, be repatriated, or join his or her vessel.

This, we believe, is important in view of one of the stated objectives behind the personal appearance interim rule that became effective August 1, 2003, namely that "[i]nterviews provide an opportunity for consular officers to learn details of proposed trips and discuss with applicants their background experience, and the rationale and motivation for their proposed visits to the U.S."⁹ While the rationale and motivation should be clearly identifiable from a letter of employment from the shipping company that owns or operates the vessel, it may not be possible, for the reasons stated, for the seafarer, or for that matter the U.S. shipping agent in an "invitation" letter, to provide "details" about vessel itinerary or even vessel name at the time of the visa application and the personal interview.

5. Availability of an emergency signing off/on "visa waiver" facility

In its submission on the proposed rule to eliminate the crew list visa system, and again in its submission on the interim rule on personal appearance, the Council raised the possibility of arranging for a "transit without visa" facility for emergency situations involving the signing off/on of non-visaed crewmembers from/to vessels already in U.S. ports. The Supplementary Information to the Rule at issue does not discuss this issue, and we therefore feel obliged to again bring it to the Department's attention with a request that it be addressed in the final rule when published.

The operational nature and challenges of international shipping business are such that, even if a ship operator, as a matter of employment policy, requires all crew members to be in possession of valid individual visas to the United States, situations will unavoidably occur when – in order to keep the vessel deployed in international transportation – crew members without individual visas are employed onboard vessels calling at U.S. ports.

A medical emergency, for example, can force the unplanned change of a crew member in the last foreign port of call before departure for the United States. While the

⁹ State Department cable no. 136100 (May 21, 2003) to all U.S. diplomatic and consular posts, paragraph 4 (emphasis added).

ship operator and the crewing agent are doing their utmost to find a replacement with a valid visa, that may not be possible in all situations and circumstances, and in particular not with long visa application times at U.S. diplomatic missions abroad. Mandatory vessel crewing requirements – enforced by the U.S. Coast Guard with understandable vigor and with the possibility of severe fines and detention of the vessel – can leave a ship operator with no other option than to hire a non-visaed replacement seafarer, possibly with the understanding that the replacement seafarer should sign-off in the first U.S. port of call to be replaced with either the original seafarer or another seafarer from within the shipping company with a valid visa.

Situations may also arise where a seafarer with a valid visa is scheduled to sign off the vessel when it arrives at the U.S. port, but, because of unplanned weather or operational reasons, the vessel arrives later than planned so that the visa has expired in the meantime.

Similarly, a replacement seafarer, who is to join the vessel in a U.S. port, may not have had the time to obtain an individual visa before proceeding by plane to the U.S. airport nearest to where the vessel is moored, because of the time needed to process visa applications at the U.S. diplomatic mission in the seafarer’s country of residence.

Decisions to grant visa waivers are made by U.S. border agents at the point of entry in the United States. They are therefore, technically, outside the scope of this particular rulemaking. However, the crew list visa system has historically and to a significant degree been used by ship operators and crewing agents for exactly the types of emergency situations described above.¹⁰ The complete and formal elimination of the crew list visa system leaves a need unaddressed – a need, which, as the Department itself observed when originally proposing to eliminate the system, may in fact have been the principal reason for the creation of the crew list visa system.¹¹

We believe that the State Department in consultation with the Department of Homeland Security (DHS) should explicitly address in the final rule the issue of whether and how an “emergency visa waiver facility” for the emergency situations described above could be made available once the crew list visa system has been officially eliminated.

The Council again suggests that the Department create such a facility based on requirements that the signing off/on crewmember and the U.S. shipping agent would have to meet or must arrange for, such as: (a) possession of a valid passport, (b) for signing off seafarers: capturing of digital photograph and digital finger scans of right and left index finger (akin to the US VISIT procedures that are currently applied to visa holders arriving

¹⁰ Another option, “Transit Without Visa (TWOV)”, has always had a degree of unpredictability attached to it, and has since the September 11th terrorist attacks been so severely restricted that TWOV visas are now only being issued very sparingly, if at all.

¹¹ “[T]he use of the visaed crew list appears to have been intended principally as a temporary or emergency measure to be used until such time as it becomes practicable to issue individual documents to each member of a vessel’s or aircraft’s crew”. 67 *Fed.Reg.* 76711(emphasis added).

at U.S. airports and certain seaports, and which would already apply to signing on seafarers); proof of a ticket for a direct flight out of the U.S., and, escort by the local shipping agent or licensed security guards to the nearest airport until the plane has departed for a direct flight out of the United States; and (c) for signing on seafarers: met in the airport after US VISIT arrival procedure by the local shipping agent and escorted by that person or licensed security guards directly to the vessel.

6. ILO Seafarers' Identity Documents

The Council notes that the Supplementary Information to the Rule contains the following discussion concerning the seafarer identification documents issued in accordance with the ILO Seafarers' Identity Documents Convention (Revised), 2003:

“While the Department recognizes that a seafarer’s ID containing biometrics could be useful, it is likely to take years for such a document to be developed and adopted widely. Further, one of the principal reasons for requiring individual visas is the need, for security purposes, for a consular officer to personally interview each applicant. Adoption of the new ID card will not address the need for interviews. (...) [T]he Department continues to believe that the security of the U.S. demands individual crew visas despite the dislocations that the requirement may cause initially”.¹²

The Council and other industry representatives have interpreted this and other discussions with the government to mean that the Department and DHS have concluded that the new ILO seafarers' identity document will not be accepted as a travel document or as replacement for an individual visa for seafarers seeking entry into the United States. In the interest of clarity and certainty, we request that the final rule when published confirm whether this is an accurate and correct understanding of the Department's and DHS' position.

7. Conclusion

The Council appreciates the opportunity to submit these comments in response to the Department's Rule.

The Council urges the Department to extend the effective date of the Rule to October 26, 2004 to align with the Enhanced Border Security Act's requirement that biometric identifiers be included in visas to the United States, and to allow the shipping industry as a whole as well as the Department and U.S. diplomatic missions abroad to arrange for a future system relying solely on individual visas.

Issues that we believe the Department should address before the final rule is published in order to allow for an orderly transition to an individual visa-only system are:

¹² 69 *Fed.Reg.* 12797-8.

(i) Review, and where necessary, amend the Department's visa instructions to U.S. diplomatic missions abroad to allow them to issue individual C1/D visas to bona fide crew member applicants;

(ii) Consider amending the final rule to allow for the issuance and pick-up of the approved visa at another U.S. diplomatic mission than the one where the application and interview was undertaken;

(iii) Establish clear and uniform information requirements for visa applications applicable to, and implemented uniformly by, all U.S. visa issuing diplomatic missions;

(iv) Determine the future role, if any, of "invitation" letters and clarify to the U.S. diplomatic missions that individual visas can be obtained even if there only is "a reasonable possibility", and not necessarily certainty, that the seafarer may need to enter the United States to seek shore leave, be repatriated, or join his or her vessel;

(v) Consider and address in the final rule whether and how an "emergency visa waiver facility" for non-visaed signing off/on seafarers in emergency situations could be made available.

Finally, the Council would appreciate the Department's confirmation whether our understanding that the new ILO seafarers' identity document will not be accepted as a travel document or as replacement for an individual visa is correct.

WORLD SHIPPING COUNCIL

MEMBER LIST

- APL
- A.P. Moller-Maersk Sealand (including Safmarine and Torm Lines)
- Atlantic Container Line AB
- CP Ships Holdings, Inc. (including Canada Maritime, CAST, Lykes Lines, Italia Lines, Contship Containerlines, TMM lines, and ANZDL)
- China Ocean Shipping Company (COSCO)
- China Shipping Group
- CMA-CGM Group
- Compania Sud-Americana de Vapores (CSAV)
- Crowley Maritime Corporation
- Dole Ocean Cargo Express
- Evergreen Marine Corporation Ltd. (including Lloy & Triestino and Hatsu Marine)
- Great White Fleet, Ltd.
- Hamburg Sud (including South Seas, Empressa and Alianca)
- Hanjin Shipping Company, Ltd. (including Senator Lines)
- Hapag-Lloyd Container Linie GmbH
- HUAL AS
- Hyundai Merchant Marine Company, Ltd.
- Kawasaki Kisen Kaisha Ltd. (K Line)
- Malaysia International Shipping Corporation (MISC)
- Mediterranean Shipping Company, S.A.
- Mitsui O.S.K. Lines
- NYK Line
- Orient Overseas Container Line, Ltd.
- Pacific International Lines
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- United Arab Shipping Company
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