



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; PERSONAL APPEARANCE**

[Public Notice 4393]

SEPTEMBER 4, 2003

1. Introduction

The World Shipping Council (“the Council” or “we”) submits these comments in response to the Interim Rule With Requests for Comments (“Interim Rule”) issued by the Department of State (“Department of State” or “the Department”) on July 7, 2003 (*68 Fed.Reg. 40127 et seq.*). By that Interim Rule, the State Department significantly reduces the number and kind of situations in which the requirement that a non-immigrant visa applicant appears before a consular officer for a personal interview may be waived by that officer.

The Council, a non-profit association of over forty international ocean carriers, was established to address public policy issues of interest and importance to the international liner shipping industry. The Council’s members include the full spectrum of ocean common carriers, from large global operators to trade-specific niche carriers, offering container, roll-on roll-off, car carrier and other international transportation services. They carry more than 93% of the United States’ imports and exports transported by the international liner shipping industry, or roughly \$500 billion worth of American foreign commerce per year.¹

International liner shipping provides regular, scheduled services connecting U.S. exporters and importers with virtually every country in the world. Liner shipping vessels make more than 22,000 calls at ports in the United States each year or more than 60 vessel calls a day. Most crew members on these liner shipping vessels are foreign citizens whose visa status and requirements are regulated by the Immigration and Nationality Act.

2. The rule’s significance for foreign seafarers and vessel operators

The Interim Rule eliminates, effective August 1, 2003, the broad 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. Included in these categories are C-1 and crew list visas, respectively. Both visa categories are extensively used by foreign seafarers onboard ocean vessels in international commerce that call on U.S. ports.²

Requiring that all seafarers on a crew list visa application be presented for personal interviews by a consular officer will effectively eliminate the usage of the crew list visa system.

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

² 22 CFR § 41.102 (a) and (b). See also *68 Fed.Reg. 40127*. The State Department in 2002 issued approximately 8,000 crew list visas and approximately 200,000 individual visas to seafarers (and air crews).

Crew list visas have been used in a variety of situations.

One category of situations has involved vessels, typically non-liner vessels, such as tankers, which - while already at sea - are instructed by their charterers or operators to head to a U.S. port to unlade or to load cargo.

Another category of situations has involved medical or other emergencies, necessitating the urgent and unplanned replacement of one or more crew members while the vessel is in a U.S. port, where either the crew members, who are being released due to the emergency do not have valid, individual visas to the United States, and/or the replacing crew members have not been able to obtain individual visas in advance of traveling to the United States in order to join the vessel.

A third category of situations has involved the scheduled signing off of one or more crew members whose individual visas to the U.S. have expired and/or the replacing crew members have not been able to obtain an individual visa in advance of the vessel's departure from the U.S. port.

Presenting the crew members for personal interviews in the situations described above would be so impractical and so operationally difficult that the Interim Rule, should it be made final, in effect would do what the Department's earlier, proposed - and still open - rulemaking on the elimination of the crew list visa intended to do, namely to abolish the crew list visa system.³

Eliminating the crew list visa will, at least in the short term, lead to an increased number of vessels calling at U.S. ports with non-visaed crew members on board.

In accordance with post-September 11 processing guidelines, non-visaed crew members are not - except in the rarest of circumstances - granted shore privileges to attend to their personal needs. Instead, they are detained on board, possibly with the additional requirement that the ship owner or operator place guards at the vessel's gangways.

Non-visaed crew members, or crew members with expired individual visas, who were scheduled to sign off at the U.S. port, will also find it virtually impossible to be granted so-called "transits without visas" which would allow them to proceed to the nearest U.S. airport only for the purpose of repatriating to their countries of residence or flying to another country to join a vessel there.

The elimination of the crew list visa system will also significantly increase the number of applications for individual seafarer visas at diplomatic posts overseas, who in accordance with the Interim Rule would unconditionally be required to undergo - together with the millions of other visa applicants in the various visa categories enumerated in the rule - personal interviews.

³ 67 *Fed.Reg.* 76711 *et seq.*

Most U.S. diplomatic posts in seafaring producing countries, including in Southeast Asia, which is a main supplier of seafarers, are already experiencing significant delays in processing applications from seafarers for individual visas to the United States.

We are, however, concerned that *the combined effect* of the Interim Rule's de facto elimination of the crew list visa *and* the requirement that most other non-immigrant visa applicants also be interviewed, including first time applicants for seafarers visas, will result in such prolonged, overall waiting times for individual seafarer visas⁴ that they could have operational implications for vessels calling at U.S. ports.

U.S. and international mandatory requirements exist for the proper crewing, and crew composition, of ships. In order to remain in compliance with these requirements, shipowners and operators need some degree of predictability of the availability of crew members with valid visas so that they can properly plan for the crewing of their vessels and the time and place of the replacement of crew members. And in those medical and other emergencies that by definition transcend normal planning, but are unfortunate, yet regular occurrences in the shipping as in any other industry, shipowners and operators need to be reasonably certain that procedures are in place that provide for, or facilitate, the replacement of crew members, including on vessels that already are in or heading for a U.S. port, by qualified and trained seafarers.

Extensive waiting times for the issuance of individual seafarers visas to the United States already make it difficult for ship operators and crewing agents to plan for the crewing and replacement of crew members. That difficulty will be significantly compounded by the inevitable increases in the overall waiting time for the issuance of individual visas as a result of the Interim Rule.⁵ That difficulty is further compounded by the existing lack of visa processing and/or visa waiver procedures for the handling of crew manning, replacement and transit situations.

We discuss below possible measures to address, or mitigate, these operational concerns and problems for the international shipping industry.

However, it is important to note that our concerns are underpinned by the Department of State's own recognition that the Interim Rule will lead to visa application backlogs and waiting times. In a recent cable to U.S. diplomatic posts, the Secretary of State noted that the Department "expects and accepts that many posts will face processing backlogs for the indefinite future (...) The Department appreciates that many posts will face interview backlogs...[but] posts must implement the new interview guidelines using existing

⁴ I.e., the waiting time before an interview can be conducted, *and* the waiting time after the interview and until the issuance of a visa.

⁵ For example, the U.S. embassy in Manila indicated on its website (accessed on August 26, 2003) that the *estimated* next available appointment time for a personal interview is November 10, 2003, or a waiting time for an interview just shy of three months. The website (<http://manila.usembassy.gov/wwwhappo.html>) also advises that in order "to avoid delay in your travel, apply for your visa at least 3 months in advance and before you make final travel arrangements". While that admonition may be somewhat easier to follow in case of leisure travel, the operational characteristics of international shipping seldom provide the luxury of such an extended planning horizon for crewing and crewing rotation purposes.

resources. Posts should not, repeat not, use overtime to deal with additional workload requirements but should develop appointment systems and public relations strategies to mitigate as much as possible the impact of these changes”.⁶

3. The Interim Rule’s specific objectives: Purpose and rationale for intended trip to the United States

The Department of State explains in the Supplementary Information to the Interim Rule that restricting the number of instances in which interviews of nonimmigrant visa applicants may be waived is “necessary to support a series of steps undertaken in order to more adequately ensure the security and integrity of non-immigrant visa application and issuance procedures”.⁷

The Council does not dispute the Department’s assessment as it applies to the *general* population of visa applicants to the United States.

However, we are troubled that the Supplementary Information does not indicate why the specific objectives behind the Interim Rule, which are enumerated in the aforementioned State Department cable to all U.S. diplomatic posts, would warrant, effective immediately, the *unconditional* interviewing of *every* seafarer who applies for an individual visa to the United States.⁸

As far as we have been able to ascertain, every U.S. diplomatic post requires that an application for an individual seafarer visa, in addition to the personal application forms (DS 156 and Supplemental DS 157) which every nonimmigrant visa applicant is required to submit, be accompanied by a copy of both the current employment contract and a letter from the company and/or from the company’s agent in the United States, confirming employment. The letter must also indicate the crewmember’s position, intended vessel’s itinerary and projected length of time in U.S. waters and ports. At some diplomatic posts, the seafarer is also required to submit proof of qualifications (original diplomas and

⁶ State Department cable no. 136100 (May 21, 2003) to all U.S. diplomatic and consular posts.

⁷ 68 *Fed.Reg.* 40127.

⁸ The Interim Rule does give the individual consular officer discretion to waive the personal appearance of a visa applicant, who within twelve months of the expiration of their previous visa are seeking re-issuance of a nonimmigrant visa in the same classification at the consular post of the alien’s usual residence, and for whom the consular officer has no indication of any noncompliance with U.S. immigration laws and regulations. A random search of various U.S. diplomatic posts’ website, however, does not seem to indicate a uniform pattern as to whether this waiver discretion is being applied to seafarers. For example, while the U.S. embassy in Kiev explicitly states that the waiver discretion applies to seafarers who meet the waiver requirements, the U.S. embassies in Copenhagen, Tokyo, Manila and Santo Domingo, respectively, make no mentioning of such a waiver possibility for seafarers who meet the waiver requirements. Interestingly, while the U.S. embassy in Seoul does not require personal appearances for aircrew visa applications (i.e., the same types of visa used by seafarers) from Korea-based airline crew members, it requires seafarers applying for the same types of visa to appear in person; the embassy website does not mention the personal appearance waiver discretion for visa applicants seeking re-issuance of expired visas in the same category. It is not clear from their websites whether the other embassies listed also have different procedures for aircrew and seafarer visa applicants.

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.

It would seem that the submission of this information – which we find fully legitimate and understandable – should be sufficient, in the overwhelming majority of seafarer visa applications, to establish the bona fide nature of the applications without having to call the seafarer in for an interview for the same purposes. The submission of this information also clearly distinguishes seafarer visa applicants from the general population of visa applicants in terms of information readily available to the U.S. diplomatic posts to determine the purpose, rationale and details of the intended trip to the United States that triggers the visa application in the first place.⁹

The aforementioned State Department cable lists two specific objectives behind the Interim Rule's restriction of the number of instances in which the personal interview may be waived. One of these objectives is that the visa interview would "elicit information to help determine individual applicants' eligibility for a visa. Interviews 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.*"¹⁰

The purpose of the seafarer applicant's intended trip to the United States will have been explained, and documented, in the documentation accompanying the visa application. So will the rationale and motivation for the intended trip.

The seafarer's experience and professional qualifications will similarly have been documented in the proof of qualifications accompanying the visa applications as required at many U.S. diplomatic posts.

If there is a concern about proper documentation of seafaring qualifications at other U.S. diplomatic posts, such a concern could be addressed by the State Department instructing those diplomatic posts, which today do not, as part of the documentation accompanying a visa application, require proof of qualifications, including Seaman's Book, to do so instead of instituting an inflexible rule that all first time seafarer visa applicants must undergo personal interviews.

If there is a concern about the bona fide nature of the employment contract or the company that has issued it, such a concern should be addressed as part of the diplomatic

⁹ The number of seafarers engaged on internationally operating vessels is relevant for these considerations. Most estimates put the number between 1.2 – 1.5 million seafarers employed globally. Of these, and based on U.S. Coast Guard calculations, approximately 200,000 seafarers arrive on vessels calling at U.S. ports each year. This number is a tiny fraction of the approximately 36 million foreign visitors that come to the United States each year.

¹⁰ State Department cable no. 136100 (May 21, 2003) to all U.S. diplomatic and consular posts, paragraph 4 (emphasis added). Anecdotal evidence suggests that personal visa interviews at many diplomatic posts may take, at most, a couple of minutes, and often less. Terms like "learn" and "discuss" seem somewhat exaggerated against such brief interview sessions.

post's ordinary way of doing business in the country of residence of the seafarer and the shipping company. One of the reasons for having diplomatic posts overseas is that the local presence facilitates contacts and relationships with the local society and its political, cultural and economic institutions and entities. Established and bona fide shipping companies and their crewing agencies are known entities with an established track record with the local maritime administrations of the host government, which can easily be verified by the local U.S. diplomatic post. Newly established and unknown shipping companies may raise security and other concerns, e.g. smuggling and other illicit schemes, but we do not believe that such concerns can appropriately be addressed through an interview with the individual seafarer applying for a visa. They should instead be addressed through the diplomatic post's normal information gathering routines about the local business and industries in, and via its contacts with the government of, the host country. The Council's Member companies run regular and frequent scheduled services to and from the United States, and are well known enterprises.

If there is a concern about the bona fide nature of a U.S. shipping agent, who may have been required to submit a letter, accompanying the visa application, confirming employment, such concerns should be addressed by the diplomatic post in cooperation with the Department of State and U.S. law enforcement agencies here in the United States.

U.S. based shipping agencies are typically well-established and well-known entities with extensive contacts and relationships with the U.S. Coast Guard Captain of the Port and other U.S. border agencies in whose district these companies are located. One of the objectives of creating the Department of Homeland Security (DHS) was to ensure a better, and more effective, coordination between and among the U.S. federal agencies with responsibilities in regard to foreign visitors to the United States, including seafarers. DHS and its relevant agencies, including the Coast Guard (USCG) and the Bureau of Customs and Border Protection (CBP), have been working diligently towards implementing similar advance reporting requirements for seafarers on vessels calling at U.S. ports. Sometimes U.S. shipping agents transmit such information on behalf of the ship operator to the agencies. The agencies may also contact the U.S. shipping agents in situations where they seek clarification of submitted vessel and crew member information.¹¹

The agencies are also working on uniform national standard operating procedures for the handling of situations involving arriving foreign vessels and their crews, which to

¹¹ Vessels on international voyages are required to submit so-called Notices of Arrival (NOAs) to the U.S. Coast Guard 96 hours prior to arrival at the first port of call in the United States. The required crew member information in the NOAs includes full name, date of birth, nationality, passport or marine document number, duties onboard and where the crew member embarked. Additional voyage information in the NOAs include name of last five ports before arrival in the U.S., dates of arrival and departure for these ports, for each port to be visited in the U.S. date and time of arrival and departure, and 24 hour point of contact. The 96-hour filing requirement for these NOAs, and the crew member information they include, constitute an important element in the government's multi-layered system to protect the homeland and to prevent undesirable persons from being admitted to the United States. As such, the NOA requirement is another feature that distinguishes seafarers from regular tourists seeking entry to the United States

some degree would rely on the cooperation of the U. S. shipping agents. Work is also in hand to develop a Memorandum of Understanding (MOU) between the USCG and CBP on coordination and cooperation on maritime security issues, including foreign crew members and their vessels. With these and other initiatives, initiated after the September 11 terrorist attacks, a system is being put in place that should be able to identify, and address, any security or other concerns that U.S. shipping agencies may present.

We are not aware of any reason why the Department of State and its diplomatic posts could not, and should not, rely on this system to establish the bona fide nature of U.S. shipping agents, who have confirmed the employment of a foreign seafarer on a foreign vessel already in, or scheduled to call at, a U.S. port. Relying instead on an interview with a foreign seafarer to establish the credentials of U.S. based shipping agents would seem to us to be a waste of consular resources and without security merit.

For the abovementioned reasons, we do not believe that the Interim Rule and its Supplementary Information set out a sufficient rationale for unconditionally requiring that *every* foreign seafarer have to undergo a personal interview to identify the details of the seafarer's intended trip to the United States, its rationale and purposes. We request, therefore, that the Department consider clarifying to diplomatic posts that personal appearance would not be required of *every* seafarer applying for an individual visa as long as the visa application has been determined to be accompanied by satisfactory proof of qualifications and appropriate documentation of employment. We also recommend that all posts should be instructed to require valid proof of qualifications and appropriate documentation of employment. Furthermore, if the Department of State is concerned about the nature and validity of the employment and seafaring qualification documentation that should accompany applications for individual seafarer visas, such concerns could, we believe, in cases involving legitimate seafarers be addressed through changes to the diplomatic posts' and the Department's own internal procedures and processes. Of course, diplomatic posts have always retained the right to require the personal appearance of any visa applicant who, for whatever reason, warrants closer scrutiny. That right is undisputed, and we in no way by these comments wish to question its continued validity and purpose.

4. The Interim Rule's specific objectives: Preparing for biometric identifier requirements

The aforementioned State Department cable provides another objective for the Interim Rule, namely that it represents "the next step in preparing for the eventual fingerprinting of applicants that the [State] Department will undertake to meet the legislated mandate to include a biometric identifier with issued visas".¹²

The Council assumes that this is a reference to section 303(b) in the Enhanced Border Security and Visa Entry Reform Act (Pub.L. 107-173), which requires that no later than

¹² *Ibid*, Summary.

October 26, 2004, foreign aliens shall only be issued “machine-readable, tamper-resistant visas and other travel and entry documents that use biometric identifiers”.

The Department of State deserves credit for planning diligently for the implementation of this statutory requirement.

However, we also firmly believe that the Department of State – before a final rule is promulgated - should carefully consider, and make public its determination about, the possible use of new seafarers’ identification documents, issued in accordance with the recently adopted ILO Seafarers’ Identity Documents Convention (Revised), 2003, for the purposes and objectives of this Interim Rule and those of the Enhanced Border Security and Visa Entry Reform Act and, more generally, for the facilitation of the visa application process, including the possible re-introduction of the crew list visa system.¹³

In this regard, we particularly note that the new ILO identification document will contain two biometric identifiers – a digital photograph and bar-coded fingerprints, respectively – and that the inclusion of these biometric identifiers on the document should result in an improved capability for U.S. consular officers to verify the identity and bona fides of foreign seafarers applying for visas to the United States.¹⁴ These and other improvements to the issuance of international seafarer identification documents would appear to have sufficient potential for providing assurances against admitting undesirable persons to the United States that a re-introduction of the crew list visa system should be considered as part of a final rulemaking procedure.¹⁵

The Council recognizes that time constraints may have prevented the Department from discussing in the Interim Rule the possible implications of the new ILO Convention for the implementation of the statutory biometric identifier requirement.¹⁶ We also recognize that other U.S. government agencies will be involved in setting U.S. government policies on the potential usage of the new identification document. At the same time, however, the Department was involved in negotiating the ILO agreement, and

¹³ We understand that, for the reasons enumerated in the Department of State’s earlier proposed rulemaking on the elimination of the crew list visa system, the issuance of crew list visas had even before the publication of the Interim Rule become so restricted that the crew list visa system was de facto suspended. However, no decision on whether to make permanent this de facto suspension of the crew list visa system should be made before the Department has considered, and made public its determination, whether the new international seafarers identification documents could provide such assurances against admitting undesirable persons to the U.S. on a crew list visa, and otherwise would meet the objectives of the Interim Rule, that the crew list visa system could be reinstated.

¹⁴ It should be recalled that there is no current statutory requirement that visa applicants from non-visa waiver countries have biometric identifiers in their passports -- something, which will further distinguish foreign seafarers from the general population of visa applicants to the United States, thus presumably further reducing any perceived need to interview every foreign seafarer.

¹⁵ We note that the plain language of Section 303(b) does not, *a priori*, appear to preclude the possibility that the biometric identifiers in the new seafarers’ identification document could meet the statute’s requirement for inclusion of biometric identifiers in “visas and other travel and entry documents”.

¹⁶ The new ILO Convention was approved on June 18, 2003, or only three weeks before the promulgation of the Interim Rule.

obviously has authority and responsibilities for determining and explaining the use of this new document in the visa application process.

The international shipping industry, its crew members and their countries of residence have an understandable, and legitimate, desire and expectation to know if the ILO document will serve any facilitating role in the visa application process and/or in facilitating the travel of the seafarer to and from the United States, and if so what role that would be.

During the ILO negotiations, the United States government expressed support for the development of a new international seafarers' identification document, which would make it possible to verify the identity, employment history and credentials of a foreign seafarer, including for visa application purposes.

This objective of developing an instrument that would provide for an identification form that could be used also in the visa application process was explicitly included in the U.S. government's response to a questionnaire by the ILO Secretariat in preparation for the final negotiation rounds. In its response to one of the questions in the ILO questionnaire¹⁷, the U.S. government stated that U.S. immigration laws require a foreign seafarer to hold a valid visa unless U.S. border agents waive this requirement. The response then continued: "The United States Government does, however, support the principle that a new seafarer identification document, including biometric identifiers, should to the maximum extent possible be designed so that it contains, or provides direct electronic access to, information elements needed to initiate the visa application process where applicable".

This same objective of the U.S. government was reaffirmed at the final vote on the new ILO Convention on June 18, 2003. After having voted in favor of the new Convention, the U.S. government delegate explained that, under U.S. immigration law, the seafarers' identity document would not be accepted *in lieu of* a visa nor would possession of such a document guarantee issuance of a visa to the United States.¹⁸ However, the delegate went on to stress that "[n]evertheless, we recognize the special professional needs of seafarers as described in the Preamble to this Convention *and we are considering what steps we can take to facilitate the visa application process for them*".¹⁹

The subject rule and its stated objective of preparing for the implementation of the Enhanced Border Security and Visa Entry Reform Act's biometric identifier requirement

¹⁷ The question (B4 (a)) reads: "Does the requirement to admit the bearers of seafarers' identity documents for the purposes of shore leave raise any problems for Members?"

¹⁸ "United States law requires a visa for shore leave, joining a ship or transferring to another ship, passing in transit to join a ship in another country, or for repatriation. The seafarers' identity document will not be accepted in lieu of a visa or travel document. Possession of a seafarer's identity document will not guarantee issuance of a visa." Provisional Record No 27, Twenty-Second Sitting of the 91st International Labor Conference, page 27/10 (accessible at www.ilo.org/public/english/standards/relm/ilc/ilc91/pdf/pr-27.pdf).

¹⁹ *Ibid.* (emphasis added).

seem to us to be the appropriate place for considering what measures the U.S. government can take to facilitate the visa application process for seafarers. If foreign seafarers are required to obtain visas in order to be allowed to leave the vessel in a U.S. port to repatriate (or be allowed to be in transit to join a vessel in a U.S. port), and the new ILO document were to play no facilitation role in obtaining such a visa or in their admission to the United States, the value of the new document would be unclear and a significant disappointment to many. Similarly, if the new ILO document were to be considered a required document for seafarers, the shipping industry and seafarers would have an obvious interest in knowing why seafarers with U.S. visas would need to have such documents in addition to their passports if these documents do not have any facilitation function.

The relevance of defining and implementing such steps, using the new seafarers' identification document to establish and verify the identification, employment history and credentials of individual seafarers as part of the visa application process and in facilitating their transit in and out of the United States, is also highlighted by the impending deadline of December 31, 2003, for the statutorily required entry-exit system ("US VISIT") at U.S. airports and seaports for foreign visitors to the U.S., including seafarers.

In this regard, we have learned with concern that the U.S. government is considering using biometric identifiers in the US VISIT program, which may be different from, and thus incompatible with, those included in the new ILO document. If this is true, it would suggest that the new identification document could not be used for the expedited processing of foreign seafarers in the US VISIT program.

Of similar concern to us is our understanding that the U.S. government's current intention is to use the same biometric identifiers for the purposes of both the US VISIT program and the Enhanced Border Security and Visa Entry Reform Act of 2002's biometric identifier requirement mentioned above. It would thus appear that we may be approaching a situation where incompatible biometric identifiers would prevent the new document from playing any facilitation role in the visa application process. Such an outcome would obviously raise questions as to why the U.S. government initiated the ILO negotiations in the first place. It would also raise questions as to the seriousness and validity of the U.S. government's assurances at the concluding ILO session that it is "considering what steps we can take to facilitate the visa application process" for foreign seafarers.

Clarity on these issues is therefore urgently needed and, we submit, should be provided in the context also of this Interim Rule and certainly before the Department makes it final.

5. Requirements of an efficient visa system for seafarers

The de facto elimination of the crew list visa system, together with the Department's recognition of a significant increase in the overall waiting time at many, if not all, U.S. diplomatic posts for the issuance of individual visas to the United States, is likely to have operational implications for the international shipping industry. These implications and the U.S. government's stated recognition of "the special professional needs of seafarers"²⁰ warrant the Department's attention to the difficulties in the existing seafarer visa application and issuance processes.

As discussed above, one step that the Department could take would be to clarify to diplomatic posts that personal appearance would not be required of *every* seafarer applying for an individual visa as long as the visa application has been determined to be accompanied by satisfactory proof of qualifications and appropriate documentation of employment. Posts could also be instructed that uncertainties about documentation of employment may be addressed through other means than personal interviews.

The Council has earlier recommended that several, additional requirements and concerns be addressed.²¹ They are repeated below. We do so also because we do not believe that the Department's suggestions on how to alleviate the visa issuance difficulties are sufficient to address the difficulties that the visa application and processing system is and will be experiencing²² -- an assessment which we share with, among others, the Government Accounting Office (GAO).²³

A. Expedited and privileged visa application process for seafarers

We recommend that the government create a special visa application processing system for seafarers on internationally deployed vessels. Elements of such a visa application system for seafarers should include the following:

- **Place of application should not matter**

A seafarer may be employed for many months at a time on a vessel, which during that period does not make any calls of port in the seafarer's country of residence. Seafarers seeking individual visas are today expected, if not required, to submit their visa applications at a U.S. diplomatic mission in their countries of residence. An individual

²⁰ See footnote 18 above for the U.S. government's recognition of these professional needs.

²¹ See the Council's submission, dated February 11, 2003, in response to the Department of State's proposed rulemaking to eliminate crew list visas (Public Notice 4215; *67 Fed.Reg. 76711 et seq.*).

²² The aforementioned State Department cable identifies two measures: an appointment system and "public relations strategies to mitigate as much as possible the impact of these changes [implemented in the Interim Rule}." With a current, estimated waiting time for obtaining an appointment for a personal interview of almost 3 months at the U.S. embassy in Manila, these suggested measures are clearly not sufficient.

²³ See, for example, GAO Document GAO-03-1013T, dated July 15, 2003 (Testimony of Mr. Jess T. Ford, Director, International Affairs and Trade, before the Senate Judiciary Subcommittee on Immigration, Border Security and Citizenship). See also testimony of the U.S. Chamber of Commerce before the House Committee on Government Reform, Hearing on the Impact of Visa Delays on Businesses, July 10, 2003.

visa must also today be picked up at the diplomatic mission where the application was submitted.

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.

- **Re-allocation of consular resources towards processing of seafarer visa applications**

We recommend, especially at diplomatic posts in major seafarer supplying countries, that the Department establish special seafarer visa application centers or offices, staffed with consular officers experienced in and knowledgeable about the special working and operating requirements and needs of the international shipping industry and the demands they put on crewing and crew rotation planning as well as the special professional needs of the seafaring occupation.

- **Review of visa instructions to U.S. diplomatic missions abroad**

Member companies of the Council consistently 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, for example, individual C1 visas²⁴, but not D visas²⁵, or vice versa, but not dual-purpose C1/D visas.

The rationale for such apparent restrictions in the types of seafarer visas a diplomatic mission can issue is not apparent. There can be no

²⁴ 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.

²⁵ 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.

doubt, however, that such restrictions negatively impact the manning and operations of vessels in international traffic.

The Council therefore respectfully requests the State Department 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 without conditions that negatively impact the manning and operations of vessels in international traffic.

Member companies have also reported that the length of individual visas issued to some first-time seafarer applicants is insufficient to allow for their orderly repatriation in some U.S. ports.²⁶ For example, in the ports of Miami and Houston, U.S. border agents routinely require that foreign seafarers, who intend to sign off and repatriate to their countries of domicile, must have individual visas with a remaining validity of at least another 6 months. Such a requirement – whose rationale is not clear to us²⁷ – will be difficult to meet for those first-time seafarer visa applicants who have been issued one year individual seafarer visas, considering that the typical employment contract period for seafarers on vessels in international traffic exceeds 6 months. As a result, these foreign seafarers can either not be signed off and repatriated from a vessel in these particular ports or the seafarers are required to submit applications for the extension of their otherwise valid visas for at least 6 months beyond the anticipated repatriation date. This appears to us to be an inflexible and inefficient requirement without any apparent homeland security rationale.

The Council also respectfully requests that the Department of State and the Department of Homeland Security review existing visa instructions and guidelines to U.S. border agents in order to make them mutually consistent, taking into account also the operational and employment characteristics of international shipping.

- **Appropriate role for, and use of, new international seafarers' identification documents in the visa application process**

We mentioned earlier that the U.S. government during the ILO negotiations supported of the principle “that a new seafarer identification document, including biometric identifiers, should to the

²⁶ The Council understands that the length of visas is determined, among other things, according to the principle of reciprocity. However, the situations we are concerned about here involve seafarers from the same country, but where a distinction is made between first-time seafarer applicants (eligible for a one year visas only) and repeat applicants (eligible for three year visas).

²⁷ A seafarer with a valid D visa (see footnote 25), who has been granted conditional landing privileges, is only authorized to remain in the United States for a period not exceeding 29 days. It is difficult to reconcile such a 29-day maximum stay with a requirement that the visa must be valid for another 6 months.

maximum extent possible be designed so that it contains, or provides direct electronic access to, information elements needed to initiate the visa application process”.

As also stated above, we have supported this objective, including the inclusion of biometric identifiers in the new seafarer identification document. We have done so out of the belief that the establishment of a linkage between the new document and the visa application process could significantly assist in reducing the length of the visa application process and allow U.S. consular officers to prioritize screening resources on high-risk applicants who then could be subjected to more detailed background checks and individual interviews.

We are not aware of any reason as to why the agreed, new ILO Convention would not provide for such an interface between the new identification document and the visa application process and thus have the potential for expediting, and facilitating, the issuance of visas to bona fide seafarers.

Also for that reason, we urge the Department of State to determine, before a final rule is published, what role the U.S. government intends to make of the new document for facilitating the visa application process and the seafarer’s travel to and from the United States. Not allowing any role for the new seafarers identification document in the visa application process could, arguably, make the entire international seafarer credentialing endeavor of questionable value for seafarers, their employers and their governments.

B. The need for a credible signing off/on “visa waiver” program

The operational nature and challenges of international shipping business are such that, even if a shipowner, 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 must be 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 ship operator and the crewing agent would do 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 continued long, and increasing, visa application times and waiting times for interviews at U.S. diplomatic missions abroad. Mandatory vessel crewing requirements 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.

A system should be in place that would allow for the signed-off seafarers in the examples above to proceed to the nearest U.S. airport for a flight back to their respective countries of residence. Using the new international seafarer's identification document would seem to provide the necessary assurances for U.S. border agencies to verify the identity of the signed-off seafarers and their bona fide credentials, and thus form the basis for a decision to allow such seafarers -- perhaps with certain conditions such as proof of a ticket for a direct flight out of the U.S., escort by the local shipping agent until the plane has departed, etc. -- a temporary visa waiver for the sole purpose of departing the country.

Similarly, a replacement seafarer, who is to join the vessel in a U.S. port, may not have had the time or the opportunity to obtain an individual visa before proceeding by plane to the U.S. airport nearest to where the vessel is moored. This is likely to occur because of the long, and increasing, time to process visa applications at the U.S. diplomatic mission in the seafarer's country of residence. Arrangements should be in place allowing such a seafarer -- perhaps with certain conditions such as being met in the airport by the local shipping agent and escorted by that person directly to the vessel -- to be granted permission, upon arrival in the United States, to proceed immediately to the vessel. Again, the new international seafarers' identification document could be used as the basis for approving such arrangements.

We realize that the new international seafarers' identification document may not be widely used for another year or so. In the interim, we would urge the Department of State in cooperation with the relevant Department of Homeland Security agencies to develop temporary standard operating procedures for a workable, and credible, signing off/on "visa waiver" program. A possible mechanism for the development of such a temporary program could be the national standard operating procedures that the USCG and CBP have been developing for some time now. We understand that a central element of these procedures will be the usage, and placement, of guards on vessels that arrive at U.S. ports with non-visaed crew members onboard. We see no reason why such procedures could not be developed to regulate those situations, where non-visaed crew members either have to be escorted to the nearest airport for direct repatriation and/or for the direct and immediate escort of non-visaed crew member, who arrive at U.S. airports, to the vessel they will be signing on.

C. Lifting of the suspension of the Immediate and Continuous Transit Programs under appropriate safeguards for foreign seafarers

In simultaneous interim rules on August 7, 2003, the Departments of State and of Homeland Security, respectively, announced the suspension for sixty days of the

Immediate and Continuous Transit Programs, also known as the Transit Without Visa (TWOV) program and the International-to-International (ITI) program.²⁸

The TWOV and ITI programs allow foreign aliens using air carriers, who enter into TWOV or both TWOV and ITI agreements with the government, to transit through the United States without a nonimmigrant visa while en route from one foreign country to another foreign country with one or more stops in U.S. airports. As such, the two programs are being used by foreign seafarers, who have signed off in one foreign country and are either repatriating or transiting to another country to sign on to a new vessel.

The suspension of the two programs was based on recent intelligence indicating possible terrorist threat specific to the programs and additional increased threats of activities against the interest and security of the United States. During the sixty-day suspension period the two Departments will be discussing with the airlines concerned possible steps to enhance the security of the two programs that would allow for their reactivation.

The Council fully understands that the government, faced with such urgent intelligence, had to promptly suspend the programs to avert a threat to the security of the homeland. We also applaud the two Departments for their commitment to work with the involved airlines to determine whether the programs can be reactivated under appropriate safeguards.

The immediate, temporary effect of the suspension has been an increase in the number of visa applications at U.S. diplomatic posts from those foreign aliens who have to pass in transit through U.S. airports. Foreign seafarers undoubtedly have been, and will continue to be, impacted by the suspension of the two programs. They will also indirectly be impacted by the additional increase in the visa application and interview waiting times at U.S. diplomatic posts that the suspension has given rise to – an increase that can be expected to grow even more if the suspension of the programs is extended or made permanent.

We would urge the government to consider, among possible safeguards that might be implemented to enhance the security of the two programs, the future use of the new international seafarers' identification document. While not a visa or a replacement for a passport, the new document will, as mentioned above, include biometric identifiers and other features that would assist U.S. border agents in reliably verifying the identity of the seafarers in question.

Until the new international document is in widespread use, the Government could also consider, as a temporary measure, whether foreign seafarers, in order to qualify for transit via U.S. airports under either of the two programs, should be required to present copies of their employment contract and a letter from their company confirming employment (or termination of employment as the case may be) to the ticket issuing air

²⁸ 68 *Fed.Reg.* 46926 *et seq.* and 68 *Fed.Reg.* 46948 *et seq.*

carrier participating in the programs, i.e. employment documentation requirements akin to those in place at many U.S. diplomatic posts as part of the visa application process.

The Council would be pleased to discuss with the Department these and other, possible safeguards in order to reactivate the TWOV and ITI programs and foreign seafarers' participation in them.

D. Seafarers from countries participating in the visa waiver program

For all the situations described under B and C above, we would suggest that a seafarer from a visa waiver country should, as a matter of course, be allowed to precede to/from the vessel from/to the nearest U.S. airport (or be in transit between two foreign countries²⁹), using their ordinary passports. It would be difficult to comprehend why such a seafarer, if coming to the United States as a tourist, could be granted entry to the United States for a period of up to 90 days without any visa requirements, whereas arrival to – or departure from – the United States in his or her seafaring occupation could lead to denial of entry, in particular when the purpose for seeking entry to the United States is to immediately join the vessel or to embark on a direct flight back to the country of residence.

6. Conclusion

The Council appreciates the opportunity to submit these comments in response to the Department's Interim Rule with request for comments. Our comments are based on our continued commitment to work with the government to enhance maritime and homeland security, while facilitating the effective and efficient flow of people, cargo and transportation assets for legitimate economic and social purposes.

For the reasons discussed above, the Council does not believe that the Interim Rule and its Supplementary Information set out a sufficient rationale for unconditionally requiring that *every* foreign seafarer have to undergo a personal interview to identify the details of the seafarer's intended trip to the United States, its rationale and purposes. We request that the Department consider clarifying to diplomatic posts that personal appearance would not be required of *every* seafarer applying for an individual visa as long as the visa application has been determined to be accompanied by satisfactory proof of qualifications and appropriate documentation of employment. We recommend that all posts should be instructed to require that valid proof of qualifications and appropriate documentation of employment should accompany applications for seafarer visas. We also suggest that posts should be instructed that, if there are uncertainties about a seafarer's qualifications or his documentation of employment, then they should be addressed through various means, including the possibility of a personal interview.

²⁹ The suspension of the TWOV and ITT programs does not apply to citizens of countries participating in the visa waiver program.

The Council also believes that the Department of State – before a final rule is promulgated on personal appearance - should explain to the industry the possible use of the new seafarers identification documents, issued in accordance with the recently adopted Seafarers' Identity Documents Convention (Revised), 2003, for the purposes and objectives of this Interim Rule and those of the Enhanced Border Security and Visa Entry Reform Act and, more generally, for the facilitation of the visa application process, including the possible re-introduction of the crew list visa system.

Furthermore, the Council requests that the Department address the continuing difficulties in the seafarer visa application and issuance process. We suggest several measures that the Department could consider implementing in order to expedite the processing time for applications for seafarer visas to the United States.

Appendix A

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 Lloyd Triestino and Hatsu Marine)
- Great White Fleet, Ltd.
- Hamburg Sud (including Columbus Line, Alianca and Crowley American Transport)
- Hanjin Shipping Company, Ltd.
- 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.
- P&O Nedlloyd Limited
- United Arab Shipping Company
- Wan Hai Lines Ltd.
- Wallenius Wilhelmsen Lines
- Yangming Marine Transport Corporation, Ltd.
- Zim Israel Navigation Company, Ltd.