**National Association of Maritime Organizations**



**Streamline and Standardize Crew Processing**

June 14, 2018

# Background

While clearly laws and regulations govern processes for arriving and departing crew, actual requirements deviate widely from port to port.

Since crew list visa waivers were disallowed following the events of 9/11, local ports have implemented their own requirements for processing maritime crew members. Similarly, we continue to see crew guard requirements in one U.S. port where they were not required at a previous U.S. port or are not required at the next.

Crew List Visa Waivers: A Brief History

The DHS Visa Waiver Program allows certain eligible foreign nationals to travel to the U.S. without first obtaining visas under certain conditions. Historically, under this program, alien crew arriving on commercial cargo ships could be cleared for entry under the Crew List Visa Program without the need for crew members to obtain individual visas. In 2004, the DHS and the State Department agreed to eliminate this program as part of the overall effort to tighten our borders.

It is important to understand why obtaining visas can be challenging for some crew members. In the liner trade, which usually involves container traffic, ocean carriers publish their schedules well in advance. As a result, seafarers can schedule time to visit consulates to obtain visas. Conversely, mariners in the tramp industry, those with no fixed itineraries, will generally not be aware in advance that they will be calling at U.S. ports and thus are unable to obtain individual D-1 visas. Tramp carriers are responsible for approximately 76% of U.S. ship arrivals.

One of the resultant consequences of eliminating the Crew List Visa Program has been the need to place guards along vessels for which several crew members, or even the entire crew, are not in possession of visas. Depending on the number involved, at times multiple guards are required, and at the discretion of the Port Director, the requirement may be for armed guards. Because the federal government simply does not have the resources to monitor these vessels, the vessel owners or operators must pay for private guard services.

There have been occasions in which sufficient private guards were unavailable in a particular port region. This can occur when multiple ships must be guarded simultaneously.

Additionally, full-time guards can be costly. In one example, we are told that the armed guard requirement cost an additional $50,000 for just one port call, with two guards each for three shifts over a five-day period. We estimate, however, an average of $25-30,000 per guard order, or a potential annual cost of $177.3 million to the industry each year.

When applying for an individual visa, a foreign national seeking admittance into the U.S. must undergo a personal interview with a consular officer. This represents the first of a two-phase process; the second occurs upon arrival at a U.S. port of entry when a CBP Officer inspects the crew members and their documentation. In 2004, the U.S. believed that multi-phase process was critical to minimizing the risk that undesirable actors would cross our borders through legitimate commercial portals. Further, at that time DHS had only been officially in operation for just over a year. The U.S. had not yet collected data regarding the full breadth and depth of the potential security concerns, least of all those associated with foreign crew members.

In the intervening years, we have made many significant improvements to our data collection and information sharing initiatives. We have also implemented several new programs designed to ensure risk-based rather than unilateral decision making, including, but not limited to:

* The Customs-Trade Partnership Against Terrorism – C-TPAT is a voluntary program in which participants in the cargo supply chain voluntarily disclose information pertaining to their ships, crew members, and cargos and implement specific security practices.
* The 96-hour Electronic Notice of Vessel Arrival/Departure (eNOA/D) – In 2005, the reporting requirement for advance notice of arrival was expanded from 48 to 96 hours prior to vessel arrival. The amended regulation also added a crew manifest submission requirement and mandated that all data be filed electronically.
* The International Ship & Port Security Code – Ratified under the International Maritime Organization, the ISPS Code provides a standardized, consistent framework for managing risk and permitting the meaningful exchange and evaluation of information between governments, companies, port facilities, and ships. Among other provisions, it requires that vessel operators and port facilities develop security plans and routinely test them, helping to ensure that most of our nation's trading partners are complying with the same stringent security standards established in the U.S.
* The Internet – In today’s environment, deserters and absconders are apprehended much more quickly than they were 10 years ago through the many social media platforms available to law enforcement.

Not only do these programs allow enforcement agencies to focus their efforts where most needed and more effectively utilize their limited personnel, they also allow the intelligence community to analyze the crew data through multiple databases and watchlists prior to vessel arrival.

Further, we also have the benefit of over 10 years' experience. While risks of crew member deserters and absconders certainly remain, it is our belief they are insufficient to continue to justify the economic and human costs resulting from the elimination of the Crew List Visa Program.

Additionally, procedures for off-signing crew are equally burdensome. In one port, crew members must fly direct to foreign, which can be extremely costly for the carrier and time consuming for the repatriating crew member. This same port requires that vessels remain in port until off-signing crew members’ flights depart; and if a flight is cancelled or the mariner misses a flight, he or she must re-board the vessel and sail on — clearly without a visa for the next destination port. Yet while at the airport, the crew member is free to come and go at will.

In another area, once an on-signer arriving on a C-1 visa has joined a vessel, he is detained until the ship goes foreign and returns. It is unclear why a crewmember can remain in a city for several weeks awaiting the ship’s arrival, yet once he joins the ship must be paroled in order to depart the vessel to see a doctor or attend to other critical matters.

# Proposed Solutions

NAMO recognizes that the risks of deserters and absconders vary from port to port, and local CBP must take measures to prevent such activity. Yet these requirements frequently seem illogical to the vessel owners and operators, who must pay for crew guards, multi-leg flights, and lengthy hotel stays, among other expenses. Further, such local policies place some ports at a competitive disadvantage while encouraging vessels to call at other ports.

CBP and industry also acknowledge that some immigration laws are anachronistic and must be updated. An example includes the 29-day parole limit, which is no longer sufficient when offshore tankers are used for cargo storage pending changes in oil prices.

Finally, we recognize that the adage “watch what you wish for” applies here. While industry appreciates uniformity of processing, it does not seek standardization of procedures such that onerous requirements are placed at ports across the board.

While these issues are extremely broad in nature, there may be some actions we can take to improve the climate for crew members and vessel owners/operators while still protecting the homeland.

1. Review archaic immigration statutes: Convene group to review current law and regulations with an eye toward making 21st century updates. We recommend including agents, carriers, immigration attorneys, and seafarer welfare groups in this review process.
2. Analyze deserter/absconder data from the last 10 years: Considering the discussion of crew visa waivers above, determine whether a continuing need to disallow this program exists. While we recognize that reinstating programs previously eliminated in the name of security will be difficult, it is not impossible. Let us be certain the data support the ongoing humanitarian and economic costs of eliminating this program. If it is determined that we must still deny crew visa waivers, let us evaluate whether additional scrutiny can be conducted on arrival to identify those who truly represent a risk and allow the majority of hardworking seafarers to obtain shore leave they so desperately need.
3. Develop a “reasonableness test” for local port practices: NAMO does not mean to suggest that CBP port directors are unable to ascertain measures needed to keep their ports safe. However, there is not always a full understanding of the larger ramifications of the policies being enforced. We recommend CBP institute an approval process for certain procedures and create a mechanism for stakeholders to “appeal” if the benefits to security are in question.