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Treatment of foreign seafarers

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The United States effectively treats foreign seafarers more harshly than any other group that enters with country without breaking the law.

The general rule is that all persons who are not US nationals or permanent residents must have a visa to enter the United States. Persons desiring to become US citizens or permanent residents must obtain an immigrant visa. Most other persons desiring to enter the United States for a limited period of time must obtain a nonimmigrant visa. To obtain a nonimmigrant visa, one must have a valid passport and complete the Nonimmigrant Visa Application, Form DS-160 and submit it and a photograph (head shot) to the relevant US embassy or consulate. The applicant must then schedule an interview, but the interview is generally required only for persons between the ages of 14 and 79. An application fee of \$160 must be paid prior to the interview. In many cases, there is also a visa issuance fee. But some nationalities may be eligible for more favorable treatment.

The Visa Waiver Program (VWP) allows citizens from participating countries to travel to the United States without a visa for stays of 90 days or less. Such travelers must be eligible to use the VWP and have a valid Electronic System for Travel Authorization (ESTA) approval prior to travel. The traveler's purpose must be permitted by a Visitor (B) Visa (e.g., tourism or various business purposes). Travel must be performed on an approved air or sea carrier and the traveler must have a round trip ticket indicating return passage to a country outside the United States that is a participant in the VWP. Currently, there are 38 participating VWP countries. These countries include all the EU and EEA members, plus Australia, Brunei, Japan, New Zealand, Singapore, South Korea, and Taiwan.

Citizens of Canada and Bermuda do not require visas to enter the United States for visit, tourism, and temporary business travel purposes. Also, citizens of Canada and Bermuda do not require visas to enter the United States for purposes of travel as a crewmember. Citizens and permanent residents of Mexico generally must have a nonimmigrant visa or a Border Crossing Card (also known as a "Laser Visa"). For ease of travel, the B-1/B-2 visa and the Border Crossing Card have been combined into one document (DSP-150).

A Crewmember Visa (D-1) must be obtained by persons working on board vessels or international airlines entering the United States if the individual intends to depart the vessel or airliner (even for short periods) while it is in the United States. The process for obtaining a Crewmember Visa includes all the requirements for obtaining a regular nonimmigrant visa. In addition, the applicant for a Crewmember Visa must provide evidence of the purpose of the trip, the intent to depart the United States after the trip, and the ability to pay all costs of the trip if applicable. Evidence of family ties in the applicant's home country may suffice for showing the intent to depart. The Visa Waiver Program is not applicable to entry as a crewmember, but (as noted above) citizens of Canada and Bermuda do not require visas to enter the United States for purposes of travel as a crewmember.

Commercial airlines have scheduled routes. In addition, airline crewmembers tend to stay with the same airline for extended periods. Therefore, crewmembers on foreign airlines that call at US airports know with certainty that they will need Crewmember Visas. The same cannot be said of most merchant vessels. They have no scheduled routes in most cases and sometimes change destinations en route. Many merchant mariners are employed by the same maritime employer for only one year at a time; long-term employment contracts are the exception rather than the rule on the marine sector. A merchant mariner on a foreign vessel, in most cases, has no idea whether the vessel will call in a US port during the six-month period during which a Crewmember Visa is valid. Therefore, most merchant mariners do not go through the time and expense required to obtain such a visa.

An example (from the pre-9/11 era) may illustrate the visa conundrum. A ship's officer from a visa waiver country was assigned to join his ship in a US port. He received the assignment several weeks in advance and decided to visit the United States as a tourist during the period before he was to join the ship. After two weeks of touring the US, he joined the ship as scheduled. The US immigration officer for the ship noted his arrival and promptly informed the master that a civil penalty would be assessed if this particular ship's officer went ashore for any reason. I was attending a major shipping conference in Washington, DC shortly thereafter. During a Q&A with the Deputy Chief Counsel of the Immigration and Naturalization Service (INS), a senior representative of the shipping company involved related the above and asked why this individual presented no threat to the United States during the two weeks that he toured the country, but was suddenly a threat when he boarded his ship. The INS representative's reply was that tourism and crewmember issues were entirely separate programs. In other words, common sense was and is not applicable.

When cargo (merchandise) from outside the United States is bound for unloading in the US, advance notice of the particulars concerning the cargo is transmitted to the US Government. Every cargo is screened. If the cargo is deemed suspicious, it undergoes scanning and possibly other individualized examination. Less than 10% of cargo coming to the United States is subjected to this enhanced examination. In other words, more than 90% of the cargo coming to the US is deemed to not present a security threat and is admitted through routine processing, based largely upon the paperwork related to cargo.

The US Government is also provided advance notice of all crewmembers on all ships bound for a US port. The advance notice of arrival must include, for each crewmember, the individual's full name, date of birth, nationality, passport or mariner document number, position or duties on the vessel, and where the crewmember embarked. This information is then compared against an extensive database of known and suspected terrorists and similar undesirables. If the individual is determined to be a severe threat, the vessel can be barred from entry into US waters while the individual remains on board. If the threat is deemed less serious, the vessel must hire armed guards to keep the individual from departing while the vessel is in US waters. Even if a crewmember presents no known threat, he or she may not depart the vessel (generally may not even come down the gangway to check draft marks or to make a telephone call from a landline) unless that individual has a US Crewmember Visa. In other words, unlike with cargo where a particular piece of cargo is deemed unthreatening unless shown otherwise, a crewmember without a US Crewmember Visa is deemed a threat to the security of the United States if he or she steps ashore even for a moment. A passport (even from a country that participates in the Visa Waiver Program) is insufficient. Likewise, possession of a seafarers' identity document issued in accordance with the ILO Seafarers' Identity Documents Convention will not suffice.

For all practical purposes, the United States treats foreign seafarers as threats to the security of the US unless and until that seafarer has jumped through various bureaucratic hoops. Those hoops are effectively impossible for most foreign seafarers to negotiate. Thus, foreign seafarers are substantially denied the ability to take liberty or shore leave when their ships call in US ports. It is ironic that the United States Government allows these same seafarers to navigate large vessels loaded with oftentimes hazardous cargoes through US waterways and to call at and unlade/lade in US ports. The threat potentially presented by these ships and their cargoes appears far greater than that presented by an individual crewmember without a US Crewmember Visa, but I am unfortunately getting logical.

There are a variety of means by which a terrorist might enter the United States to wreak havoc. The 9/11 terrorists all obtained tourist visas and then flew to the US on commercial airliners. A terrorist could join the numerous economic migrants who successfully cross the southwest border each year. Alternatively, a terrorist could walk across the unguarded border with Canada. If a terrorist opted to try to enter the United States as a foreign crewmember, the process becomes more complex and uncertain. The individual would have to undergo at least rudimentary training so as to qualify as a seafarer. Failure to have some basic skills will generally prevent one from getting hired. If hired, being unskilled will likely lead to quick dismissal. Assuming that the terrorist demonstrates the requisite skills and gets hired on an ocean-going merchant vessel, the individual must wait for the vessel to make a US port call, which is certainly a long-shot within the six-to-twelve month period on a particular vessel. No self-respecting terrorist or terrorist organization would select the maritime option as an efficient means of getting a malefactor into the United States.

Approximately 90% of goods imported to the United States from overseas arrives by ship and, of that, over 95% arrives on foreign-flagged ships manned by foreign crewmembers. If

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imported cargoes were treated like foreign crewmembers, the US economy would grind to a halt. Fortunately, there is a strong lobby in Washington, DC to ensure that foreign trade is expedited. There is no such lobby in Washington for foreign seafarers.

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