U.S. Department of Transportation
United States Coast Guard

Commandant
United States Coast Guard

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MOC POLICY LTR 01-02
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From: Commandant
To: Distribution

Subj: PROCEDURES FOR WAIVER OF REQUIREMENTS ON CITIZENSHIP ABOARD COMMERCIAL FISHING VESSELS

Ref: (a) 46 U.S.C. 8103
(b) 8 U.S.C. 1101, et seq.

1. Section 8103(i)(1) of reference (a) requires that, with certain exceptions, only citizens of the United States or lawfully admitted resident aliens serve as unlicensed seaman on fishing, fish processing, or fish tender vessels engaged in fisheries in the navigable waters of the United States or the exclusive economic zone. Reference (a) also allows up to 25 percent of the unlicensed seamen aboard those fishing industry vessels to be non-resident aliens employable under reference (b), the Immigration and Nationality Act. Lawfully admitted non-resident aliens must hold visas issued by the Immigration and Naturalization Service in accordance with reference (b) under the Non-Agricultural Temporary Labor Program (H-2B visas) to serve aboard fishing industry vessels as permitted by §8103(i)(1)(C) of reference (a).

2. Reference (a) grants the Secretary of Transportation the authority to waive citizenship requirements for any vessel under §8103(b)(3)(c), other than a requirement that applies to the master of a documented vessel, if the Secretary determines, after investigating, that qualified citizens of the United States are not available. This authority was delegated to the Commandant, then further delegated to the Chief of the Office of Compliance (G-MOC). This policy letter sets out the procedures that will govern the processing of requests for waivers of citizenship for employers seeking to exceed the 25-percent limit applicable to unlicensed seamen that are non-resident aliens aboard fishing industry vessels.

3. The content of requests for waivers of citizenship submitted by employers and the procedures of the Coast Guard for processing these requests are as follows:

a. Each request must be in writing;

b. The employer must provide the list of persons, including the nationality and status of each in the United States, their positions, and the vessels the employer seeks to exempt;

c. The employer must identify the number of non-resident seamen to be employed and the overall size of the vessel's or vessels' crew(s) and the time period over which the 25% limit will be exceeded;

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d. The employer must certify that the vessel(s) will operate in compliance with all other applicable citizenship requirements regarding the master or other officers in charge of deck or engineering watches on documented vessels;

e. The employer must provide certification from the regional administrator of the Department of Labor (DOL) in whose jurisdiction the vessel will operate that citizens of the United States or resident aliens are not qualified and available to work. (Note: DOL's H-2B certification procedures require that the employer submit an application and necessary facts to support a finding that the need is temporary and is either seasonal, one-time, peak, or intermittent. DOL's procedures require the submittal of the application 60 days in advance of the need for labor);

f. The employer must submit the waiver request including DOL's labor-pool certification, and the employer's certification that all other citizenship requirements are met, to the Commandant (G-MOC), U. S. Coast Guard Headquarters, 2100 2nd Street, SW, Washington, D.C. 20593;

g. Upon receipt of the request, G-MOC will evaluate the information provided to determine whether it proves that citizens of the United States and resident aliens are not available for work, and may investigate further as necessary to determine the validity of the information provided;

h. If, before the request is approved, information provided or discovered establishes that citizens of the United States or resident aliens are qualified and available, the employer will be required to seek their employment. If no such workers are available, G-MOC will grant the waiver to exceed the 25-percent limit for the time period authorized by the DOL certification; and

i. If, within 30 days of receipt by the Coast Guard of a request, the Coast Guard does not make a determination or advise the employer that it needs more time for consideration, the request stands approved for 90 days from the end of the 30 days.

4. If you have any questions regarding implementation of this policy, please call LCDR Jennifer Williams of my staff at (202) 267-0505.

J. D. SARUBBI
By direction

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