



CITIZENSHIP VIOLATIONS UNDER 8103 (b) AND (i) REVISITED

Written By CDR Mark Hammond

The Hearing Office continues to see a fairly steady flow of cases alleging violations of crew citizenship requirements under section 8103 of title 46, United States Code. Many cases continue to be returned to the charging unit for various deficiencies. Some are dismissed altogether because there is insufficient evidence in the case file to prove that the violation occurred. The following article, which first appeared in Volume 5 of the Hearing Office Newsletter, is reprinted here with a few updates to re-emphasize key elements of 46 U.S.C. § 8103(b) and (i), and highlight important considerations when documenting and constructing cases.

The requirements known to many as the “75/25” rule are really two different provisions of federal law that address the percentage of unlicensed seamen that may be employed on board certain vessels. The two provisions are found in 46 U.S.C. § 8103.

The first is subsection (b) of section 8103, which applies to DOCUMENTED VESSELS. Paragraph (1) of subsection (b) requires that not more than 25 percent of the total unlicensed seamen on board a documented vessel may be aliens lawfully admitted to the United States for permanent residence. Otherwise, the unlicensed seamen must be citizens of the United States or foreign nationals enrolled in the United States Merchant Marine Academy. If more than 25 percent of the total unlicensed seamen on board are permanent resident aliens, OR there is an unlicensed seaman on board that is not a U. S. citizen, a permanent resident alien, or enrolled in the Merchant Marine Academy, there is a violation of 46 U.S.C. § 8103 (b)(1).

The second provision is subsection (i), paragraphs (1) and (2), which are applicable to FISHING VESSELS ENGAGED IN FISHERIES. Paragraph (1) requires any unlicensed seaman to be either a citizen of the United States, an alien lawfully admitted to the United States for permanent residence, an alien allowed to be employed under the Immigration and Nationality Act, or an alien allowed to be employed under certain rules and immigration laws of the

Commonwealth of the Northern Mariana Islands (CNMI). Paragraph (2) requires that not more than 25 percent of the total of unlicensed seamen may be employed under the Immigration and Nationality Act, such as a person lawfully admitted for employment in the U.S. holding an HB-2 work visa. On fishing vessels engaged in fisheries, therefore, if there are unlicensed seamen that do not fall within the four categories in (i)(1), there is a violation of 46 U.S.C. § 8103 (i)(1). If more than 25 percent of the unlicensed seamen are aliens allowed to be employed under the Immigration and Nationality Act, then there is a violation of 46 U.S.C. § 8103 (i)(2).

Subsection (i) of section 8103 applies to all U.S. fishing vessels, whether they are documented or state-numbered. If we set aside the special provision for vessels in the CNMI, this subsection differentiates between unlicensed seamen who are U.S. citizens or permanent resident aliens, and unlicensed seamen who are aliens legally in the U.S. but not permanent resident aliens. There is no limit on the number of U.S. citizens or resident permanent aliens who may serve as unlicensed seamen. No more than 25% of the unlicensed seamen on board, however, may be aliens in the U.S. legally but not permanent resident aliens.

Documentation of the important facts is key in these cases. Vague statements such as “two of the vessel’s 4-man crew admitted to being foreign citizens,” without more specific evidence of their status, is not sufficient to show a violation occurred. Since it is conceivable that there could be persons on board to whom this law does not apply, such as passengers or NOAA observers, it is important to document the names of all persons on board, whether they are members of the crew on the vessel, and whether they hold a Coast Guard license or are unlicensed. It’s also important to document any statements made, and make copies of any documents produced regarding: identification; citizenship; lawful admittance as an alien; enrollment in the U.S. Merchant Marine Academy; and employment under the Immigration and Nationality Act or immigration laws of the Commonwealth of the Northern Mariana Islands.

A statement or evidence that the vessel is either a documented vessel, or a vessel engaged in fisheries in the navigable waters of the United States or the exclusive economic zone (EEZ), is necessary to the determination that a violation occurred. Also, in cases where Immigrations and Customs Enforcement (ICE) personnel have made a determination regarding citizenship status, a statement from the ICE official or other evidence of such determination would be helpful.

A detailed discussion of the law and manner in which citizenship, lawful admittance, or proper employment might be demonstrated can be found in our Newsletter, Volume 3. A violation of 46 U.S.C. § 8103 requires sufficient evidence to identify the number of unlicensed seamen on the vessel and the relevant status of the unlicensed seamen as legal residents of the U.S. or otherwise. Take the time to ask the questions and document the answers, and collect any status documentation available. This will assist in determining whether a violation occurred and help to avoid unnecessary delays in processing a case.