

# Gulf Coast Mariners Association



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### FATHER SINCLAIR OUBRE SPEAKS FOR ALL MARINERS ON ELIMINATION OF CREW LIST VISAS

Father Sinclair Oubre, President of the Apostleship of the Sea is an active GCMA and SIU member and sails as an Able Seaman. In short, Father Sinclair is one of us.

Father Sinclair was selected a number of years ago by the Secretary of Transportation to serve as a member of the Merchant Marine Personnel Advisory Committee and served on that Federal advisory committee as a steady and consistent voice that speaks out on behalf of mariner issues. His pastoral duties are as Pastor of the St. James Catholic Church in Port Arthur, TX.

Father Sinclair served offshore supply vessel mariners on the Gulf Coast as head of the Board of Directors of the Gulf Coast Mariners Association Education Fund that distributed federal training funds to train hundreds of mariners to meet the requirements of STCW. Following the recent sinking of the OSV LEE III, a boat from Galveston, TX, with the loss of its five crewmembers near the mouth of the Mississippi River, Father Sinclair requested that GCMA provide him with full media details of the accident.

Father Sinclair recently met with representatives of Congress, the U.S. Department of Homeland Security and the labor movement in Washington, D.C. to advance the cause of improving the potentially dangerous and often unnecessary restrictions on mariners' shore-leave rights that have become entangled with new homeland security regulations.

Father Sinclair has a broad view of the maritime industry and its mariners. It is this broad view that our mariners, besieged with their own problems, need to develop and it is to Father Sinclair that our Association has learned to turn for guidance.

It seems that foreign seamen arriving in United States ports are trapped in the middle between security and terrorism.

Father Oubre and his national ministry, the Apostleship of the Sea of the United States of America is urging Congress to ratify the International Labor Organization's (ILO) Convention 185 "in the most expedient manner possible so that seafarers do not become the latest victims of terrorism."

Our mariners on the Gulf Coast were caught in a repressive squeeze play long before the terrorist attacks of September 11, 2001. During the pre-9/11 period, members

of the Offshore Marine Service Association (OMSA) sealed their vessels, closed off access to and egress from every dock, restricted visitors to vessels and held captive-audience meetings to deny access to maritime union members who brought with them the unwelcome message that it was time to stand up for their rights of free speech and free assembly guaranteed by the United States Constitution. These lockdown restrictions blended so easily with the post-9/11 security regulations enforced by the Coast Guard for an entirely different reason that mariners have become accustomed to their loss of freedom.

Father Sinclair notes that ILO Convention #185 was unanimously ratified by a vote of 392 to 0 last year by delegates to the International Labor Organization forum in Geneva, Switzerland. ILO Convention 185 calls for a universally recognized mariner identification document. ILO Convention 185 also states the critical need for providing shore leave for mariners and further specifies that "seafarers shall not be required to hold a visa." ILO-185 also states that "any member (nation) which is not in a position to fully implement this requirement shall ensure that its laws and regulations or practice provide arrangements that are substantially equivalent."

For now, however, all foreign mariners must possess "D1" (non-immigration) visas to come ashore in the United States. "After September 11, 2001, the Immigration and Naturalization Service ceased issuing crew list visas," Father Sinclair explained. "It also changed its rules regarding the INS agent issuing waivers for mariners to go ashore if they did not have a D-1 visa. The new regulations only allow a supervisor to waive the D-1 visa requirement and, unlike the airline industry, there is no avenue for appeal."

One consequence is that mariners have been denied shore-side medical care because they lack visas. "They can't get off the ship unless it's a life-threatening condition," he noted. "This has led to mariners sailing from U.S. ports on voyages that are weeks long without necessary health care. We can only hope that by the time the vessel reached its next port, the situation did not evolve into a life-threatening problem."

A recent article in Professional Mariner magazine<sup>(1)</sup> highlights this point with the following example: <sup>(1)</sup> *April/May 2004, p. 4*

"This past fall, when a Cypriot-flag bulk carrier called on Portsmouth, NH, to unload salt, the second assistant engineer, a Ukrainian citizen, was suffering from an abscessed tooth and needed to see a doctor. He was in terrible pain and lacked medication. He, like the rest of the crew must stay aboard the ship, he was told, since he did not have a visa. The ship's previous stop was near Pisco, Peru, a desert wasteland lacking basic services, including a phone. The next stop was to be New Orleans, where they could expect a similar greeting."

Another concern is that such instances may lead to American mariners unjustly being denied leave overseas.

"The bottom line is we don't see the relationship between the D-1 visa and security," Father Sinclair said. "Our present policies assume that the greatest threat to maritime security comes from mariners leaving the vessels. However, the real threat is a terrorist posing as a mariner and staying on the vessel. He or she could blow up the ship at dock or scuttle it at an important waterway junction. Preventing the seafarer from leaving the vessel because the mariner lacks a visa will not prevent either of these security concerns."

In a recent letter outlining the situation, the Apostleship of the Sea asked Congress to enact Convention 185 on seafarer documents "and let these new documents be accepted as identification for the mariner and in place of the D-1 visa."

[GCMA reported the foregoing in GCMA News, Issue #22, April 2004.]

#### SHORE LEAVE AS A NATIONAL ISSUE

One of the most significant positions taken by the America's maritime labor unions is the one spearheaded by Father Sinclair Oubre.

Not only are GCMA's lower-level mariners discriminated against in many different ways but this attitude has also been transferred to the seamen of other nations who arrive in U.S. ports and find that they cannot obtain shore leave.

Every maritime labor union in the United States has stood up to oppose this form of discrimination. Father Sinclair stood up for all mariners in Coast Guard public meetings that this subject was discussed in the rulemaking project for the new Maritime Transportation Security Act (MTSA).

Although Father Sinclair still must win over the Coast Guard and the Department of State, he did find an ally in the Maritime Administration, an agency of the U.S. Department of Transportation. GCMA commends the following document from the Apostleship of the Sea (AOSUSA) that recognizes the support of the Maritime Administration and recognizes the head of that agency as a friend of merchant mariners:

#### **A Resolution Thanking the United States Maritime Administration for Their Efforts in Defending Mariners' Rights to Shore Leave**

WHEREAS, in the wake of the attacks on the United States of America on September 11, 2001, the Immigration and Naturalization Service (now U.S. Customs and Border Protection) severely restricted the access of non-U.S. seafarers to shore leave;

WHEREAS, thousands of seafarers have been denied shore leave and medical care because of these policy changes;

WHEREAS, the Apostleship of the Sea of the United States of America (AOSUSA) and other seafarer ministry organizations and seafarer welfare agencies have vociferously decried the loss of Crew List Visas and the loss of the authority of Custom and Border Protection officials to waive D-1 Visas for visiting mariners;

WHEREAS, the U.S. Maritime Administration has actively supported the rights of seafarers to access shore leave;

WHEREAS, the United States Department of State has refused to consider the points raised by U.S. Maritime Administration, AOSUSA, seafarer maritime ministries, maritime unions and other seafarer welfare agencies, and has issued the final rule eliminating the crew list visa and explicitly rejecting the principle of accepting the new seafarer identification document

BE IT RESOLVED THAT the Apostleship of the Sea of the United States of America meeting during its 2004 Annual Conference at the Great Lakes Maritime Academy wishes to express its most sincere thanks and appreciation to **Capt. William Schubert and the dedicated men and women of**

**the United States Maritime Administration** for their efforts in overcoming the onerous policies that have prevented seafarers from access shore leave;

BE IT FURTHER RESOLVED THAT AOSUSA looks forward to continuing the cooperative efforts with the United States Maritime Administration in assisting the more than one million foreign seafarers who visit our ports, and to eventually develop policies and procedures that will reduce the more onerous effects of the U.S. Department of State's policies.

#### SHORE LEAVE AS AN INTERNATIONAL ISSUE

**The Gulf Coast Mariners Association** was grateful for the extensive support of the **International Transport Workers Federation (ITF)** in our drive to gain worldwide recognition of the problems that our mariners faced in the offshore oil industry on the Gulf Coast. GCMA outlined our problems in detail in several reports presented to ITF in the Summer of 2000. The ITF, in support of our cause on behalf of mariners in the offshore oil industry, held an international meeting in New Orleans where over 150 ITF delegates and the General Secretary, David Cockroft, personally joined our mariners in a march and demonstration at the Work Boat Show in the Morial Convention Center.

International Transport Workers Federation Secretary General wrote the following letter to the Visa Services Division of the U.S. State Department that outlined ITF's opposition to the State Department's elimination of crew list visas on April 19, 2004:

Dear Sir,

Further to our previous communications during the rule making process, we are extremely disappointed that the United States has issued the Interim Final Rule in Public Notice 4654. We also note that the Public Notice advises that the proposed rule solicited 81 comments from seafarers' trade unions, shipowners and Governments, all of which argued against the elimination of the crew list visa. Moreover, earlier this year the Secretary-General of the International Maritime Organization and the Director-General of the International Labor Office wrote a joint letter to the Secretary of the Department of Homeland Security requesting the United States to recognize the exceptional position of seafarers in terms of entry into foreign countries and to facilitate shore leave for seafarers.

The joint letter by the heads of two United Nations Specialized Agencies notes the way the international community has, in the wake of 11 September, put in place additional stringent and comprehensive measures to address the question of maritime security. The International Ship and Port Facility Security (ISPS) Code, adopted by the IMO, which comes into force on 1 July this year, puts seafarers at the forefront of the new maritime security regime. The IMO Diplomatic Conference that adopted amendments to the SOLAS Convention and the ISPS Code also adopted a Conference Resolution on Human Element Related Aspects and Shore Leave for Seafarers. The ILO also promptly responded to a request, which originated from the United States, to revise the (Seafarers' Identity Document Convention and adopted ILO Convention No. 185 in June 2003. The ILO International Labor Conference, which adopted ILO

Convention No. 185 (Seafarers' Identity Documents), also adopted a Conference Resolution Concerning Decent Work for Seafarers. The fact that two United Nations Specialized Agencies adopted such Resolutions, which recognize that seafarers need special protection, shore leave and facilitation of travel to and from ships, are indicative of the importance the international community attaches to such matters.

As we have stated in our previous comments, the requirement that seafarers secure individual visas is causing great hardship. The State Department Public Notice wrongly suggests that individual visas would be cheaper as most seafarers would receive a multiple entry, long-term visa. However, it ignores the fact that the cost of a crew list visa was borne by the shipowner, while the costs associated with the issuance of an individual visa are generally met by the seafarer. As many seafarers come from developing countries and live in communities some distance from a United States Embassy or Consulate, the costs are not insubstantial. Moreover, we are advised that many seafarers encounter difficulties in securing a United States visa when they are not able to demonstrate that they will actually be visiting the United States. In these cases the seafarers become unemployable.

The State Department Public Notice erroneously suggests that the new seafarers' identity document, which contains biometric details, would take many years to be developed. The Convention has been adopted and the necessary technical standards to ensure global interoperability have just been agreed. Moreover, a number of countries have started to ratify the ILO Convention and some are receiving technical assistance from the United States to implement the onerous provisions associated with the issuance of seafarers' identity documents. We would have hoped that the United States would have encouraged widespread ratification of the ILO Convention, through the provision of an incentive that would have provided more favorable treatment for seafarers holding the new seafarers' identity document.

The State Department Public Notice states: *"By eliminating the crew list visa, the Department will ensure that each crewmember entering the United States will be required to complete the nonimmigrant visa application forms, submit a valid passport and undergo an interview and background checks."*

It also suggests that: *"one of the principal reasons for requiring individual visas is the need, for security purposes, for a consular officer to personally interview each applicant."*

However, this ignores the modalities of the shipping industry and the fact that many ships, crewed by seafarers who do not hold a valid United States visa and who have not been subject to a consular interview, are likely to call at ports in the United States. Shipping is unique in this regard. It therefore needs and, given its importance to the global economy, deserves special treatment.

We are firmly of the view that the new seafarers' identity document, coupled with other measures, most notably the 96 hour rule that requires the details of all persons on board to be submitted to the United States Coast Guard 96 hours prior to the arrival of the vessel, provide an equivalent level of security and adequate time for background checks. Moreover, given that ships with seafarers on board who have not been subject to a consular interview currently visit ports in the United States, we believe acceptance of the provisions of ILO

Convention No. 185 would significantly enhance homeland security.

Seafarers cannot understand why they are subject to such a visa regime by the United States and are, at the same time, expected to be responsible for the ship's security and for the implementation of the onerous duties imposed by the ISPS Code.

We note that the U.S. visa regime for seafarers applies to all seafarers, even those who originate from visa waiver countries. This uniquely discriminates against seafarers.

We hope this letter receives sympathetic consideration and that the United States shows some flexibility, which would involve the promotion of the new ILO seafarers' identity document through the provision of an incentive; meet the expectations of the international community with regard to shore leave for seafarers and, at the same time, enhance the homeland security of the United States.

The International Transport Workers' Federation (ITF) is an international trade union federation of transport workers' unions. Over 550 unions representing more than 4.5 million transport workers in over 130 countries are members of the ITF. The affiliated unions within the ITF Seafarers' Section represent over 700,000 of the estimated 1.2 million seafarers employed in the global shipping industry. The ITF stands ready to co-operate with the various United States agencies to put in place a regime which will improve maritime security and the homeland security of the United States, while at the same time, providing for the more equitable treatment of seafarers and recognizing their crucial role in terms of the functioning of the global economy and their pre-eminent role in enhancing maritime security.

We look forward to hearing from you. Yours sincerely,  
David Cockcroft, General Secretary