

9 FAM 41.41 NOTES

*(CT:VISA-1035; 09-24-2008)
(Office of Origin: CA/VO/L/R)*

9 FAM 41.41 N1 CLASSIFICATION UNDER INA 101(A)(15)(D)

9 FAM 41.41 N1.1 Services Required for Normal Operation On Board Vessel

(CT:VISA-1035; 09-24-2008)

In determining whether the services of an alien are required for normal operation and service on board a vessel, the consular officer shall take into account the alien's responsibilities and activities on the ship. For example, a beautician or a lifeguard employed on board a luxury liner, an electrician employed on board a cable ship, or a chemist employed on board a whaling boat is classifiable as a crewman. It is immaterial whether such an alien is employed by the owners of the vessel or by a concessionaire.

9 FAM 41.41 N.1.2 Certain Dry-Dock Workers

(CT:VISA-1035; 09-24-2008)

Since INA 101(a)(15)(D) applies to crewmen in service on board a vessel, it does not apply to workers coming to work on shore to effect repairs to the vessel while it is in dry-dock. Workers coming to do repair work under warranty may do so on a B-1 visa, provided the requirements of **9 FAM 41.31 N7.1 (a)** are met; otherwise, they should seek classification as temporary workers under INA 101(a)(15)(H).

9 FAM 41.41 N1.3 Vessels

(CT:VISA-1035; 09-24-2008)

The INA makes no distinction between U.S. and foreign flag vessels. Therefore, foreign crewmen may be accorded D visas notwithstanding the nationality of the vessel on which they are employed, provided all other requirements for D classification are met. Note, however, that INA 101(a)(15)(D) precludes the issuance of crew visas to aliens who seek to

join fishing vessels having a home port or operating base in the United States, regardless of the nationality of the fishing vessel. (See 9 FAM 41.41 N2.)

9 FAM 41.41 N1.4 Interpretation of “Departure” For Purposes of INA 101(a)(15)(D)

(CT:VISA-1035; 09-24-2008)

To qualify for D status, crewmen must intend to depart from the United States with the vessel on which they arrived or some other vessel within 29 days at any one time. In order to effect a departure in terms of the INA, a vessel must sail from the United States destined to a foreign port or place; travel to international waters is insufficient for the purpose of departure. An alien on board a vessel which sails to sea and returns without effecting a departure (i.e., without entering or clearing at a foreign port), and whose itinerary is thus coastwise in nature, remains in the United States subject to the 29-day limitation. Aliens entering the United States solely to work on board vessels that do not travel to a foreign port or place are unable to qualify under INA 101(a)(15)(D), because they cannot meet the departure requirement. For the exception regarding fishing vessels based in the United States landing temporarily in Guam, (see 9 FAM 41.41 N2.4).

9 FAM 41.41 N1.5 D Visa for Crewman With Layover in United States

(TL:VISA-25; 07-21-1989)

The fact that a crewman expects to spend a layover period in the United States does not preclude a D visa classification if the crewman does not plan to remain for more than 29 days at any one time.

9 FAM 41.41 N1.6 D Visa for Crewman Not Currently So Employed

(TL:VISA-25; 07-21-1989)

A crewman may be issued a D visa although not so employed at the time of application. The consular officer shall inform the crewman that the visa may be used for entry only if the crewman is employed on the vessel or aircraft on which the crewman arrives.

9 FAM 41.41 N1.7 Crewmen Entering United States on Training Vessels

(TL:VISA-25; 07-21-1989)

Aliens entering the United States as trainees on training vessels are classifiable as nonimmigrant crewmen under INA 101(a)(15)(D).

9 FAM 41.41 N1.8 Crewmen Seeking Nonimmigrant Visas During Strikes

(CT:VISA-1035; 09-24-2008)

If an alien seeks admission to the United States under INA 101(a)(15)(D) for the purpose of performing service on board a vessel or aircraft at a time when there is a strike in the bargaining unit of the employer in which the alien intends to perform such service, the consular officer shall seek the *Office of Legislation, Regulations, and Advisory Opinions* (CA/VO/L/A) advisory opinion before issuing a D visa. Such advisory opinion is not required if the alien was employed before the date of the strike and seeks to continue to perform service as a crewman to the same extent and on the same routes as before the strike.

9 FAM 41.41 N1.9 Documentation of Crewmen Classifiable Under INA 101(a)(15)(D)

(CT:VISA-1035; 09-24-2008)

An alien who is classifiable as a crewman and otherwise admissible may be issued an individual D visa. The consular officer should normally issue the D visa for the full period of validity and the number of applications for admission indicated by the applicable reciprocity schedule.

9 FAM 41.41 N1.10 Alternatives for Crewmen Who Fail to Qualify for Nonimmigrant Status Under INA 101(a)(15)(D)

(CT:VISA-1035; 09-24-2008)

Crewmen who fail to qualify for D status, including alien crew members seeking to enter the United States in the performance of duties on fishing vessels having a U.S. home port or operating base (see 9 FAM 41.41 N2), will generally have to seek immigrant status. Such crewmen may apply for H-2 visas provided they can establish that the jobs are temporary in nature. However, according to 9 FAM 41.53 N3.2, an alien may not be classified H-2 for the purpose of occupying a position that is of permanent or indefinite nature. Crewmen unable to qualify for D visas are generally unable to establish entitlement to H-2 visas because the nature of their positions on the vessels may be presumed to be permanent (even if their own

employment on the ship is not). *U.S. Customs and Border Protection (CBP)* inspectors at the port of entry (*POE*) have the authority to parole crewmen into the United States but it is anticipated that this power would seldom be used to allow U.S. entry for crewmen who cannot establish entitlement to status under INA 101(a)(15)(D).

9 FAM 41.41 N2 CLASSIFICATION OF FISHING VESSEL CREW

(TL:VISA-25; 07-21-1989)

If the home port or operating base of a fishing vessel is in a foreign country, alien members of the crew are classifiable under INA 101(a)(15)(D). A crewman on a fishing vessel having a home port or operating base in the United States is not entitled to a D visa and would normally require an immigrant visa.

9 FAM 41.41 N2.1 Nationality of Fishing Vessel

(TL:VISA-25; 07-21-1989)

Since INA 101(a)(15)(D) does not differentiate between U.S. and foreign flag fishing vessels, the prohibition against issuing D visas to crewmen of such vessels which have home ports or operating bases in the United States applies equally to fishing vessels of all nationalities.

9 FAM 41.41 N2.2 "Operating Base" Defined

(TL:VISA-25; 07-21-1989)

The term "operating base" is intended to cover places where the vessel takes on supplies regularly, where the cargo of the vessel is sold, or where the owner or master of the vessel engages in business transactions. It is not intended to cover those cases where fishing vessels occasionally come into ports in the United States for supplies. Generally speaking, a fishing vessel which transacts business on a regular (though not necessarily frequent) basis will be considered as having an operating base in the United States. A single fishing vessel will often have more than one operating base.

9 FAM 41.41 N2.3 "United States" Defined for INA Purposes

(TL:VISA-25; 07-21-1989)

INA 101(a)(38) defines "United States" as the continental United States, Alaska, Hawaii, Puerto Rico, Guam, and the Virgin Islands of the United

States. Consequently, American Samoa is not considered part of the United States in determining whether a fishing vessel has a U.S. home port or operating base. However, crewmen on a fishing vessel with a home port in American Samoa will be precluded from D classification if the vessel has an operating base in a place which falls within the INA definition of United States.

9 FAM 41.41 N2.4 Fishing Vessel Landing Temporarily in Guam

(TL:VISA-25; 07-21-1989)

INA 101(a)(15)(D)(ii) provides that an alien serving on board a fishing vessel having a home port or operating base in the United States may land temporarily in Guam on a D visa if the alien does so solely in pursuit of his or her calling as a crewman and departs from Guam on the vessel on which he or she arrived. Such an alien shall be considered to have departed from Guam after leaving the territorial waters of Guam, without regard to whether the alien arrives in a foreign state before returning to Guam.

9 FAM 41.41 N3 CREWMAN TRAVELING TO JOIN A VESSEL OR AIRCRAFT IN UNITED STATES

9 FAM 41.41 N3.1 Classification Under INA 101(A)(15)(C)

(TL:VISA-322; 10-10-2001)

A crewman traveling to the United States as a passenger to join a vessel or aircraft is classifiable C-1. The consular officer should normally require the applicant to present a verifying letter from the employer or the employer's agent.

9 FAM 41.41 N3.2 Validity of C-1 Visas

(CT:VISA-1035; 09-24-2008)

The consular officer should normally *issue C-1 visas for the full validity possible under the appropriate reciprocity schedule.*

9 FAM 41.41 N3.3 Combination C-1/D Visa Authorized in Certain Cases

(CT:VISA-1035; 09-24-2008)

The consular officer may issue a crewman a D visa concurrently with a C-1 visa for use in future applications for admission.

- (1) Where the reciprocity schedule lists the same number of applications and period of validity for both C-1 and D visas, the consular officer may issue a single combination C-1/D visa in lieu of separate concurrent C-1 and D visas.
- (2) When the reciprocity schedules for C-1 and D visas differ with regard to the number of applications or period of validity permitted in each category, the consular officer shall issue separate C-1 and D visas.

9 FAM 41.41 N3.4 Transit Without Visa (TWOV) for Crewmen to Join Vessel or Aircraft

(CT:VISA-1035; 09-24-2008)

DHS has suspended the Transit Without Visa (TWOV) program indefinitely.

9 FAM 41.41 N4 COASTING OFFICERS

(TL:VISA-25; 07-21-1989)

An alien seeking to enter the United States as a coasting officer shall be documented with a B-1 visa. Coasting officers are employed when an officer of a foreign vessel is granted home leave while the vessel is in U.S. ports. A replacement or coasting officer will substitute for an officer on leave during the period the vessel is in and out of various U.S. ports, provided the vessel does not remain in U.S. waters for more than 29 days, and the original officer returns in time to depart with the vessel. The coasting officer may then repeat the process with another vessel of the same foreign line. Since a coasting officer is admitted for more than 30 days, a C-1 or D visa would not be appropriate and an H visa does not provide a reasonable alternative.

9 FAM 41.41 N5 YACHTS CRUISING IN U.S. WATERS FOR MORE THAN 29 DAYS

(TL:VISA-2; 08-30-1987)

Members of the crew of a private yacht sailing out of a foreign port which will be cruising in U.S. waters for more than 29 days may be documented with B-1 visas if they establish that they have a residence abroad which they do not intend to abandon and are otherwise qualified.

9 FAM 41.41 N6 INA 273(A) AND (B) NOT APPLICABLE TO CERTAIN ALIEN CREWMEN

(CT:VISA-1035; 09-24-2008)

DHS will not levy a fine against a carrier bringing an alien crewman to the United States who does not possess a visa if the crewman is held on board under conditions prescribed by *DHS*.

9 FAM 41.41 N7 CREWMAN DESTINED TO OUTER CONTINENTAL SHELF

(CT:VISA-1035; 09-24-2008)

See 9 FAM 41.31 N9.9.

9 FAM 41.41 N8 WAIVERS OF INELIGIBILITY FOR CREWMEN UNDER INA 212(D)(3)(A)

(CT:VISA-1035; 09-24-2008)

See 9 FAM 40.301 for guidance on waivers of ineligibility for crewmen.

9 FAM 41.41 N9 VISA AND PASSPORT WAIVER FOR MEMBERS OF ARMED FORCES OF FOREIGN COUNTRIES MAKING VISITS TO THE UNITED STATES

(CT:VISA-1035; 09-24-2008)

See 9 FAM 41.3 Notes.

9 FAM 41.41 N10 DEPENDENT OF CREWMAN IS CLASSIFIABLE B-2

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A dependent accompanying a crewman entering the United States as a nonimmigrant under INA 101(a)(15)(D), and not performing services required for normal operation of the vessel, must obtain a B-2 visa, unless such dependent is planning to enter the United States for a purpose that would necessitate a different classification. (See 9 FAM 41.31 N13.5.)