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ALERT

**CITIZENSHIP AND IMMIGRATION CANADA ISSUES GUIDELINES REGARDING
WHETHER NON-CANADIAN WORKERS ON CRUISESHIPS NEED CANADIAN
WORK PERMITS**

On June 23, 2010, Citizenship and Immigration Canada released Operational Bulletin 214. The Bulletin creates guidelines for Immigration Officers regarding foreign nationals entering Canada as members of a crew on a vessel, specifically cruise ships.

Regulation R186(s) of the Immigration and Refugee Protection Act states that a member of a crew is permitted to work in Canada without a worker's permit under certain conditions. The Regulations states:

R186(s). A foreign national may work in Canada without a work permit as a member of a crew who is employed by a foreign company aboard a means of transportation that

(i) is foreign-owned and not registered in Canada, and

(ii) is engaged primarily in international transportation

Prior to the release of this guideline, there had been uncertainty and inconsistencies regarding what was meant by "engaged primarily in international transportation". The new guidelines are meant to settle this issue.

The definition of "coasting trade" in the *Coasting Trade Act* will now be the standard for determining whether the ship requires a coasting trade license. If a ship meets the definition, then foreign nationals working on it will require a working permit. Coasting trade is defined as

"the carriage of goods or passengers by ship... from one place in Canada... to any other place in Canada.. either directly or by way of a place outside Canada"

So what are some examples of when a ship will require a working permit?

Foreign National Crew Will Need a Work Permit When

A working permit may be required if a cruise ship embarks passengers at a Canadian port and disembarks any of these passengers permanently at another Canadian port. For example, if a cruise ship embarks all passengers in Montreal, disembarks some in Charlottetown, and continues to New York where the remaining passengers disembark, then foreign crew members will generally require a working permit.

Foreign crew members may also require a working permit if the ship embarks passengers at one Canadian port, and then ends the cruise and disembarks passengers at another Canadian port. For example, if passengers embark in Victoria, make a stop in Anchorage, Alaska, and end their cruise in Vancouver, then the foreign national crew may require a working permit.

Foreign National Crew May Be Exempt When

Foreign crew may be exempt when a cruise ship embarks and disembarks at the same destination within Canada, even if it makes stops in foreign jurisdictions. For example, if a cruise ship embarks passengers in Halifax, makes a stop in Boston, and then returns to Halifax then a working permit may not be required.

Foreign workers may also be exempted if a cruise ship starts at a Canadian port of call, and ends its itinerary at a foreign port of call, so long as passengers do not disembark elsewhere in Canada. For example, if a cruise ship embarks in Vancouver, and disembarks in Portland, then foreign crew will likely be exempt.

This is Still not the Only Test

It is important to note that the new definition is merely a guide. It is expected that officers will generally follow them. However, officers will be permitted to take into consideration the unique circumstances of each case as well as other requirements under the Immigration and Refugee Protection Act and its Regulations.

For more information please contact Steven Meurrens at steven.meurrens@larlee.com, or at 604-681-9887.