



Court File No. IMM -4221-15

FEDERAL COURT

**Seafarers' International Union of Canada,
Linda Brunet, Mike De Ruyter-Ladouceur, and Edwin Piadopo**

Applicants

and

**The Minister of Citizenship and Immigration Canada and
The Minister of Public Safety and Emergency Preparedness Canada**

Respondents

APPLICATION FOR LEAVE and for JUDICIAL REVIEW

TO THE RESPONDENTS:

AN APPLICATION FOR LEAVE TO COMMENCE AN APPLICATION FOR JUDICIAL REVIEW has been commenced by the applicants under SUBSECTION 72(1) OF THE *IMMIGRATION AND REFUGEE PROTECTION ACT*.

UNLESS A JUDGE OTHERWISE DIRECTS, THIS APPLICATION FOR LEAVE will be disposed of without personal appearance by the parties, in accordance with paragraph 72(2)(d) of the *Immigration and Refugee Protection Act*.

IF YOU WISH TO OPPOSE THIS APPLICATION FOR LEAVE, you or a solicitor authorized to practice in Canada and acting for you must prepare a Notice of Appearance in Form IR-2 prescribed by the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, serve it on the tribunal and the applicant's solicitor or, if the applicant does not have a solicitor, serve it on the applicant, and file it, with proof after service, in the Registry, within 10 days after the day on which this application for leave is served.

IF YOU FAIL TO DO SO, the Court may nevertheless dispose of this application for leave and, if the leave is granted, of the subsequent application for judicial review without further notice to you.

Note: Copies of the relevant Rules of Court, information on the local office of the Court and other necessary information may be obtained from any local office of the Federal Court or the Registry in Ottawa, telephone: (613) 992-4238.

The applicants seek leave of the Court to commence an application for judicial review of:

The decision or decisions (the “Decision”) of an officer or officers of Canada Border Services Agency (“CBSA”) and/or Citizenship and Immigration Canada (“CIC”) (hereinafter, the Decision maker is referred to as the “Tribunal”) to allow Nelson Amata (“Amata”) to enter Canada to work in Canada as unlicensed crew aboard the *Amalthea*, a foreign ship under the flag of Greece engaged in coasting trade (as defined in section 2 of the *Coasting Trade Act*, S.C. 1992, c. 31)(“Cabotage”), by issuing a work permit on or around August 31, 2015 without first requiring a Labour Market Impact Assessment (“LMIA”).

The Decision is part of a broader continuing course of conduct by the Tribunal since at least 2013 to issue work permits to unlicensed foreign crew, who are neither Canadians nor permanent residents of Canada, on foreign ships engaged in Cabotage without first requiring an LMIA to be conducted, or a labour market opinion assessment (“LMO”), as the process was called prior to June 2014.

The applicant, Seafarers’ International Union of Canada (“SIU”), became aware of the Decision on or about September 1, 2015. The individual applicants became aware of the Decision on or about September 15, 2015.

The Tribunal is composed of unknown officers at CBSA or CIC, which are as follows:

Canada Border Services Agency
191 Laurier Avenue West
Ottawa, ON K1A 0L8

Phone: 1-800-367-5693

Citizenship and Immigration Canada
365 Laurier Avenue West
Ottawa, ON K1A 1L1

Phone: 1-888-242-2100

The Tribunal’s file number in relation to this Application for Leave and Judicial Review is not known.

If this Application for Leave is granted, the Applicants seek the following relief by way of a judicial review:

1. A declaration that the Tribunal erred in its Decision to issue a work permit to Amata without first requiring an LMIA.
2. An order quashing the Decision and an Order remitting the matter back for redetermination in accordance with the *Immigration and Refugee Protection Act*, SC 2001, c. 27 (the “*IRPA*”); the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the “*Regulations*”); relevant policy directives, if any, including those of CIC and Employment and Social Development Canada (“ESDC”); and the directions of this honourable Court.
3. A declaration that the work permit issued to Amata by the Tribunal pursuant to its Decision is invalid, as the Decision to issue such permit without an LMIA was based, *inter alia*, on improper and invalid considerations; misapprehension of the law and government policy; and/or misrepresentations.
4. Such further and other relief as counsel may advise and this Honourable Court may permit.

If the application for leave is granted, the application for judicial review is to be based on the following grounds:

The Applicants

1. The applicant, Seafarers’ International Union of Canada (“SIU”), is an unincorporated trade union that represents the vast majority of unlicensed seafarers in the maritime field in Canada (“Canadian Crew”).
2. The applicant, Linda Brunet, is a Canadian seafarer residing in Pierreville, Québec and is qualified to work as a chief cook.
3. The applicant, Mike De Ruyter-Ladouceur, is a Canadian seafarer residing in Montreal, Québec and is qualified to work as a mechanical assistant-trainee.
4. The applicant, Edwin Piadopo, is a Canadian seafarer residing in Montreal, Québec and is qualified to work as an able seaman.
5. At all material times, the individual applicants, Linda Brunet, Mike De Ruyter-Ladouceur, and Edwin Piadopo (the “Individual Applicants”) were all unemployed members of SIU who were seeking work and who were available and qualified to work as crew on the *Amalthea*.

6. The SIU and its members have a special interest in ensuring that Canadian laws are respected regarding the transportation of goods by water in Canada and the employment of Canadian Crew in connection with such transportation.
7. The SIU and its members have a special interest in ensuring that the maximum job opportunities in the maritime industry be made available to permanent residents and citizens of Canada, as well as ensuring that minimum standards regarding employment of Canadian Crew be respected.
8. There are currently, and for long periods of time have been, over 300 members of the SIU who are unemployed. SIU members are qualified and available to act as Canadian Crew on foreign ships engaged in Cabotage.
9. At all material times, the SIU had members who were unemployed and who were seeking work and who were available and qualified to work on the *Amalthea* to fill the job positions of each member of the Foreign Crew.

The Respondents

10. The respondent, CBSA, is a federal agency charged with ensuring, *inter alia*, Canada's security and prosperity by managing the access of people and goods to and from Canada.
11. The respondent, CIC, is a federal agency that screens and processes, *inter alia*, temporary foreign worker applications for Canada. It does so in large part with the aid of the Temporary Foreign Worker program at ESDC.
12. The CBSA and CIC have a joint operational mandate to enforce the immigration laws and regulations of Canada with respect to issuing work permits to foreign workers, including Foreign Crew, with CIC holding the primary policy mandate.

The Amalthea

13. Minerva Marine Inc. ("Minerva") is a ship management company incorporated in Greece.
14. The *Amalthea* is an oil tanker registered in Greece and sailing under the flag of Greece.
15. The *Amalthea* is a "foreign ship" within the meaning of the *Coasting Trade Act*.
16. Minerva is the manager of the *Amalthea* and, in that capacity, is the employer of all Foreign Crew on the *Amalthea*.

Amata

17. Amata is a Phillipine national. He was born on September 9, 1974.

18. At all relevant times, Amata was employed as a cook by Minerva as part of the Foreign Crew on the *Amalthea*.
19. The Tribunal issued a work permit to Amata on or around August 31, 2015 permitting Amata to work in Canada as a Foreign Crew member onboard the *Amalthea*.
20. Minerva pays Amata a fraction of the prevailing wages normally paid to Canadian Crew in the same or comparable job positions. Furthermore, the wages received by Amata as a cook on the *Amalthea* are far less than the minimum wage specified by s. 178 of the *Canada Labour Code*, R.S.C. 1985, c. L-2.

The Legislative Framework

21. Under s. 196 of the *Regulations*, a foreign national must not work in Canada unless authorized to do so by a work permit or the *Regulations*.
22. Under the *Coasting Trade Act*, the term “coasting trade” (i.e. – Cabotage as defined above) carries a wide definition that includes 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.
23. Pursuant to s. 3(1) of the *Coasting Trade Act*, foreign ships, such as the *Amalthea*, may not engage in Cabotage.
24. Under s. 4(1) of the *Coasting Trade Act*, a person resident in Canada acting on behalf of a foreign ship may apply and be granted a license to engage in Cabotage (“CTA Waiver”).
25. Although s. 186(s) of the *Regulations* provides for an exemption for the requirement to hold a work permit for the foreign crew of vessels primarily engaged in international transportation, this provision does not apply to Cabotage situations, as the trade, by definition, is not an “international” trade. Thus, all foreign crew of vessels engaged in Cabotage must hold a valid work permit.
26. Under s. 203(1)(b) of the *Regulations*, in order to issue a work permit:
 - a. ESDC must provide an assessment of the impact of the employment of the foreign national on the labour market (i.e. – an LMIA) to CIC. CIC, in most situations, cannot issue a work permit without an LMIA; and
 - b. an ESDC officer must make a determination, *inter alia*, that the employment of the foreign national is likely to have a neutral or positive effect on the labour market in Canada.
27. Under s. 203 (1) and (3) of the *Regulations*, the LMIA provided by ESDC shall be based on, *inter alia*, the following factors:

- a. whether the employment of the foreign national is likely to have a neutral or positive effect on the labour market in Canada;
 - b. whether the employment of the foreign national will or is likely to result in direct job creation or job retention for Canadian citizens or permanent residents;
 - c. whether the employment of the foreign national will or is likely to result in the development or transfer of skills and knowledge for the benefit of Canadian citizens or permanent residents;
 - d. whether the employment of the foreign national is likely to fill a labour shortage;
 - e. whether the wages offered to the foreign national are consistent with the prevailing wage rate for the occupation and whether the working conditions meet generally accepted Canadian standards; and
 - f. whether the employer will hire or train Canadian citizens or permanent residents or has made, or has agreed to make, reasonable efforts to do so.
28. Under s. 205(a) of the *Regulations*, a work permit may be issued under s. 200 of the *Regulations* to a foreign national who “intends to perform work that... would create or maintain significant social, cultural or economic benefits or opportunities for Canadian citizens or permanent residents” without ESDC first conducting or issuing an LMIA or providing an LMIA to CIC (a “C10 Exemption”).
29. Section 205(a) of the *Regulations* is intended to provide both CBSA and CIC officers with the flexibility and authority to respond in special and limited circumstances where the social, cultural or economic benefits to Canada of issuing the work permit are so clear and compelling that the importance of the LMIA can be overcome.
30. Prior to reviewing such requests, officers are encouraged to ensure that all practical efforts to obtain ESDC's assessment are made before a C10 Exemption is granted. Foreign nationals submitting an application for consideration under a C10 Exemption should be in a position to provide documentation supporting their claim of providing important or notable social, cultural or economic benefits or opportunities for Canadian citizens or permanent residents.

Cabotage conducted by the Amalthea and its Foreign Crew

31. In or around August 2015, PF Collins International Trade Solutions (“PF Collins”), on behalf of Suncor Energy Products Inc. (“Suncor”), applied for a CTA Waiver in connection with the *Amalthea* and a CTA Waiver was granted to Suncor for the *Amalthea* to transport approximately 450,000 barrels of crude oil

from Nederland, Texas, USA for discharge at Montreal, Quebec and/or Portland, Maine, USA via pipeline to Montreal and/or Canaport, in Saint John, New Brunswick and/or Halifax, Nova Scotia, and/or Whiffen Head, Newfoundland and Labrador and/or other locations in Atlantic Canada, commencing on or about August 15, 2015 and ending on or about September 13, 2015 (the “Nederland Run”).

Granting of Work Permits without LMIAs

32. Minerva employed Foreign Crew on the *Amalthea*, including Amata, on the August 15, 2015 to September 13, 2015 Nederland Run.
33. The Tribunal granted work permits to the Foreign Crew of the *Amalthea*, including Amata, in connection with the Nederland Run without first requiring LMIAs by granting C10 Exemptions.
34. At no time have any of the Respondents or any other persons approached the SIU or inquired with the SIU or engaged in any other efforts to determine if there are Canadians or permanent residents who are qualified to work as Canadian Crew on the *Amalthea*.
35. The Individual Applicants and many other members of the SIU are qualified and available to work as Canadian Crew on the Nederland Runs being conducted by the *Amalthea*.
36. The employment of the Foreign Crew, including Amata, on the Nederland Run has had and continues to have a negative effect on the labour market in Canada and, should the Nederland Run be repeated, will continue to have a negative effect in connection with future runs.
37. There was no legal basis for granting a C10 Exemption or any other exemption from an LMIA before issuing work permits to Amata or the Foreign Crew as there is no indication or evidence that Amata or the Foreign Crew intended to perform work that would create or maintain significant social, cultural or economic benefits or opportunities for Canadian citizens or permanent residents, as required by the *IRPA* and its *Regulations* and the relevant governmental policy directives.
38. The SIU alerted officials and Ministers in the Government of Canada and officials at PF Collins of the availability of qualified Canadian Crew available to crew the *Amalthea* while it engages in Cabotage under CTA Waivers on the Nederland Run; however, Canadian Crew have not been engaged to work on the *Amalthea* and the Tribunal has ignored the SIU and continued unabated in its ongoing course of conduct of issuing work permits without first requiring an LMIA.

39. Minerva pays the Foreign Crew working on the *Amalthea*, including Amata, a fraction of the prevailing wages normally paid to Canadian Crew. Furthermore, these wages are far less than the minimum wage specified by s. 178 of the *Canada Labour Code*, R.S.C. 1985, c. L-2.

Broader Course of Conduct

40. Since at least 2013, the Tribunal has routinely issued work permits to all foreign crews of foreign ships under CTA Waivers engaged in Cabotage without first requiring LMIA's by systematically granting C10 Exemptions to virtually all foreign crews (the "Course of Conduct").
41. Since at least 2013, this Course of Conduct involves issuing thousands of work permits to foreign crew in connection with approximately 140 foreign ships engaging in Cabotage under approximately 260 CTA Waivers without first requiring that LMIA's be conducted. This has been accomplished by routinely granting C10 Exemptions.
42. Since at least 2013, the SIU has alerted officials and Ministers in the Government of Canada of the availability of qualified Canadian Crew available to crew foreign ships engaging in Cabotage under CTA Waivers; however, the Tribunal has ignored the SIU and its members and has continued unabated in its Course of Conduct.
43. The foreign crew on foreign ships under CTA Waivers engaged in Cabotage are typically paid a fraction of the prevailing wages normally paid to Canadian Crew. Furthermore, these wages are less than the minimum wage specified by s. 178 of the *Canada Labour Code*, R.S.C. 1985, c. L-2.
44. The Course of Conduct creates an economic incentive for companies to contract with foreign ships under CTA Waivers with foreign crew instead of Canadian flagged ships with Canadian Crew. It furthermore creates an economic disincentive to employ Canadian Crew on foreign ships under CTA Waivers while they are engaged in Cabotage.
45. The applicants plead and rely on
- a. sections 8, 196, 200, 203, and 205 of the *Regulations*;
 - b. section 72 of the *IRPA*;
 - c. section 178 of the *Canada Labour Code*;
 - d. sections 18 and 18.1 of the *Federal Courts Act*;
 - e. the *Federal Courts Rules* and the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*; and

f. the principles of Administrative Law.

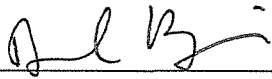
Conclusion

The Decision to issue a work permit to Amata on the basis of a C10 Exemption was unlawfully made, given the clear existence of qualified and available Canadian Crew and the lack of the creation or maintenance of significant social, cultural or economic benefits or opportunities for Canadian citizens or permanent residents.

The applicants have **not** received written reasons from the Tribunal.

If the application for leave is granted, the applicants propose that the application for judicial review be heard at Vancouver, in the English language.

DATED AT VANCOUVER this 15th day of September, 2015.



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I HEREBY CERTIFY that the above document is a true copy of
the original issued out of / filed in the Court on the _____
day of _____ **SEP 15 2015** A.D. 20 _____
Dated this _____ day of **SEP 15 2015** 20 _____

