

PUBLICATION

Entrepreneurs May Have a New Way to Start Up in the United States

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The Department of Homeland Security (DHS) published a proposed rule that could provide an unusual type of immigration benefit called "parole" to individuals seeking a key role in start-up entities in the United States backed by experienced venture capital or government grants. An outgrowth of President Obama's November 2014 executive actions on immigration, the proposed rule was published on August 31, 2016, with comments due on October 17, 2016.

Defining Entrepreneur and Start-Up Entity

A qualifying applicant must have a substantial ownership interest (at least 15 percent) in a start-up entity and be "well-positioned, due to his or her knowledge, skills, or experience to substantially assist the entity with the growth and success of its business." The "start-up entity" must be a U.S. business entity formed within the preceding three years to provide goods or services and cannot be purely an investment vehicle designed to provide income to the entrepreneur and his or her family. No more than three entrepreneurs from the same start-up entity may be granted parole.

Start-Up Entity must have received a Qualified Investment

The start-up entity must have received either a "qualified investment" of at least \$345,000 from one or more "qualified investors" or at least \$100,000 through government awards or grants. Unlike other investor visa classifications (EB-5 or E-2), a "qualified investment" of lawful capital must come from a source or sources OTHER than the entrepreneur, his or her family, or business entities where the entrepreneur's family has any direct or indirect ownership. Instead, this minimum of \$345,000 must be from a U.S. citizen (USC), lawful permanent resident (LPR) or a U.S. organization majority owned and controlled by USCs or LPRs, who within the past five years have (i) made a total of \$1,000,000 in investments in start-up entities in at least three separate years and thereby created at least five full-time jobs filled for at least one year by U.S. workers outside of the investor's family.

To meet the alternative requirement of \$100,000 from a "qualified government award or grant," the applicant must show receipt of some type of an award or grant for economic development, research and development, or job creation from a federal, state or local government entity that regularly provides such awards or grants to start-up entities.

The proposed rule allows for some flexibility and consideration of an application if an applicant, who otherwise can meet the definitions of "entrepreneur" and "start-up entity," cannot fully satisfy the "qualified investment" of \$345,000 or \$100,000. To still qualify for parole, an applicant would have to present "other reliable and compelling evidence" of the start-up entity's "substantial potential for rapid growth and job creation."

Validity and Process

The initial parole may be granted for up to two years, conferring a multiple entry travel document and authorization for employment solely with the start-up entity. Individuals present in the United States in another classification must depart and apply for parole at a port of entry, because the approval notice itself would not provide any direct change from another nonimmigrant status.

Renewal

Successful entrepreneurs may be re-paroled for an additional three years if the applicant maintains at least a ten percent ownership interest in the start-up entity and the entity has received at least \$500,000 in qualified investments or grants during the period of initial parole, created ten qualified jobs OR reached at least \$500,000 in revenue and average 20 percent annual growth during the initial 2 years. The applicant must also maintain a household income greater than 400 percent of the federal poverty line for his/her household size.

Family

Spouses and children can apply for separate parole documents. Unrestricted work authorization is available for the entrepreneur's spouse (not children) but requires a separate application once the spouse has been paroled into the United States.

Other Considerations

This is only meant to provide an overview of a proposed rule that could undergo significant revisions before anything is made final. "Entrepreneur Parole" offers a temporary solution that may open a new pathway for individuals to play key roles in promising businesses who have not otherwise been able to qualify for or maintain immigration benefits through more established and long-term classifications (e.g., H-1B, L-1, E-2, O-1, EB-2/3, or EB-5). The maximum period of parole for any entrepreneur based on the same entity is five years, so an applicant who wants a longer stay in the U.S. will need to look to either new start-up entities or a new visa classification, the process for which could be pursued even while in parole. The proposed rule has some fairly rigorous requirements and a decision on a parole application cannot be appealed or reconsidered/reopened. Parole can be revoked or terminated without notice or opportunity to respond if USCIS determines the parole is not providing significant public benefit, and a material change to the applicant's or entity's qualifications must be reported.

For more details, [click here](#).

For a complete copy of the proposed International Entrepreneur Rule, [click here](#).