

PUBLICATION

DHS Final International Entrepreneur Rule to Take Effect July 16, 2017

January 30, 2017

On January 17, 2017, the Department of Homeland Security (DHS) published its final rule implementing the discretionary parole for entrepreneurs program, which was proposed this past August. See our blog post regarding the proposed rule here. The final rule, effective July 16, 2017, adds regulations allowing DHS to grant parole on a case-by-case basis to entrepreneurs of start-up entities for up to 30 months with possible extension of an additional 30 months for a five-year maximum. Entrepreneurs must show substantial and demonstrated potential for rapid business growth, job creation and significant public benefit to the United States by, among other things, the receipt of (1) significant capital investment from U.S. investors with established records of successful investments; or (2) significant awards or grants from certain federal, state or local governmental entities.

Requirements for Parole

Entrepreneur. To qualify for parole, an entrepreneur must (1) own a significant (at least ten percent) ownership interest in the start-up entity at the time of the initial grant of parole; and (2) play an active and central role in the operations and future growth of the entity, such that his or her knowledge, skills or experience will substantially assist the start-up entity in conducting and growing its business in the United States.

Start-up entity. The entity must meet the definition of start-up entity, meaning that it must have been created within the five-year period immediately preceding the filing of the initial parole application or within the five-year period prior to receiving a grant, award or investment. Up to three entrepreneurs per start-up can qualify for Entrepreneur Parole.

Qualifying investment or government award/ grant. A qualifying investment is made in good faith and includes lawfully derived capital not from any immediate family member (parents, spouse, brother, sister or child) or from any entity owned by such family member. A government award or grant is an award or grant for economic or research development, or job creation made by a federal, state or local governmental entity. The entrepreneur must show the start-up entity either (1) received in the last 18 months a qualified investment of at least \$250,000 from one or more qualified investors; or (2) received, in the last 18 months, at least \$100,000 through one or more qualified government awards or grants. Alternatively, if an entrepreneur partially meets one or both of the above criteria, the applicant can provide alternative "reliable and compelling evidence of the start-up's substantial potential for rapid growth and job creation." The final rule lowers the amount of investment entrepreneurs must show to have received from a proposed \$345,000 to \$250,000.

Qualifying investor. A qualified investor is a U.S. citizen or lawful permanent resident (LPR) or an organization owned and operated by U.S. citizens or LPRs that regularly makes substantial investments in start-ups. During the past five years, the investor must have (1) made investments in start-ups of no less than \$600,000; and (2) after the investment at least two such entities created at least five qualified jobs (at least 35 hours per week by a U.S. citizen or LPR) OR generated at least \$500,000 in revenue with average annualized revenue growth of 20 percent or more.

Application Process

Initial parole. Starting July 15, 2017, entrepreneurs can request an initial grant for parole on the new Form I-941 Application for Entrepreneur Parole for a filing fee of \$1,200. The applicant must submit evidence demonstrating that he or she will provide a significant public benefit to the United States based on his or her role as an entrepreneur of a start-up and that the entity is a start-up that received a qualifying investment or grant.

Additional periods of parole. Entrepreneurs can request additional periods of parole for up to 30 more months prior to parole expiring by again filing Form I-941 with required fees and supporting documents. The applicant must submit evidence showing he or she will continue to provide a significant public benefit and qualify under the definition of entrepreneur. This means that the applicant is still working as an entrepreneur at the start-up, which can be shown with proof that he or she (1) continues to possess a significant (at least five percent) ownership interest in the entity; and (2) continues to play an active and central role in the operations and future growth of the entity such that his or her knowledge, skills or experience would substantially assist the start-up in conducting and continuing to grow the business in the United States.

The applicant must also show that the entity continues to be a start-up, meaning it has been lawfully operating in the United States during the period of parole and continues to have substantial potential for rapid growth and job creation. Additionally, the applicant must show that the entity during the initial parole period (1) has received at least \$500,000 in qualifying investments or government grants/awards; (2) created at least five qualified jobs; or (3) generated at least \$500,000 in annual revenue and averaged 20 percent in annual revenue growth during the initial period. If the application partially meets the above criteria, the alien may provide alternative evidence showing the entity's substantial potential for rapid growth and job creation.

Parole for dependents. The entrepreneur's spouse and children must individually file Form I-131 and must include evidence of qualifying relationship to the entrepreneur. Dependents' amount of time granted for parole will match the period granted to the entrepreneur and the spouse of an entrepreneur granted parole may file Form I-765 to apply for employment authorization.

Material change. The final rule expanded the definition of "material change," which can affect the parole. A material change means any change in facts that could reasonably affect whether the company provides a significant public benefit to the United States, including, among others, "a significant change with respect to ownership and control of the start-up entity." "Material" changes need to be reported to USCIS and be accompanied by a new Entrepreneur Parole application documenting continued eligibility.

Other conditions and termination. Parole further imposes income-related conditions and the entrepreneur must maintain a household income that is greater than 400 percent of the federal poverty line for the household size. The investment and revenue amounts will increase every three years based on changes in the Consumer Price Index. DHS, in its discretion, may terminate parole if the entrepreneur no longer provides a significant public benefit. Parole terminates automatically without notice when the parole expires unless a non-frivolous application for re-parole is filed or when entrepreneur no longer employed by the start-up or ceases to have a qualifying ownership interest.

Other considerations. The final rule offers a temporary solution for entrepreneurs who thus far faced a lack of visa options tailored to their needs as start-up founders. However, after the maximum period of five years of parole, entrepreneurs will need to look for any other immigrant or nonimmigrant classification for which they may be eligible. Nonimmigrant visas such as an O-1 for Individuals with Extraordinary Ability or a green card in the EB-2 national interest waiver category are possibilities for entrepreneurs. Parole is not considered an admission to the United States, so parolees are ineligible to adjust or change status in the United States.