



October 14, 2016

VIA ELECTRONIC SUBMISSION

The Honorable León Rodríguez
Director
U.S. Citizenship and Immigration Services
U.S. Department of Homeland Security
20 Massachusetts Avenue, NW
Washington, DC 20529

Samantha Deshommes
Chief, Regulatory Coordination Division
Office of Policy and Strategy
U.S. Citizenship and Immigration Services
U.S. Department of Homeland Security
20 Massachusetts Avenue, NW
Washington, DC 20529

Re: *International Entrepreneur Rule; Proposed Rule*

Dear Director Rodríguez and Ms. Deshommes:

The Office of Advocacy (Advocacy) of the U.S. Small Business Administration respectfully submits this comment letter to the United States Citizenship and Immigration Service (USCIS) of the Department of Homeland Security (DHS) for the *International Entrepreneur Rule*.¹ Advocacy applauds USCIS for undertaking this initiative that would allow international entrepreneurs to utilize the parole program to stay temporarily in the United States to grow their start-up businesses and create U.S. jobs.

On September 30, 2016, Advocacy held a small business roundtable in Washington D.C. attended by small start-ups, small business representatives, international students, immigration attorneys, venture fund and angel fund investors, and other interested parties. Advocacy also heard from small entities and from interested parties across the country. Small businesses have

¹ International Entrepreneur Rule, 81 Fed. Reg. 60,130 (proposed Aug. 31, 2016) (to be codified at 8 C.F.R. pts. 103, 212, & 274a).



also expressed to Advocacy that while they support the goals of this rule, they are concerned that the strict requirements may be too difficult for innovative international entrepreneurs that own high growth potential startups to take advantage of it. Advocacy recommends that USCIS consider alternatives and clarifications as proposed that would improve the feasibility of this program.

The Office of Advocacy

Congress established Advocacy under Pub. L. 94-305 to represent the views of small entities before Federal agencies and Congress. Advocacy is an independent office within the U.S. Small Business Administration (SBA); as such the views expressed by Advocacy do not necessarily reflect the views of the SBA or the Administration. The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), gives small entities a voice in the Federal rulemaking process. For all rules that are expected to have a significant economic impact on a substantial number of small entities, Federal agencies are required by the RFA to assess the impact of the proposed rule on small business and to consider less burdensome alternatives.

The Small Business Jobs Act of 2010 requires agencies to give every appropriate consideration to comments provided by Advocacy. The agency must include, in any explanation or discussion accompanying the final rule's publication in the Federal Register, the agency's response to these written comments submitted by Advocacy on the proposed rule, unless the agency certifies that the public interest is not served by doing so.

Background

USCIS acknowledges the significant economic contributions international or immigrant entrepreneurs make to the U.S. economy, particularly in job creation and innovation.² Firms founded by immigrants in engineering and technology sectors employed over a half million workers in 2012, and venture-funded, immigrant-founded firms have created an average of 150 U.S. jobs per company.³ Of the top 87 privately-held startups valued over a billion dollars, 51 percent had at least one immigrant founder, a list that includes Uber and SpaceX.⁴

According to a Kauffman Foundation study, immigrants are twice as likely to become entrepreneurs as native-born Americans.⁵ A recent Advocacy study found that the role of immigrant entrepreneurs has grown in the last 20 years. The percentage of the self-employed

² 81 Fed. Reg. at 60,135.

³ Dane Stangler and Jason Wiens, Ewing Marion Kauffman Foundation, *The Economic Case for Welcoming Immigrant Entrepreneurs* (Sept. 2015), <http://www.kauffman.org/what-we-do/resources/entrepreneurship-policy-digest/the-economic-case-for-welcoming-immigrant-entrepreneurs>.

⁴ Stuart Anderson, *Immigrants and Billion Dollar Start-ups* (March 2016), <http://nfap.com/wp-content/uploads/2016/03/Immigrants-and-Billion-Dollar-Startups.NFAP-Policy-Brief.March-2016.pdf>.

⁵ Jason Wiens, Chris Jackson, & Emily Fetsch, Ewing Marion Kauffman Found., *Entrepreneurship Policy Digest, Immigrant Entrepreneurs: A Path to U.S. Economic Growth* (Jan. 22, 2105), http://www.kauffman.org/~media/kauffman_org/resources/2015/entrepreneurship%20policy%20digest/january%202015/entrepreneurship_policy_digest_january_2015_immigrant_entrepreneurs_pathtouseconomic_growth.pdf.

who were born abroad more than doubled between 1994 and 2015, growing from 8.6 percent to 19.5 percent.⁶

A 2016 Advocacy report detailed the limited immigration options for immigrant entrepreneurs to start and grow their own businesses in the United States.⁷ For example, there are almost a million international students studying in the United States.⁸ However, there are few options to keep these students in the country to commercialize their ideas and businesses; these students can establish their business in other countries that compete with the United States. A majority of the students receiving a master's degree or Ph.D in the fast-growing Science, Technology, Engineering, and Math (STEM) fields in U.S. universities are international students.⁹

In August 2016, USCIS released a proposed rule that would amend its regulations to allow international entrepreneurs to use an immigration program called parole to gain temporary entry in the United States to work and expand their start-up business.¹⁰ Section 212(d)(5)(A) of the Immigration and Nationality Act (INA) provides USCIS with the discretion to parole an individual into the U.S. temporarily under certain conditions for urgent humanitarian reasons or significant public benefit on a case-by-case basis. The parole program does not confer a permanent legal status, and parole can terminate automatically upon the expiration of the parole period or on written notice by DHS.¹¹ Under this proposed rule, entrepreneurs may be granted an initial stay of two years and seek a subsequent request for re-parole for up to three additional years.

To qualify for the initial two year stay under the parole program, an entrepreneur must have a significant ownership stake (at least 15 percent) of a start-up entity formed within the 3 years before the application for parole. The entrepreneur must also show that the business has a substantial and demonstrated potential for business growth as evidenced by receiving, within one year before the application: a) at least \$345,000 from one or more qualified investors; or b) at least \$100,000 through one or more qualified government grants; or c) alternate criteria that show rapid growth or job creation.¹²

To qualify for the additional three-year stay, an entrepreneur must have a significant ownership stake (at least 10 percent) in a start-up entity, and show that the entity continues to have

⁶ Daniel Wilmoth, Ph.D., SBA Office of Advocacy, *The Arrival of the Immigrant Entrepreneur* (Oct. 6, 2016), <https://www.sba.gov/sites/default/files/advocacy/Arrival-Immigrant-Entrepreneur.pdf>.

⁷ Margaret E. Blume-Kohout, MBK Analytics, LLC, SBA Office of Advocacy, *Imported Entrepreneurs: Foreign-Born Scientists and Engineers in U.S. STEM Fields Entrepreneurship* (February 2016), <https://www.sba.gov/sites/default/files/advocacy/rs432tot-Immigrant-STEM-Entrepreneurs.pdf>.

⁸ Int'l Educ. Exch., *2015 Open Doors Report on International Educational Exchange* (Nov. 2015), http://www.iie.org/Research-and-Publications/Open-Doors#.V_zJb_krLmg. The report found the number of international students at U.S. colleges and universities had the highest rate of growth in 35 years, increasing by ten percent to a record high of 974,926 students in the 2014/15 academic year.

⁹ Stuart Anderson, *supra* note 4, at 23-25. In 2011, 60-65 percent of those receiving a master's degree or Ph.D. in electrical engineering were foreign nationals, and 47-50 percent of those receiving a master's degree or Ph.D. in computer science were foreign nationals.

¹⁰ International Entrepreneur Rule, 81 Fed. Reg. 60,130 (proposed Aug. 31, 2016) (to be codified at 8 C.F.R. pts. 103, 212, & 274a).

¹¹ *Id.* at 60,134.

¹² *Id.* at 60,137.

substantial rapid growth and job creation, by showing: a) at least \$500,000 in qualifying investments, qualified government grants or awards or a combination of such funding during the initial parole period; b) creation of at least 10 qualified jobs with the start-up entity during the initial parole period; c) at least \$500,000 in annual revenue and averaged 20 percent in annual revenue growth during the initial parole period; or d) alternative criteria of the start-up entity's substantial potential for rapid growth and job creation.¹³

The Proposed Rule Has Been Certified in Error under the Regulatory Flexibility Act

Section 605(b) of the Regulatory Flexibility Act (RFA) allows an agency to certify that a rule will not have a significant economic impact on a substantial number of small entities in lieu of preparing a more detailed Initial Regulatory Flexibility Analysis (IRFA).¹⁴ When certifying, the agency must provide "a statement providing the factual basis for such certification."¹⁵ In the current rule, USCIS has certified that the proposed rule will not have a significant economic impact on a substantial number of small businesses.¹⁶

USCIS' basis for certifying this rule is that small businesses are not directly regulated because the rule regulates only individuals applying for parole.¹⁷ Advocacy does not agree with this analysis. The only international entrepreneurs eligible for this parole program are those that have a significant ownership stake in a start-up entity formed in the preceding three years. Further, as discussed below, the thresholds to qualify for parole are directly tied to the ability of the international entrepreneur's start-up to produce significant public benefits to the United States, such as raising capital investments, revenue thresholds, and creating jobs. In addition, this rule only allows the international entrepreneur to work for the business identified in the parole application, and does not permit the entrepreneur to transfer the work authorization to another enterprise. Finally, depending on the size of the stake, the start-up entity may be imperiled if the international entrepreneur is no longer eligible to stay in the United States. Therefore, Advocacy submits that the benefits of the rule directly impact start-up entities, which USCIS acknowledges are likely to be small.

Advocacy recommends that USCIS submit a supplemental certification analyzing the impact of this rule on small businesses, and determine whether this rule will have a significant economic impact on a substantial number of small businesses. USCIS' supplemental certification should analyze the number of small businesses affected by this rule, and specifically identify which sectors of the economy will be impacted, such as which sectors historically receive significant venture and angel capital funding or which sectors have disproportionately high concentrations of immigrant-owned firms.

¹³ *Id.* at 60,146.

¹⁴ 5 U.S.C. § 605(b).

¹⁵ *Id.*

¹⁶ 81 Fed. Reg. at 60,163.

¹⁷ *Id.* at 60,162. "While the applicant for parole may be the owner of a firm that could be considered small within the definition of small entities established by 5 U.S.C. 601(6), DHS considers the applicants to be individuals at the point in time they are applying for parole, particularly since it is the individual and not the entity that files the application and it is the individual whose parole must serve a significant public benefit under this proposed rule."

The Qualifying Thresholds May Be Too High to Benefit International Entrepreneurs

Advocacy is concerned that USCIS' capital investment thresholds for parole applicants are too high, preventing a significant portion of international entrepreneurs of high growth startups from qualifying. To qualify for the initial parole period, USCIS requires the entrepreneur's start-up entity to have received an investment of \$345,000 from one or more qualified investors or a grant of at least \$100,000 from a federal, state or local government entity within the year before application.

Based on feedback received at Advocacy's roundtable, very few international entrepreneurs with a stake in a small start-up company will be eligible to apply for this program due to the high threshold of \$345,000. According to a 2012 Advocacy report utilizing the Census' 2007 Survey of Business Owners, only 5.3 percent of immigrant owned firms had start-up capital of more than \$250,000 dollars.¹⁸ Many participants stated that it would be difficult for a major founder to obtain \$345,000 in capital investment without a permanent vehicle to stay in the United States to continue working on their business. One former international student at George Washington University who has started 6 companies stated that none of her companies had received \$345,000 in start-up capital. She stated that most individual angel investors invest around \$5,000-\$25,000 per investor in the first two years of a company's founding. Other student entrepreneurs attending the roundtable also stated that they had not raised that amount of funds. One participant stated that this level of funds would limit the type of businesses to those in the STEM fields in the California area.

Advocacy spoke to a group of graduate students, some on an F-1 international student visa, who stated that start-up competitions normally have prizes of \$10,000-\$50,000, and the largest competition had a prize of \$250,000. These foreign students stated that their immigration status precluded them from applying for many of these start-up competitions. Advocacy attended the National Council of Entrepreneurial Tech Transfer's (NCET2) University Start-up Demo Day, and most start-up participants (who were all affiliated with a university) agreed that this figure was also too high for them to meet. Advocacy spoke to three student teams whose companies only raised \$25,000-\$80,000 in their first year of formation. A representative from NCET2 stated that the average investments for the IT space ranges from around \$25,000 to \$100,000, but that figure can be much higher for the health care industry. In fact, we spoke to one more experienced President and CEO of a health care diagnostics company who stated that the \$345,000 funding threshold was possible to meet.

However, Advocacy spoke to the manager of a Virginia based incubator focused on government contracts who stated that this threshold would be hard to meet for service-based sectors where less capital may be needed. For example, many foreign students in the STEM fields often start computer or engineering consulting firms that need very little start-up capital—they only need physical space and computers.

¹⁸Robert W. Fairlie, *Immigrant Entrepreneurs and Small Business Owners, and their Access to Financial Capital* (May 2012), <https://www.sba.gov/sites/default/files/rs396tot.pdf>. See Table 7: Startup Capital Distributions for Immigrant and Non-Immigrant Owned Firms Special Tabulations from the Survey of Business Owners (2007).

A comparative study of entrepreneurship visas around the world found that other countries had lower required thresholds for visas and offered more incentives for entrepreneurs.¹⁹ These countries are trying to compete for these innovative entrepreneurs. For example, the following European countries required lower thresholds: Germany (\$280,000 plus creating 5 jobs), Ireland (\$93,000), Italy (\$53,000), and Sweden (\$23,000). In Chile, there is no threshold; the government actually provides \$40,000 to chosen entrepreneurs.²⁰ One of the researchers on this study noted that it was important for USCIS to keep the capital thresholds high enough to ensure that the applicants have legitimate and successful businesses. Nevertheless, USCIS should analyze the success rate for the businesses in these countries that offer entrepreneur visas based on their capital threshold requirements to assess whether the proposed thresholds is too high.

Advocacy Recommends a Lower Threshold and a More Flexible Approach to the Threshold Requirement

Advocacy recommends that USCIS lower the threshold to represent the median of capital investment amounts typically made during the seed and startup stage of a company's life cycle. USCIS adopted the \$345,000 threshold based mainly on the 2015 U.S. market average estimate of all angel capital investment according to the Center for Venture Research at the University of New Hampshire. Looking at the underlying data, 28 percent of these angel investments were made in the seed and startup stage, 45 percent in the early stage, 25 percent in the expansion stage, and 2 percent in the late stage.²¹ Since the rule is focused on fostering the growth of certain businesses in its initial stages, the capital threshold should be based only on investment amounts that are typically made during the seed and startup stage. Because USCIS averaged all angel investments, this includes higher amounts made at the early, expansion, and late stage; some high values in these stages may skew the data to raise the capital threshold amount above what is invested at the seed and startup stage. This rule should focus on helping international entrepreneurs at the point where it's most needed, particularly earlier in the life cycle of a business at the seed and startup stage when entrepreneurs need to make decisions about their long-term business strategy.

Another recommendation posed at Advocacy's roundtable was to have different capital threshold amounts based on the type of investment. This is currently done in other countries. For example, Canada's entrepreneur visa requires a threshold of \$157,000 from venture capital funds, \$59,000 from angel investors or no threshold for incubators. The United Kingdom's visa requires raising \$74,000 from a qualified investor or at least \$296,999 from another source.²² One roundtable participant recommended that there be a lower threshold for F-1 students, particularly those who take part in extra years of Optional Practical Training (OPT) to work at an employer. On

¹⁹ D. Volchek, N. Efendic, & S. Terjesen., *Expatriate Entrepreneurship*, Babson Conference, Bodo, Norway (2016). These figures have been converted to U.S. dollars.

²⁰ *Id.*

²¹ Jeffrey Sohl, *The Angel Investor Market in 2015: A Buyers' Market*, Ctr. for Venture Research, (May 25, 2015), <https://paulcollege.unh.edu/sites/paulcollege.unh.edu/files/webform/Full%20Year%202015%20Analysis%20Report.pdf>.

²² See note 19.

average there were about 100,000 F-1 students per year using the Optional Practical Training (OPT) Program in 2008-2013.²³

The Definition of Qualified Investor is Too Strict

Participants at Advocacy's roundtable were also concerned that the USCIS' definition of qualified investors is too strict, and would rule out almost every investor who would fund these international entrepreneurs. The proposed rule requires entrepreneurs to show that they have received a substantial investment of capital from "established U.S. investors with a history of successful investments in start-up entities."²⁴

a) Changes to the Definition of "Successful investments" Should Be Considered

USCIS proposes to limit "qualified investors" to those who have an established record of successful investments in start-up entities. USCIS proposes that such record would include, during the 5-year period prior to the date of the parole application, one or more investments in other start-up entities in at least three separate calendar years in exchange for equity or convertible debt comprising no less than \$1,000,000. The applicant will need to show that, subsequent to such investment by the investor, at least two such entities each created at least five qualified jobs or achieved at least \$500,000 in revenue with average annualized growth of at least 20 percent.²⁵ Multiple roundtable participants noted that the definition of "qualified investor" is different and more stringent than the definition of "accredited investor" that the Securities and Exchange Commission utilizes to determine which individuals are able to participate in investment opportunities.²⁶ Advocacy spoke to prominent angel investors who stated that they did not believe they could meet this definition, and they did not believe a majority of angel investors could meet this definition. Advocacy spoke to multiple attorneys representing start-ups who also believe that many angel investors would not meet this definition, particularly because of the high number of required jobs or revenue requirements for the start-ups where they have invested.

b) Changes to the Definition of "Qualified investments" Should Be Considered

Advocacy has also heard concerns that USCIS is limiting the funding source to a certain type of investor (such as venture capital firms, angel investors, or start-up accelerators), and are specifically excluding any investments from the entrepreneur or family members, and

²³ Neil G. Ruiz, *The Geography of Foreign Students in U.S. Higher Education: Origins and Designations*, Brookings Institution (August 2014). The author provided Advocacy with this updated figure, from the amount of 75,000 F-1 students.

²⁴ 81 Fed. Reg. at 60,139.

²⁵ *Id.* at 60,130.

²⁶ SEC, *Report on the Review of the Definition of "Accredited Investor,"* (Dec. 18, 2015), <https://www.sec.gov/corpfin/reportspubs/special-studies/review-definition-of-accredited-investor-12-18-2015.pdf>. Under the SEC's accredited investor definition natural persons are accredited investors if their income exceeds \$200,000 in each of the two most recent years (or \$300,000 in joint income with a person's spouse) and they reasonably expect to reach the same income level in the current year. Natural persons are also accredited investors if their net worth exceeds \$1 million (individually or jointly with a spouse) excluding the value of their primary residence. Certain enumerated entities with over \$5 million in assets qualify as accredited investors, while others, including regulated entities such as banks and registered investment companies, are not subject to the assets test.

crowdfunding sources.²⁷ Many international entrepreneurs may not be able to obtain funding from more established investors due to their immigration status. According to an Advocacy report, almost two-thirds of immigrant entrepreneurs reported that their start-up capital was personal or family savings. Only 8.3 percent received a business loan from a bank or financial institution, 0.3 percent received their funds from venture capitalist(s), and 0.2 percent received grants.²⁸ A 2015 Kauffman Foundation report surveying firms on Inc. Magazine's 5,000 fastest growing companies in America found similar statistics. These firms reported the following funding sources: 67.2 percent used personal savings, 51.8 percent used bank loans, 34 percent used credit cards, and 20.9 percent used family funds. Only 7.7 percent used angel investors, 6.5 percent used venture capital and 3.8 percent used government grants.²⁹ A few entrepreneurs at the roundtable expressed concern that this rule seems to also be excluding crowdfunding as a funding source, when it has been very successful in raising start-up capital for entrepreneurs in the last few years. Other participants sought clarification on whether this rule would exclude sources of funding such as start-up competitions or start-up accelerators.

c) Changes to the Definition of "U.S. Investors" Should Be Considered

USCIS is requiring that the \$345,000 total investment must be made by one or more qualified U.S. investors. If the investor is an individual, the investor would need to be a U.S. citizen or lawful permanent resident.³⁰ Advocacy heard from immigrant foreign students and startups who are entrepreneurs who received their funding from their family or a business contacts from their country of origin. One entrepreneur has received initial funding from Turkey, and this source of income could not be utilized as part of this threshold. This individual wondered why this restriction was present, if the source is legitimate and the ultimate goal is to create U.S. jobs. An immigration attorney stated that there is a lot of foreign investment in Silicon Valley from countries like Germany and China that is going to start-ups. At the NCET2 University Start-up Demo Day, many participants echoed these statements, highlighting that there is a lot of foreign money available and these types of restrictions would force entrepreneurs to obtain foreign funds and set up their businesses in other countries. One immigrant entrepreneur on an F-1 visa stated that this limitation on U.S. funds could lower the valuation of his company because there would not be the competition of foreign investments.

Advocacy recommends that USCIS produce supplemental information on how many investors would meet the threshold outlined in this proposed rule, in light of small business concern that very few investors would meet these standards. USCIS should also analyze the investors who meet this threshold, and look at their respective share of the investment funds market. In

²⁷ 81 Fed. Reg. at 60,164.

²⁸ Robert W. Fairlie, *supra* note 27, at 22. See Table 10: Sources of Startup Capital for Immigrant and Non-Immigrant Owned Firms Special Tabulations from the Survey of Business Owners (2007).

²⁹ Jason Wiens & Jordan Bell-Masterson, Ewing Marion Kauffman Found., *Entrepreneurship Policy Digest: How Entrepreneurs Access Capital and Get Funded* (June 15), <http://www.kauffman.org/what-we-do/resources/entrepreneurship-policy-digest/how-entrepreneurs-access-capital-and-get-funded>.

³⁰ See 81 Fed. Reg. at 60,164.

addition, since 74% of investment is made intra-region, USCIS should provide a geographical distribution of potential qualified investors.³¹

This will inform USCIS if flexibilities in certain regions are warranted if there is a mismatch between international entrepreneurs and investor pool potential. In the alternative, USCIS should consider lowering these investor standards, particularly the requirements for prior investments creating at least five qualified jobs or achieving at least \$500,000 in revenue with average annualized growth of at least 20 percent. Small businesses have also recommended that USCIS consider adopting standards for the definition of investor, such as the accredited investor definition adopted by the Securities and Exchange Commission.

USCIS Should Clarify How the Parole Procedure Would Work

Participants at Advocacy's roundtable raised many questions regarding how the parole program would work in practice, at every step of the immigration process.

a) USCIS Should Clarify How to Apply for Parole, Particularly For Those in Other Visa Categories

There were many questions on which type of individuals on existing visa categories could apply for the parole program, and whether and how an individual adjusts their status to the parole program from another visa category.

The F-1 visa, for example, is a non-immigrant visa, and under this status the student must have the intent to depart after the termination of their studies. F-1 students cannot tell from this rule whether applying for the parole program would violate their F-1 status, as they would be showing their intent to stay in the United States and start a business. International entrepreneurs question the feasibility and legality of an F-1 student to be able to apply for parole, start a business, and raise the necessary funds required under this rule. For example, these F-1 students stated that they are often precluded from entering start-up competitions or applying for government grants due to their immigration status. Some students have commented that it may be easier for an F-1 student to partner with another domestic founder of a company, who may be able to start this business and raise the necessary funds. F-1 students can also be granted the authority to work for an employer after graduation in Optional Practical Training for a period of 12-36 months. Immigrant entrepreneurs seek clarification on whether F-1 students working for another employer under the OPT program will be allowed to apply for the parole program to start their own business. One participant asked whether USCIS would in the future allow F-1 students to complete the OPT program in their own start-up company.

Multiple roundtable participants asked how individuals on an H-1B visa or another nonimmigrant visa could adjust to this parole program.

³¹ Angel Resource Institute at Willamette University, *2015 Annual ARI Halo Report* (Released March 9, 2016). <http://www.angelresourceinstitute.org/~media/Files/Halo%20Report%202015%20Annual%20vFinal.pdf>.

b) USCIS Should Clarify Parole Procedures

Roundtable participants seek clarification on the process of entering the United States under the parole program. The proposed rule states that petitioners on a non-immigrant visa (such as the H-1B visa or an F-1 visa) would need to “exit the United States and request to be paroled at a port of entry.”³² F-1 students stated that they were very concerned with this requirement to leave the United States, as many students experience delays of sometimes months in getting back into the United States due to adjudication problems at the border. A representative from the National Association of International Educators recommended that USCIS allow these individuals to “parole in place,” or not be required to leave the country to adjust their status into the parole program. The proposed rule does not mention the term “parole in place,” but USCIS has approved this process for other situations.

c) USCIS Should Change Time Periods of Parole

Under this proposed rule, entrepreneurs may be granted an initial stay of two years, and seek a subsequent request for re-parole for up to three additional years. One participant at the roundtable who is a serial entrepreneur was concerned that the initial parole period was only two years, which he stated is the most important time for a start-up to present their proof of concept, set up their stable team and grow their business. Under this rule, the entrepreneur would have to take time during their crucial second year of parole to re-apply for the additional three years of parole. More time may be needed to earn revenue and start expanding their workforce for certain types of companies with longer sales cycles. This entrepreneur recommended that USCIS switch the time periods in the parole program, with an initial three-years parole, followed by an additional two years of parole.

d) USCIS Should Clarify the Next Steps for Entrepreneurs After Parole

Roundtable participants are very concerned with utilizing the parole program because the proposed rule is not clear on what an entrepreneur leading a start-up company would do after the five-year period ends. Under USCIS regulation, “parole may terminate automatically upon the expiration of the authorized parole period.”³³ The rule states that “parole does not provide a parolee with temporary nonimmigrant status or lawful permanent resident status. Nor does it provide the parolee with a basis for changing status to that of a nonimmigrant or adjusting status to that of a lawful permanent resident.”³⁴ Some roundtable participants are open to using this program if it can be a bridge between visa categories, but the rule seems to rule out this possibility. In addition, the status itself is tenuous, as “parole may be terminated at any time in DHS’ discretion.”³⁵ USCIS should provide more information on an entrepreneur’s next steps after the parole program ends.

³² 81 Fed. Reg. at 60,160.

³³ 81 Fed. Reg. at 60,134.

³⁴ *Id.*

³⁵ *Id.*

Small start-ups at the roundtable stated that it would be difficult to raise money from angel fund and venture fund investors without a more permanent guarantee that the founding entrepreneur could stay and grow their company. Representatives from the Institute of Electrical and Electronics Engineers (IEEE) were concerned that the entrepreneurs are vulnerable in this parole program, because they are providing their great ideas to funders but may be forced to leave the country and sell their company or move it overseas. Immigrant entrepreneurs in the initial two-year parole program could face the possibility of getting denied the additional three years of parole, and would have to quickly determine whether they should sell their company or move the company overseas. F-1 students at the roundtable seemed reluctant to pursue this parole program over a more traditional visa category like the H-1B visa. Roundtable participants also inquired about the limitations on individuals on the parole program, such as purchasing property or getting a driver's license.

e) USCIS Should Provide More Resources for Applicants

USCIS should provide more resources for small start-ups interested in applying for this rule. For example, USCIS should advise applicants on the amount of time the application and reapplication process will take so entrepreneurs can plan accordingly. USCIS should also provide contact information and a way for entrepreneurs to track the status of their application. Similar to in the EB-5 program, USCIS should consult technical advisors that have experience evaluating the growth of start-ups to help select parole applicants.

Conclusion

Advocacy supports the goals of this regulation, to utilize the parole program to increase and enhance entrepreneurship, innovation and job creation in the United States. Potential beneficiaries have told Advocacy that they are concerned that the strict requirements under this proposed rule may be too difficult for innovative entrepreneurs to meet and would be a barrier for their entry and success in the United States. Advocacy urges USCIS to give full consideration to the alternatives and clarifications posed by small businesses that would improve the feasibility and success of this new immigration initiative.

If you have any questions or require additional information please contact me or Assistant Chief Counsel Janis Reyes at (202) 619-0312 or by email at Janis.Reyes@sba.gov.

Sincerely,



The Honorable Darryl L. DePriest
Chief Counsel
Office of Advocacy
U.S. Small Business Administration



Janis C. Reyes
Assistant Chief Counsel
Office of Advocacy
U.S. Small Business Administration

Copy to: The Honorable Howard Shelanski
Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget