

International Entrepreneur Parole (IEP): NVCA Wins Case Challenging Delay

December 04, 2017 | Advisory | By [Susan J. Cohen](#)

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On December 1, 2017 Judge James Boasberg of the U.S. District Court for the District of Columbia granted summary judgment to the National Venture Capital Association (NVCA) in its challenge to a regulation published by the Department of Homeland Security (DHS) delaying the implementation of the International Entrepreneur Parole (IEP) Rule. The IEP regulation, published in the last days of the Obama administration, aimed to provide an immigration option for foreign entrepreneurs. The new program was scheduled to take effect on July 17, 2017, but on July 11, 2017, DHS published a rule in the Federal Register delaying the implementation of the program until March 2018, and stating DHS's intention to rescind the IEP regulation entirely. Judge Boasberg ruled that the government violated the Administrative Procedure Act by summarily delaying the implementation of the program without publishing a full regulation seeking notice and comment from the public.

Since "start-up visa" immigration bills have not yet been passed by Congress, the IEP program was a most welcome development and innovation for foreign entrepreneurs starting companies and raising investment capital in the U.S. The program had been greeted with tremendous enthusiasm by the U.S. venture community and foreign entrepreneurs alike. Many foreign entrepreneurs (together with their US investors) had planned on utilizing the new immigration procedure as soon as it was finalized.

Although this court ruling hands a victory to the NVCA, it is not clear whether or when DHS will begin accepting IEP applications as the agency likely has not yet prepared an application form for this immigration benefit nor trained its officers in how to adjudicate such applications. It is also likely that DHS will appeal the District Court ruling.

We will continue to report on breaking developments on this evolving and very important topic.

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