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## Rule For Foreign Startup Founders Seen As Helpful Stopgap

By Allissa Wickham

Law360, New York (August 26, 2016, 10:16 PM ET) -- A long-awaited rule that would allow immigrant startup founders to temporarily stay in the U.S. was largely greeted by attorneys Friday as a welcome stopgap since entrepreneurs have limited visa options, but its potential investment demands mean the program likely won't be for everyone.

The proposed entrepreneur rule — one of several initiatives still being rolled out under President Barack Obama's executive actions on immigration — **was released** by U.S. Citizenship and Immigration Services on Friday to moderate cheers from immigration practitioners, since the U.S. still lacks a visa option for startup founders.

"I welcome it, absolutely, as I'm sure thousands of aspiring parolees will," said Susan Cohen, chair of Mintz Levin Cohn Ferris Glovsky & Popeo PC's immigration practice, who added that the rule could serve as a bridge to something "longer term" for immigrants.

Under the proposed regulation, immigrant entrepreneurs and their families would be eligible for a parole period of two years, with the possibility of an extra three years of "reparole," meaning startup founders could potentially nab five years of parole altogether.

Importantly, however, parole only amounts to temporary permission to stay in the U.S., and doesn't provide any actual immigration status. And so, if someone wanted to secure a visa for after their parole period, they would need to leave the U.S. and then return with visa status, according to Cohen.

"Parole isn't a visa status, so it's an odd creature in the immigration law," she said, adding that it's something of a "limbo" designation, since it doesn't "have the rights associated with the full immigration status."

And then there are the requirements themselves. According to the proposed rule, someone seeking parole would "generally" need to show that they have recently created a new company in the U.S. and that it has "substantial potential" for quick growth and creating jobs.

This includes an applicant's potentially showing that the startup has received \$345,000 in investments from U.S. investors, like venture capital firms, or at least \$100,000 from governmental bodies. However, the rule also notes that evidence that a startup has been chosen for a "reputable" accelerator could also serve as a "strong indicator" of the company's potential.

Applicants will also generally need to show that they have a significant ownership interest in the company, which is pegged at 15 percent, and have an "active and central role" in

the startup, according to the rule.

All told, these requirements will likely slim down the number of people who can take advantage of this new regulation, and indeed, the U.S. Department of Homeland Security is estimating that only 2,940 entrepreneurs may be eligible for parole each year.

"It's really targeted toward somewhat larger companies and somewhat larger investments, where there's a significant track record," said Dan Berger of Curran & Berger LLP. "This is not meant for the calls that I get every other day from somebody who's developed an app ... [and] wants to stay here for six months or a year to try something."

Additionally, DHS is saying that it thinks 20 percent yearly revenue growth is a reasonable requirement for reparole, among other factors. However, requirements for reparole may be a bit steep, according to Peter F. Asaad of Quarles & Brady LLP.

"The three-year extension does not seem easy to get by any means," Asaad said. "The first two years may be easier because they're giving you a chance."

Still, the rule won plaudits from attorneys in other regards. For instance, Cohen pointed out that the parole rule allows for three applicants per startup entity, which can be good, she noted, because there's sometimes a team involved with a project.

"You know, you've got the developer, the really technical person, and then you've got the marketing evangelist type person that's going to sell it," she said.

"They're all really key to the success of the business," she added.

And there's also the possibility that having this parole option could lead to more funding for immigrant startup founders, according to Sophie Alcorn of Alcorn Immigration Law.

"If the investor knows that their investment will qualify this person for the [parole], then they might be more willing to make a more substantial investment ... to allow this parole process to happen," Alcorn said.

Of course, this rule is still only in its proposed form, so there's the possibility that it could change. The regulation is scheduled to be placed in the Federal Register next Wednesday, and the public will have 45 days to comment on it.

After the agency considers the comments, it will have to publish a final rule, and given this tight schedule, a final version may not surface until the end of the year. USCIS is therefore looking at a busy next few months if it's hoping to get this parole regulation out the door before Obama exits the White House.

--Editing by Mark Lebetkin and Philip Shea.