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USCIS Parole Rule: A Practical Solution For Entrepreneurs

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Law360, New York (January 23, 2017, 10:32 AM EST) -- On Jan. 17, 2017, U.S. Citizenship and Immigration Services published a final rule in the Federal Register amending the immigration regulations to expand the use of the government's "parole" authority to authorize parole for foreign entrepreneurs who can demonstrate that they will provide a significant public benefit to the United States as a result of economic growth and/or job creation resulting from their entrepreneurial activities.

The new regulation will become effective on July 16, 2017, 180 days following the publication of the rule. The six-month delay between publication and the effective date is intended to provide the government with time to prepare materials and training for this brand new immigration benefit.



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This expansion of the government's parole authority is a welcome development for foreign entrepreneurs who have been frustrated by the lack of immigration options available through the existing U.S. visa categories, which generally are not oriented to companies that are in startup mode. Former President Barack Obama first announced his intention to improve U.S. immigration options for foreign entrepreneurs in November 2014. This final regulation is the culmination of that effort and came just days before the end of his eight-year presidency.

The requirements and other pertinent aspects of this new "international entrepreneur" parole immigration option are summarized below.

Applicant Must Qualify as an "Entrepreneur"

To qualify, an applicant must be an entrepreneur connected with a startup entity who is well-positioned to advance the entity's business. The entrepreneur must own at least 10 percent of the entity at the time of the application and must demonstrate that s/he has 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 entity in conducting and growing its business in the U.S. Accordingly, a passive investor would not qualify.

The requirement in the final regulation of ownership of at least 10 percent of the entity, is an improvement over the 15 percent ownership requirement in the original, proposed rule.

Startup Entity Must be "Recently" Formed

To qualify as a "startup" entity, it must have been formed within the five years immediately preceding the date of filing the initial parole application and it must have lawfully done business since its creation and have substantial potential for rapid growth and job creation. This five-year look-back period is an improvement over the originally proposed three-year period, and it shows that USCIS recognizes that some companies need longer than three years to reach a point where they can demonstrate sustained growth.

Entity Must Demonstrate Substantial Potential for Rapid Growth and Job Creation

The regulation provides applicants with a variety of ways to demonstrate substantial potential for rapid growth and job creation, including any one of the following:

- **Investments from Established U.S. Investors:** Proof of receipt of investments of capital totaling at least \$250,000 from U.S. investors (such as venture capital firms, angel investors or startup accelerators) with a history of substantial investment in successful startup entities. The minimum investment amount of \$250,000 is an improvement over the initially proposed threshold requirement of \$345,000, and will pave the way for more foreign entrepreneurs to benefit from this new option.

To qualify as an investor under the regulation, the U.S. organization or individual investor must (1) have made qualified investments of at least \$600,000 in startups over the prior five-year period; (2) show that subsequent to such investment at least two such startup entities created at least five qualified jobs or generated at least \$500,000 in revenue, with average annualized revenue growth of at least 20 percent. A qualified job means full-time employment in the U.S. that has been filled for at least one year by a qualifying employee.

A qualifying employee includes a U.S. citizen, lawful permanent resident, or other immigrant lawfully authorized to work in the U.S. but is not an entrepreneur of the startup entity or the parent, spouse, brother, sister, son or daughter of such entrepreneur. Independent contractors are specifically excluded from the qualifying employee definition;

- **Government Grants:** Proof of receipt of awards or grants of at least \$100,000 from federal, state or local government entities with expertise in economic development, research and development, or job creation;
- **Alternative Criteria:** If the applicant only partially meets one or more of the above criteria relating to capital investment or government funding, s/he may still succeed with the parole application if s/he can provide additional reliable and compelling evidence that s/he would provide a significant public benefit to the U.S. upon receipt of the parole status.

Parole Application and Filing Fee

USCIS is preparing a new application (form I-941) for this new immigration benefit which will carry a fee of \$1,285, which includes a base fee of \$1,200 and an \$85 biometrics fee.

Initial Parole Period, Parole for Family Members, Required Updates and Renewals

30-Month (2.5-year) Initial Parole Period

Upon approval of the parole application, the beneficiary of the application would be authorized for a parole period of 2.5 years. To secure parole, three prerequisites are required: The applicant must (1) submit the required parole application (on new USCIS form I-941); (2) receive approval of the application; and (3) enter the United States with the parole status. Parole cannot be accomplished without making a physical entry into the United States. Accordingly, if someone is in the U.S. in a visa status, applies for, and receives approval of a parole application, s/he must exit the U.S. and re-enter with parole in order to assume this new status.

The entrepreneur who is the beneficiary of the parole application is authorized to work for the startup entity upon entry into the U.S. with parole status. S/he is not required to apply for an employment authorization document (EAD). S/he is not authorized to work for any other entity and must continue to work for the startup entity described in the parole application in order to maintain parole status.

It is not necessary to be in the U.S. to apply for parole. International entrepreneurs outside the U.S. may apply, but as a practical matter, it may be difficult for many entrepreneurs outside the country to meet all the required criteria if they have not yet worked for the startup entity in the U.S., or if they have not worked lawfully for the startup entity.

Financial Requirement for Maintaining Parole Status

There is no required wage obligation for the parole beneficiary, but to maintain parolee status the parole beneficiary must maintain a household income that is greater than 400 percent of the federal poverty line for his or her household size as defined by the U.S. Department of Health and Human Services. These guidelines can be found [here](#). Under the current guidelines, for a family of four, the 2016 poverty line is \$24,300 so the 400 percent household income requirement is \$97,200. Please note that HHS is expected to release its Federal Register notice of the 2017 poverty guidelines on Jan. 24, 2017.

Required Updates Regarding Material Changes

The regulation requires parole beneficiaries to immediately notify USCIS of any material changes that could reasonably affect the outcome of the determination whether the entrepreneur provides, or continues to provide, a significant public benefit to the U.S. Such material changes include: any criminal charge, conviction, pleas of no contest or other judicial determination in a criminal case concerning either the entrepreneur or the startup entity; any complaint, settlement, judgment, or other judicial or administrative determination brought by a government entity; any settlement, judgment, or other legal determination concerning the entrepreneur or startup entity in a legal proceeding brought by a private individual or organization (other than proceedings primarily involving claims for damages not exceeding 10 percent of the current assets of the entrepreneur or startup entity); a sale or other disposition of all or substantially all of the startup entity's assets; the liquidation, dissolution or cessation of operations of the startup entity; the voluntary or involuntary filing of a bankruptcy petition by or against the startup entity; a significant change with respect to ownership and control of the startup entity; and a cessation of the entrepreneur's qualifying ownership interest in the startup entity or of the entrepreneur's central and active role in the operations of that entity.

Family Members

The spouse and dependent children (under 21) of the parole beneficiary are entitled to apply for parole status and once granted, to remain in the U.S. for the same period of time as the principal parole beneficiary.

Spouses and dependent children must file Form I-131 to accompany or join the principal parole beneficiary or applicant. Form I-131 carries a filing fee of \$575 plus a biometric processing fee of \$85 for any applicant aged 14 or over.

Upon arrival in the U.S. in parole status, the spouse of the principal parole beneficiary may apply for an EAD. The children of the principal parole beneficiary are not allowed to apply for employment authorization.

Timed Increases of Investment and Revenue Amount Requirements

USCIS has indicated that the required investment and revenue amounts will be automatically adjusted every three years by the consumer price index and the required amounts will be posted on the USCIS website.

Conclusion

Over the years, several "startup" visa bills have been introduced in Congress and have never become law. The decision to expand the existing parole authority in the U.S. immigration law to open an immigration avenue for foreign entrepreneurs who benefit the United States economy provides a practical solution for qualifying entrepreneurs. The criteria to qualify are strict, but the criteria in the final regulation represent an improvement over the more burdensome requirements

in the proposed rule.

As with any regulation, the incoming new administration could take steps to rescind it. We will alert our readers to any developments concerning this new international entrepreneur regulation.

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