

One Minute Memo®



Venture Capitalists and Immigration Proponents Likely Disappointed by USCIS Proposed Entrepreneurial Parolee Rule

By Angelo A. Paparelli

Seyfarth Synopsis: USCIS proposes a regulation to grant special “parole” entry to certain foreign entrepreneurs backed by venture capitalists and angel investors. The rule is long and complicated, while the benefit granted is revocable. Applicants for parole and their backers need to make sure that all required evidence and business records are submitted. Guidance by immigration counsel is probably required. The initial grant of parole entry is only for two years, with one renewal allowed for three more years. The proposed rule provides no direct pathway to a work visa or a green card. U.S. Citizenship and Immigration Services will accept comments on the proposal for the next 45 days. The prepublication version of the proposed rule can be accessed [here](#).

The Department of Homeland Security, through its component agency, U.S. Citizenship and Immigration Services (USCIS), has issued a proposed regulation to allow a qualified foreign citizen to gain entry and be employed in the United States if he or she will engage in activities that are likely to “increase and enhance entrepreneurship, innovation, and job creation in the United States” with a “start-up” entity. The USCIS proposed regulation would not change any other means of gaining work permission under the existing employment-based visa categories, e.g., the EB-5 immigrant investment program, immigrant visa classifications based upon, or exempt from, PERM labor certification, or through family-based immigration avenues.

Under the Immigration and Nationality Act, parole (an immigration “term of art” having nothing necessarily to do with the criminal laws) is a discretionary grant of permission to enter the U.S. under narrowly prescribed terms. Parole is not a formal “admission” to the country but a specially permitted “entry.” Unlike a green card or work visa -- both of which are considered a legal “status” in the United States -- parole can be automatically revoked by immigration officials without mandatory notice to the parolee. USCIS proposes that once the application for entrepreneurial parole is approved, the applicant and family members must leave the U.S. in order to be granted parole; they may not change from a nonimmigrant status within the United States.

USCIS proposes an initial two-year grant of parole to a qualifying “International Entrepreneur,” with one additional three-year renewal allowed. Under the proposal, the entrepreneurial parolee may work only in a start-up entity formed within the last three years in which s/he (a) will play a “central role in the operations and future growth of the entity,” and (b) owns at least a 15 percent interest. USCIS also proposes that the parolee’s spouse and children may be given parole entry, and that the spouse can be granted open-market employment authorization. The entrepreneurial parolee, however, may only be employed by the USCIS-approved start-up entity. USCIS also proposes to amend its Form I-9 (Employment Eligibility

Verification) to allow a start-up entity to accept an original foreign passport and Form I-94, issued by U.S. Customs & Border Protection with the notation "PE-1," as a "List A" document of identity and employment authorization.

The pre-publication version of the rule and its preamble run to 155 double-spaced pages. Once it is published in the Federal Register, expected in the next few days, the public will have 45 days to offer comments. Proving eligibility as an International Entrepreneur will require a \$1,200 filing fee, completion of an Application for Entrepreneur Parole (Form I-941) and the submission of extensive evidence. USCIS will review the evidence and give a thumbs-up approval or deny the application with no right of rehearing or appeal.

In order to qualify, the parole applicant must show that the start-up entity has the "substantial potential for rapid growth and job creation." This can be established through investments from established "U.S. investors (such as venture capital firms, angel investors, or start-up accelerators)." The parole applicant may prove this with evidence that the "entity has received investments of capital totaling \$345,000 or more from established U.S. investors with a history of substantial investment in successful start-up entities." USCIS proposes that aside from the parole applicant, only U.S. citizens and lawful permanent residents (green card holders) may invest in the start-up. A start-up entity may employ no more than three entrepreneurial parolees, according to the USCIS proposed rule.

Alternatively, the proposed rule suggests that the submitted evidence should include proof of grants or awards of at least \$100,000 from local, state or federal government entities that have "provided support for economic, research and development, or job creation purposes."

Venture capitalists and foreign entrepreneurs -- who have waited since November 2014 to see how USCIS would articulate President Obama's Executive Action announcing a proposed rule -- are likely to be disappointed. They may see the benefit of entrepreneurial parole as too small and too short in duration in return for the effort to establish the proposed rule's very burdensome and narrow requirements. Moreover, they may be disappointed to learn that the USCIS proposal fails to take into account the harm associated with a revocation of parole (whether based on material business changes or otherwise) and the absence of any administrative or judicial review. Also disappointing is the realization that the proposed regulation offers no pathway to lawful permanent resident status.

Fortunately, however, if USCIS receives compelling and substantiated comments within the next 45 days, the final rule may become a more viable avenue to jump-start innovation, job creation and economic growth. Only time will tell.

For guidance and assistance to understand the proposed International Entrepreneur rule, or any other business immigration assistance, including the EB-5 immigrant investment program, please contact your Seyfarth attorney, [Angelo A. Paparelli](mailto:Angelo.A.Paparelli@seyfarth.com) at apaparelli@seyfarth.com, or any member of the [Business Immigration Group](#) or the [EB-5 Immigrant Investment Specialty Team](#).

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Seyfarth Shaw LLP One Minute Memo® | August 29, 2016

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