



## **Public Comments on New Regulations for International Entrepreneurs Due by October 17, 2016**

Insights

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Public comment to the U.S. Department of Homeland Security's (USDHS) Notice of Proposed Rulemaking creating a new "parole" immigration benefit for certain International Entrepreneurs is due to the agency by October 17, 2016. Once the comment period ends, the agency is required to consider all of the submitted comments before implementing a final rule. No applications will be accepted for this new immigration benefit until after a final rule is published.

The new regulation is the result of Presidential Executive Action rather than a new statute or Act of Congress. The action stems from President Obama's Immigration Accountability Executive Action, issued in November 2014. The White House describes this administrative action as necessary "to ensure that our system encourages [foreign entrepreneurs] to grow our economy." The proposed rule would allow the USDHS to use its existing discretionary statutory parole authority for entrepreneurs who can show a benefit through the substantial and demonstrated potential for rapid business growth and job creation. Because the new rule is based on Presidential Executive Action, the next President could revoke the program and the Entrepreneur's authorization to remain in the United States.

Entrepreneurs may be confused by the term "parole" in the proposed regulation as opposed to the term "visa" which is issued by a U.S. Consulate. The rule does not create any new work visa category (such as H-1B or L-1). Rather, it defines a new class of individuals who would be eligible to enter the United States as "parolees" under the agency's long-standing authority to admit individuals for "urgent humanitarian" or "significant public benefit" reasons. Entry as a "parolee" is not considered a formal "admission" into the United States and, therefore, parolees do not retain the same legal rights as visa holders. For example, the permission of a parolee to remain in the United States may be terminated by the agency at any time for any reason, and denial of parole cannot be appealed to the federal courts.

Under the regulations, the process to apply for this new class of parole depends on whether the applicant is outside the United States or whether they are present in the United States in another status. If they are outside the United States, the applicant would first apply to the U.S. Citizenship and Immigration Services (USCIS) on a new Form I-941. The proposed regulation states appearances "may" be required at a USCIS overseas office (not available in every country). Once parole is authorized, applicants would go to the nearest U.S. Consulate for biometrics and a background check and issuance of a travel document (called a "foil"). It is uncertain at this time

background check and issuance of a travel document (called a "foil"). It is uncertain at this time whether Canadian citizens might be able to apply directly at a border post. If approved for parole, the individual will be issued an I-94 "arrival/departure record" by the U.S. Customs & Border Protection (USCBP) inspecting officer upon entry. If the International Entrepreneur is present in the United States at the time of filing, the individual would apply directly to USCIS for parole status. The proposed application fees for parole are \$1,200.00, plus the biometrics fee of \$85.00.

Applicants for parole under the new rule must meet the following requirements:

1. Applicants with a significant ownership interest (of at least 15%) in a start-up AND who have an active and central role in the operations.
2. The start-up was formed in the last three years before application.
3. The start-up has "substantial and demonstrated potential for rapid business growth and job creation" shown by one of the following: (a) The entity has received in the one year prior to filing at least \$345,000 in capital investment from qualified U.S. investors (U.S. citizens or permanent residents), who in turn have established records of successful investments; OR (b) the entity has received in the one year prior to filing at least \$100,000 from certain federal, state or local government entities typically in the form of grants; OR (c) if partially satisfying either of the above, the entity shows "reliable and compelling evidence" of "substantial potential for rapid growth and job creation."
4. While in the U.S., the Entrepreneur will be required to have a household income greater than 400% of the poverty line for his/her household size. Entrepreneurs will not be eligible for federal public benefits or Obamacare health insurance premium tax credits.

Entrepreneurs admitted under the new rule will be authorized for employment immediately and are not required to seek any separate work permit. The Entrepreneur will be considered work authorized incident to status in a new "PE-1" parole status. The government agencies are amending their regulations to allow these individuals to present passports and parole documents as evidence of work authorization for purposes of I-9 forms and E-Verify.

Spouses and children (unmarried and under 21) can also receive parole to accompany the Entrepreneur. They will need to independently show the principal still qualifies, and spouses and children will also require biometrics and background checks. Filing fees are proposed to be \$480 plus the \$85 biometrics fee. Spouses will be able to work but not the children. However, unlike the principal spouse who will be work authorized at the time of entry/approval with the parole document, spouses must separately apply for work authorization, which can take 60-90 days or more after entry. The spouses can work anywhere while the principal will be bound to working only for the parole entity sponsor. The spouse cannot start working until receiving the work authorization card (EAD). The work permit fee is proposed to be \$416.00.

Initial parole will be granted for two years. At least 90 days before the initial parole expires, the Entrepreneur and dependents can apply for re-parole for another three years. While the re-parole

request is pending, work authorization will be automatically extended for 240 days or until decision.

Fisher Phillips will continue to monitor the movement of this proposed new regulatory authority. If you have any questions, please contact your Fisher Phillips legal representative for assistance.