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The International Entrepreneur Parole Rule

This year, U.S. Citizenship and Immigration Services (“USCIS”) relaunched the International Entrepreneur Parole Rule (“IEP”), which allows foreign entrepreneurs to request parole to run a qualifying U.S. start-up. However, the IEP is essentially a new program, so there is very little data or even anecdotal evidence of USCIS adjudication policies or trends. Nevertheless, IEP provides another immigration option for certain foreign entrepreneurs, especially those who do not qualify for an E-2 investor visa or EB-5.

It is important first to define the immigration benefit under this program – parole. The secretary of Homeland Security may parole an individual into the U.S. for a temporary period for urgent humanitarian reasons or significant public benefit. It is not a visa or a green card, nor does it directly lead to any type of formal immigration status. Although it is sometimes marketed as “EB-6” or an “entrepreneur visa,” these descriptions imply a much more robust immigration benefit. Finally, parole can be revoked at any time, without notice, if USCIS believes that parole is no longer warranted. Entrepreneurs seeking parole should consult with an immigration attorney to ensure that it is the best option for travel to the U.S.

To qualify for parole under the IEP, a foreign entrepreneur must own at least 10% of a U.S. start-up company, created within the 5 years preceding the application. The entrepreneur must play an active and central role to the operations of the business and must provide a significant public benefit to the U.S. Based on the other requirements discussed below,

USCIS will likely focus on job creation to determine whether the start-up will benefit the U.S., but this is up to the discretion of USCIS. If a start-up will provide other public benefits, the entrepreneur should clearly articulate those benefits and include supporting evidence. Up to three entrepreneurs per start-up can utilize the IEP.

In addition to the threshold requirements above, the start-up must have received, within the last 18 months, an investment of \$250,000 from qualified U.S. investors or \$100,000 of government funding for economic development, research and development, or job creation awards or grants. If the entrepreneur does not meet either the full capital investment or government funding, parole can be granted based on “compelling evidence” of substantial potential for rapid growth and job creation.

A qualified investor is one who, during the past 5 years, has invested at least \$600,000 in start-ups and has invested in at least 2 start-ups that have created 5 qualifying jobs for U.S. workers or generated \$500,000 in revenue with a 20% growth rate. Unlike many other immigration petitions, these criteria require a significant amount of information from third-party investors who may not be willing to provide sensitive or proprietary information about their other investments. A foreign entrepreneur should discuss these requirements with potential investors to gauge their willingness to cooperate. Similarly, an entrepreneur may need to be creative in finding publicly available evidence when investors or their portfolio companies are

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unwilling to share private information.

To apply for IEP, each entrepreneur must file his or her own Form I-941 application and supporting evidence with the \$1,200 filing fee and \$85 biometrics fee. Once approved, the entrepreneur must apply for a travel document at a U.S. Embassy or Consulate in order to be paroled into the U.S. Due to consulate closures and severe backlogs from COVID-19, this step may involve significant wait times. Canadian citizens can simply present their I-941 approval notice at the port of entry and do not need a separate travel document.

An entrepreneur's spouse and children may also be paroled into the U.S. They must file a Form I-131 application for an advance parole document, either concurrently with the entrepreneur's I-941 application or separately. Spouses may also file a Form I-765 application for employment authorization.

Under the IEP, entrepreneurs may be paroled into the U.S. for a period of 30 months and may only work for their start-up company. Entrepreneurs may request a second period of parole – called “re-parole” – for another 30

months if the start-up meets at least one of the following four criteria: 1) receive an additional \$500,000 in capital investments or government funding, 2) generate \$500,000 annual revenue at 20% growth rate, 3) create at least 5 jobs, or 4) if the start-up only partially meets the first three criteria, the entrepreneur may provide compelling evidence of the start-up's substantial potential for rapid growth and job creation. Entrepreneurs must also maintain income of at least 400% of the poverty guidelines, which is \$51,250 for single person.

Although the IEP has many specific requirements regarding investment amounts, job creation, etc., the decision to grant parole is discretionary. It is important to remember that the IEP is still a new program and USCIS is still developing its policies and adjudication standards. For example, at the time of this writing, USCIS does not publish processing times for Form I-941 applications on its website. In fact, during its only stakeholder call on the IEP, USCIS admitted that it could not estimate processing times because it had not received a sufficient volume of cases. Entrepreneurs should be patient as this program develops.

In addition to the IEP, the newly proposed H.R. 4681, the Let Immigrants Kickstart Employment (LIKE) Act offers even more optimism for foreign entrepreneurs. The LIKE Act would create a new W-1 nonimmigrant visa with criteria very similar to the IEP. The W-1 visa could be issued for two 3-year increments and two additional 1-year extensions. Start-ups could also use the visa for up to 5 essential employees (who need not be founders) depending on the size of the company. Moreover, the LIKE Act provides a path to permanent residence, allowing an entrepreneur to self-petition a green card application if the start-up has created 10 qualified jobs, raised \$1,250,000 in qualifying investments, and generated at least \$1 million in revenue in the 2 years prior to applying.

The IEP and proposed LIKE Act are encouraging immigration policies that welcome vetted entrepreneurs to the United States. Allowing these entrepreneurs to build their companies in the U.S. while working closely with the U.S. investment community is an exciting development. It is easy to imagine how the IEP will create many of the same long-term benefits as the EB-5 and other immigration by investment programs. 