



Practice Pointer: Entrepreneur Parole Program¹

*by David Wilks and Stephen Yale-Loehr**

On December 14, 2017, U.S. Citizenship and Immigration Services (USCIS) [announced](#) that it would start accepting applications for parole under the International Entrepreneur Rule (IER). This grant of parole is commonly referred to as Entrepreneur Parole.

The IER has a long and complicated history. Because the United States does not have a visa category that is specifically designed for company founders, international entrepreneurs who wish to establish and/or grow a U.S.-based business must fit into at least one of the existing visa categories, which can be difficult.

In August 2016, the Obama administration [proposed a rule](#) to grant parole to help international entrepreneurs stay in the U.S. temporarily while starting and growing their companies. After receiving more than 750 comments, the prior administration published a [final rule](#) on January 17, 2017, which was supposed to take effect on July 17, 2017. However, on July 11, 2017, just six days before USCIS was to begin accepting applications, the Trump administration [published a rule](#) delaying the effective date until March 14, 2018, while it considered whether it would eliminate the program. Represented by the American Immigration Council and Mayer Brown LLP, the National Venture Capital Association, two companies co-founded by international entrepreneurs, and two international entrepreneurs sued, claiming that the Department of Homeland Security (DHS) violated the Administrative Procedure Act (APA) in delaying implementation of the rule. On December 1, a federal district court agreed and vacated the delay rule. *Nat'l Venture Capital Ass'n v. Duke*, No. 1:17-cv-01912-JEB, 2017 U.S. Dist. LEXIS 197738 (D.D.C. Dec. 1, 2017).

Warning. As a result of the court order, USCIS is now accepting applications for the IER program. Although DHS plans to publish a proposed rule to eliminate the IER, until the rule is rescinded, international entrepreneurs who meet the program requirements are free to apply.² However, it is important to bear in mind that the program may be short-lived. DHS must comply with the APA's notice and comment requirements prior to rescinding the rule, a process which is likely to take at least a few months to complete after the rescission rule is published. As such,

¹ This practice pointer was updated on January 3, 2018 to reflect the newly released [Form I-941 Instructions](#), correcting the initially released form instructions, which were inconsistent with the final International Entrepreneur Rule.

² On November 17, 2017, a proposed rule to rescind the IER was sent to the White House Office of Management and Budget (OMB) for review. OMB review is typically the last step prior to publication of a proposed rule in the Federal Register.

clients should be warned that parole could be revoked if the IER is rescinded, and weigh the benefit of being able to work in the United States against this “worst case scenario.” All visa options should be carefully reviewed and considered when consulting with clients who are interested in seeking Entrepreneur Parole.

Requirements. The final rule requires the applicant-entrepreneur to demonstrate:

- The entrepreneur holds at least a 10% ownership stake in the start-up entity.
- The entrepreneur holds a central and active role in the operations of the start-up.
- The entrepreneur’s knowledge, skills, or experience will substantially assist with the growth and success of the start-up.
- The start-up’s formation occurred in the last five years.
- The start-up will have a significant public benefit. Documentation of public benefit may include, but is not limited to:
 - Evidence of investments from any investors, government awards, or grants.
 - Evidence of revenue generation.
 - Letters from government agencies, qualified investors, or established business associations attesting to how the start-up’s research, products, or services, or the entrepreneur’s knowledge, skills, or experience will advance the start-up's business.
 - Media coverage of the start-up.
 - Evidence of participation in a reputable start-up accelerator.
 - Patent awards.
- The start-up received substantial capital investment or awards as follows:
 - Within the last 18 months, received an aggregate of \$100,000 in government grants or \$250,000 from qualified investors.
 - A government grant must be from a U.S. federal, state, or local entity. The grant must be for economic development, research and development, job creation, or another similar monetary award directed at start-ups. The grant may not be part of a contract for goods or services, and must come from an entity or agency with a track record of granting funds to start-ups.
 - A qualified investor must have a significant track record of successful investments in other start-ups (\$600,000 in the last five years. Those investments must have resulted in two start-ups creating five full-time³ qualified jobs⁴ each, not including independent contractors, *or* \$500,000

³ Full time employment requires at least 35 working hours per week. These positions must be paid positions.

⁴ Note that each qualified job must have been filled for at least one year by a U.S. citizen, lawful permanent resident, or other work authorized immigrant. The final rule does not permit consideration of jobs held by nonimmigrants to fulfill this requirement.

revenue with an average of 20% annualized revenue growth in at least two start-up entities). The investor must also be an individual holding U.S. citizenship or lawful permanent residence, or be an entity majority owned and controlled, directly or indirectly, by U.S. citizens or lawful permanent residents.

- If the funding criteria is only partially met, the entrepreneur may provide compelling evidence that the entity has substantial potential for rapid growth and job creation.

A single start-up may sponsor up to **three** entrepreneurs for parole. An entrepreneur granted parole is able to work in the United States for the start-up incident to her or his parole. The entrepreneur is also obligated to report any material changes regarding the start-up or the entrepreneur's role with the start-up during the parole period.

Filing. The applicant must file [Form I-941](#), along with a \$1,200 filing fee and an \$85 biometrics fee. Applications are addressed to:

USCIS
P.O. Box 650890
Dallas, TX 75265

(For FedEx, UPS, and DHL):

USCIS
Attn: IER
2501 S. State Highway 121 Business
Suite 400
Lewisville, TX 75067

After Approval. Upon approval of the I-941, the entrepreneur will be issued an I-797 Notice of Action and an I-512L Authorization for Parole of an Alien into the United States. Canadians may take these documents directly to the U.S.-Canada border to be paroled into the U.S. All others will be required to obtain travel documentation (such as a boarding foil) at a U.S. consulate. The entrepreneur would then travel to the United States and request parole when appearing before U.S. Customs and Border Protection officials at the port of entry.

Work Authorization. Entrepreneurs granted parole through this program can receive up to five years of work authorization, in two 30-month increments.

Re-Parole (Extensions). To receive an extension of parole, entrepreneurs will need to again file Form I-941, demonstrating that they maintain a 5% ownership stake in the start-up and continue to provide a public benefit to the United States through their role as a founder of the entity (including maintaining a central and active role with the start-up). In addition, the entrepreneur must demonstrate that the start-up:

- Received \$500,000 in qualifying investments, government grants, or government awards;
- Created at least five full-time qualified jobs during the initial parole period; *or*
- Reached at least \$500,000 in annual revenue and averaged 20% in annual growth during the initial parole period.

If the start-up does not meet these criteria, the entrepreneur may provide documentation of the start-up's substantial potential for rapid growth and job creation.

Spouses and Minor Children. Spouses and children may accompany the entrepreneur by filing [Form I-131, Application for Travel Document](#). USCIS has reportedly updated Form I-131 for dependents of entrepreneurs, but has not yet released the revised form as of the time of this practice pointer. Spouses will be able to apply for work authorization after receiving parole by filing an I-765 under the “(c)(34)” category.

* **David Wilks** (djw@millermayer.com) is an attorney with Miller Mayer LLP (<http://www.millermayer.com>) in Ithaca, New York. A graduate of Cornell Law School, Mr. Wilks represents multinational corporations, healthcare institutions and providers, investors, universities, small businesses, and individuals in complex business immigration matters. Mr. Wilks currently serves as Vice Chair of the American Immigration Lawyers Association (AILA)'s USCIS Vermont Service Center Liaison Committee.

Stephen Yale-Loehr (syl@millermayer.com) is co-author of *Immigration Law and Procedure*, the leading immigration law treatise, published by LexisNexis. He also teaches immigration and asylum law at Cornell Law School, and is of counsel at Miller Mayer. He chairs AILA's business immigration response team. He graduated from Cornell Law School in 1981 *cum laude*, where he was Editor-in-Chief of the *Cornell International Law Journal*. He received AILA's Elmer Fried award for excellence in teaching in 2001, and AILA's Edith Lowenstein award for excellence in the practice of immigration law in 2004.