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VC Group Pushes For Win In Foreign Entrepreneur Rule Row

By **Allissa Wickham**

Law360, New York (November 14, 2017, 6:55 PM EST) -- A venture capital group and others asked a D.C. federal court Monday to vacate a Trump administration rule that delayed an Obama-era regulation for international entrepreneurs, arguing it's not lawful because the government did not give time for public notice or comment.

In support of their bid for summary judgment, the National Venture Capital Association, Omni Labs Inc. and others asked the court to nix a July rule that pushed back the effective date of the International Entrepreneur Rule until March, saying the U.S. Department of Homeland Security didn't have have the good cause to forgo notice and comment on the rule.

The **International Entrepreneur Rule** would have allowed certain foreign entrepreneurs to stay in the U.S., and was promulgated just days before President Donald Trump took office. The rule was set to take effect in July, but the Trump administration **published another rule** that month delaying it.

In September, NVCA, Omni Labs, Peak Laboratories LLC, and two U.K. siblings who founded LotusPay **launched their suit**. They're now asking the court for judgment, saying it should throw out the delay rule, which would essentially allow the entrepreneur rule to take effect.

"The Delay Final Rule — the final rule that delayed the Entrepreneur Final Rule — is unlawful and should be vacated," the plaintiffs argued Monday.

NVCA and the other plaintiffs said that the government postponed the entrepreneur rule six days before it was to go into effect, and did so without giving the public a heads-up on a chance to comment. Instead, the brief says, the government argued that the imminent effective date of the regulation provided "good cause" to not employ notice and comment under the Administrative Procedure Act.

The plaintiffs, however, raised their eyebrows at the "good cause" argument, noting that the government took its time in rolling out the delay rule.

"[The government's] own delay in promulgating the Delay Final Rule — procrastinating for six months after President Trump issued the executive order that supposedly prompted them to reconsider the Entrepreneur Final Rule — precludes them from relying on the good cause exception," the plaintiffs argued.

The International Entrepreneur Rule would let some 2,940 entrepreneurs a year seek temporary permission to be in the country, known as parole, to oversee and grow their startup companies, DHS said in January.

Under the rule, entrepreneurs need to have at least a 10 percent ownership in the business and a central role in its operations, and must show that the company has received a "significant investment" from qualified U.S. investors — likely \$250,000 or more, according to the complaint — or significant grants from government entities. They also must show their business would provide a significant public benefit.

Trump's January executive order on interior immigration enforcement ordered DHS to "ensure that parole authority is exercised only on a case-by-case basis in accordance with the plain language of the statute."

Although the International Entrepreneur Rule was set to take effect July 17, DHS announced July 10 that it would delay the rule until March 2018 in order to collect public comments on a proposal to rescind the rule entirely.

Attorneys for the plaintiffs did not respond to a request for comment, and a DHS representative said that as a matter of policy, the agency doesn't comment on active litigation.

NVCA and the other plaintiffs are represented by Andrew J. Pincus, Paul W. Hughes and John T. Lewis of Mayer Brown LLP, and Melissa Crow, Mary Kenney and Leslie K. Dellon of the American Immigration Council.

The government is represented by Glenn M. Girdharry of the U.S. Department of Justice.

The case is National Venture Capital Association et al. v. Elaine Duke et al., case number 1:17-cv-01912, in the U.S. District Court for the District of Columbia.

--Additional reporting by Nicole Narea and Kelcee Griffis. Editing by Adam LoBelia.

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