



On July 10, 2017, the [Department of Homeland Security \(DHS\)](#) announced that it is delaying the effective date of the [International Entrepreneur Final Rule](#) from July 17, 2017, to March 14, 2018. The rationale for postponing the launch of the Obama-era immigration rule is to allow the DHS time to obtain and process formal public comments regarding a proposal from the Trump administration to rescind the International Entrepreneur Final Rule pursuant to Executive Order 13767, "[Border Security and Immigration Enforcement Improvements](#)."¹

THE INTERNATIONAL ENTREPRENEUR FINAL RULE

Published in January 2017, the [International Entrepreneur Final Rule](#), aka "the startup visa," was specifically drafted to stimulate the startup industry, notably in the tech sector. The rule permits the DHS to use its parole authority on a case-by-case basis to grant a period of authorized stay to foreign entrepreneurs who demonstrate that their continued stay in the United States will provide a significant public benefit through the potential for rapid business growth and job creation for American workers.

Applicants would be granted an initial stay of up to 30 months with a possible extension for another 30 months, provided they met the following criteria:

- The applicant possesses a substantial ownership interest (at least 10 percent) in a newly created² U.S. based startup entity having substantial potential for rapid growth and job creation.
- The applicant has a central and active role in the startup entity, meaning that he or she is well-positioned to substantially assist with the growth and success of the business.
- The applicant can prove that his or her stay will provide a significant public benefit to the United States based on the applicant's role as an entrepreneur of the start-up entity by either:
 - Showing that the startup entity has received a significant investment of capital from certain qualified U.S. investors with established records of successful investments, as demonstrated by having received investments of capital totaling at least \$250,000 from established U.S. investors with a history of substantial investment in successful startup entities such as venture capital firms, angel investors, or startup accelerators.
 - Showing that the startup entity has received significant awards or grants for economic development, research and development, or job creation (or other types of grants or awards typically given to start-up entities) from federal, state, or local government entities that regularly provide such awards or grants to start-up entities, as demonstrated by having obtained monetary awards or grants totaling at least \$100,000 from government entities that typically provide such funding to U.S. businesses for economic, research and development, or job creation purposes.
 - Showing that they partially meet either or both of the previous two requirements and providing additional reliable and compelling evidence of the startup entity's substantial potential for rapid growth and job creation in the future.

In order to extend the initial period, the applicant may show that during the initial period of parole, the startup entity received either:

- Additional substantial investments of capital, including through qualified investments from U.S. investors with established records of successful investments.
- Significant awards or grants from U.S. government entities that regularly provide such funding to start-up entities.
- A combination of both types of investments.
- The threshold is the receipt of at least \$500,000 in additional qualifying funding during the initial parole period.

The International Entrepreneur Final Rule sets the bar high and is not intended for mom and pop startups. It targets savvy entrepreneurs with established U.S. investor connections and a fairly sophisticated understanding of private and/or public equity funding channels. At the genesis of the rule, the DHS estimated that fewer than 3,000 entrepreneurs would be eligible on an annual basis. The scope of the rule is therefore extremely limited. On the foothills of a flurry of executive orders, including the famous "[Muslim and Refugees Travel Ban](#)," the Trump administration sends yet another message that it fully intends to make good on its immigration reform campaign promises and protect the American workers through its [Buy American/Hire American policies](#).

Hopeful applicants that were readying to file their application on July 17, 2017, might argue that the International Entrepreneur Final Rule was supposed to do just that - create American jobs. But for now, they will have to put their American dreams on hold. The deferral of the International Entrepreneur Final Rule is but another step in the direction of more stringent enforcement of immigration law and policies.

1. Executive Order 13767 grants authority to the DHS Secretary to take all appropriate actions to ensure that parole authority is exercised selectively, and only on a case-by-case basis when an individual demonstrates urgent humanitarian reasons or a significant public benefit derived from such parole."

2. An entity may be considered recently formed if it was created within the 5 years immediately preceding the date of the filing of the initial parole application, 8 CFR 219.12(a)(2), 8 CFR 103.2(a)(7).



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