

IMMIGRATION

BIDEN ADMINISTRATION REVIVES INTERNATIONAL ENTREPRENEUR RULE, CREATING VALUABLE OPTION FOR NONCITIZEN ENTREPRENEURS TO GROW THEIR U.S. START-UP BUSINESSES

On May 11, 2021, the Department of Homeland Security (DHS) published a notice effectively reviving the International Entrepreneur Rule (IER). The IER program allows certain noncitizen entrepreneurs of start-up entities to remain temporarily in the U.S. to oversee their businesses. The IER program was originally created in the final months of the Obama administration, but the Trump administration quickly sought to dismantle the program. The recent DHS notice protects the IER program moving forward, providing a valuable option for noncitizen entrepreneurs seeking to grow their U.S. start-up businesses.

The IER program is designed to support entrepreneurs of start-up entities who can demonstrate the potential for rapid business growth and job creation. The program provides a 30-month grant of authorized stay in the U.S., with the potential for an additional 30-month renewal. If approved, the entrepreneur's spouse and children may accompany the entrepreneur in the U.S., and the spouse may apply for work authorization.

To qualify for an initial grant under the IER program, an applicant must generally demonstrate that:

- The applicant holds at least 10% ownership interest in the start-up entity, and plays a central and active operational role in the company. A start-up entity for this rule is defined as a company formed within the five years preceding the IER application, or within the five years preceding receipt of a government grant or qualified investment; and
- The start-up has received, within the 18 months preceding the IER application, either a qualified investment of at least \$250,000 from a qualified investor (such as a venture capital firm), or at least \$100,000 through one or more federal, state, or local government grants or awards. If an investment, it must be made in good faith, and in a form common to the industry, such as a purchase of the start-up's equity or convertible debt. The investment may not come from the entrepreneur or the entrepreneur's family members. If the applicant does not fully meet the investment threshold, DHS allows for alternative evidence to show the entity's substantial potential for rapid growth and job creation.

To obtain a 30-month renewal, the applicant must hold at least 5% ownership interest in the start-up entity and continue to play a central and active operational role. Further, the start-up must demonstrate that it has either:

- Received at least \$500,000 in qualifying investments and/or government grants;
- Created at least five full-time jobs (filled for at least one year); or
- Generated at least \$500,000 in annual revenue and averaged 20% revenue growth during the initial 30-month period.

Here too, if the applicant does not fully meet the renewal requirements, DHS allows for alternative evidence to show the entity's substantial potential for rapid growth and job creation.

The IER program contains other specific requirements that should be evaluated on a case-by-case basis. It is important to note that approval under the IER program does not provide a lawful immigration status (such as F-1, H-1B, E-1, E-2, or L-1 visa status). Instead, applicants and their family members receive “parole,” which is a discretionary grant of authorized stay. Parole is used in a variety of contexts (such as humanitarian cases) to allow the entry of noncitizens who may not otherwise be eligible for admission to the U.S. There are important distinctions between parole and visa status that should be discussed in detail with immigration counsel.

Overall, the IER program provides a valuable option for noncitizen entrepreneurs looking to grow their U.S. start-up businesses. This is especially true in cases where an entrepreneur may not qualify for other business creation visa categories, such as the L-1 or E-2. For example, the IER program may provide a strong pathway for F-1 students looking to create a start-up business after graduation.

We encourage anyone interested in this program to contact our [Immigration](#) Practice Group for more information at 585.232.6500 or visit www.hselaw.com.

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