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New immigrant entrepreneur rule could be win-win for everybody

Late last month, the U.S. Citizenship and Immigration Services proposed a new regulation that, once promulgated, would enhance entrepreneurship, innovation and job creation in the United States.

The proposed regulation would authorize the CIS to allow qualifying immigrant entrepreneurs to enter or remain in the United States for the purpose of operating a startup entity if the entity can demonstrate substantial potential for rapid business growth and job creation.

Current U.S. immigration law in this area was last updated a generation ago and, in many instances, has not kept up with fast-paced changes in the global marketplace. While other countries have developed robust entrepreneurial programs to attract and retain global investment and entrepreneurial risk-taking, such proposals in the United States have largely stagnated in the political quagmire of comprehensive immigration reform.

For example, each year foreign students with MBA degrees and other advanced degrees from U.S. colleges and universities are forced to depart the United States because their student visa status has been exhausted.

Many of these individuals are left with no choice but to take their advanced education, training and entrepreneurial spirit back home, or worse yet, to some third country with little or no investment in them, to start a new company which, if successful, will likely end up drawing global investment and job creation away from the United States.

A more sensible and internationally competitive approach is on the horizon, however, in the form of this proposed CIS rule change, which will occur at the agency level under a form of regulatory authority called parole.

CIS — and its legacy agency the Immigration and Naturalization Service — has long possessed the authority to parole individuals into the United States for equitable reasons. As such, the new rule would not create a new immigration status, per se, and therefore will not require congressional action.

CIS has announced a 45-day notice and comment period after which the agency will consider feedback from the public before publishing the new regulation in the Federal Register. The final rule is likely to be issued before

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completion of the Obama administration in January.

According to a study published by the National Foundation for American Policy earlier this year, “Immigrants have started more than half (44 of 87) of America’s startup companies valued at \$1 billion or more and are key members of management or product development teams in more than 70 percent (62 of 87) of these companies.”

Similarly, a 2015 report by the Kauffman Foundation found that

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immigrant entrepreneurs had started 28.5 percent of all new businesses in 2014 and 25.9 percent of all new businesses in 2013.

The proposed rule would permit the CIS to parole immigrant entrepreneurs into the United States, on a case-by-case basis,

certain federal, state or local government entities; or has partially satisfied one or both of the above criteria in addition to other reliable and compelling evidence of its substantial potential for rapid growth and job creation.

The initial two-year period of the entrepreneur’s stay in the country can be extended for an additional three years if the startup entity continues to provide a significant public benefit in the form of substantial increases in capital investment, revenue or job creation for U.S. workers.

No more than three immigrant entrepreneurs per startup entity can qualify for this benefit at any given time.

Upon approval by the CIS, the immigrant entrepreneur would receive a restricted work permit authorizing employment only with the startup entity. Meanwhile, the immigrant entrepreneur’s spouse, if applicable, would be eligible to apply for a separate work permit that would authorize employment with any employer in the United States.

The CIS expects about 3,000 immigrant entrepreneur applicants a year. The proposed program would serve as a supplement to other existing entrepreneurial programs such as the E-1 Trader visa, the E-2 Investor visa and the EB-5 Immigrant Investor visa.

However, the new program would provide greater flexibility for startups, and unlike the E-1 and E-2 programs which are restricted to a relatively small handful of participating countries, the proposed regulation would apply equally to all applicants regardless of nationality.

for up to two years if the following criteria are met:

- Immigrant entrepreneur owns at least 15 percent of the startup and has an active and central role in its operations.
- The startup was formed in the United States within the past three years.
- The startup has received at least \$345,000 from qualified U.S. investors with established records of successful investments or has received significant awards or grants of at least \$100,000 from