

NOW +

NEXT

DECEMBER 18, 2017



DHS will now accept applications under the International Entrepreneur Rule

By Jason Gerrol

Under the [International Entrepreneur Rule](#) (IER), issued on January 17, 2017, in the waning days of the Obama administration, a foreign entrepreneur may be granted parole (i.e., the ability to enter the United States) for the purpose of operating and growing his or her start-up entity in the United States. The IER was praised by many as a critical step to revising an antiquated U.S. immigration system that provides few options for immigrant entrepreneurs, while opponents of the IER viewed it as executive overreach.

Those opponents include the Trump administration, and by notice dated July 11, 2017, the effective date of the IER was [delayed to March 14, 2018](#) and it was unclear whether the IER would ever go into effect in light of comments by the Department of Homeland Security (DHS) that it was “highly likely” the IER would be rescinded altogether.

What is the current status of the IER?

On December 1, 2017, however, the United States District Court for the District of Columbia vacated DHS’ July 11, 2017 order to delay the IER, agreeing with a group of plaintiffs that DHS’ failure to provide a period of public notice and comment prior to their decision to delay the IER violated the Administrative Procedures Act (APA).

As a result of that decision, DHS and U.S. Citizenship and Immigration Services (USCIS) in particular will now begin accepting applications under the IER.

The IER’s revival, however, may ultimately be short-lived as DHS has also announced its intentions to initiate a new rulemaking, this time complying with the APA’s notice and comment requirements, to remove the IER for good.

Who can file an application under the IER?

International entrepreneurs interested in applying for parole under the IER should review the [eligibility requirements](#) and discuss the application process with experienced immigration counsel.

Please note that as of the initial publication date of this alert, there do appear to be inaccurate eligibility requirements on the IER application (Form I-941) [instructions](#) published by USCIS.

If eligible, the international entrepreneur's spouse and children under the age of 21 may also qualify for parole. The IER allows spouses to apply for employment authorization once in the U.S., which once granted, will allow them to work for any U.S. employer.

If granted parole as an international entrepreneur, how long can I remain in the United States?

Under the IER, parole may be granted for an initial period of 30 months (2.5 years), and an additional period of 30 months may be granted at the discretion of DHS.

In light of DHS' stated intentions to remove the IER, it remains unclear whether international entrepreneurs granted an initial period of 30 months will be eligible for an additional 30-month extension.

For more information on the content of this alert, please contact your Nixon Peabody attorney or:

- Courtney H. New, Esq., 617-345-6056, cnew@nixonpeabody.com
- Jason M. Gerrol, Esq., 617-345-1372, jgerrol@nixonpeabody.com