



*Heather Redman  
Angel Investor*



October 17, 2016

Via Electronic Mail: [uscisfrcomment@dhs.gov](mailto:uscisfrcomment@dhs.gov)

Samantha Deshommes  
Chief, Regulatory Coordination Division  
Office of Policy and Strategy  
U.S. Citizenship and Immigration Services  
Department of Homeland Security  
20 Massachusetts Avenue NW  
Washington, DC 20529

**Re: International Entrepreneur Rule [CIS No. 2572-15; DHS Docket No. USCIS-2015-0006]**

Dear Ms. Deshommes,

Please find enclosed our comments on the proposed International Entrepreneur Rule. We appreciate the opportunity to review the rules and provide comments. Please do not hesitate to contact us if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Schutzler".

Michael Schutzler  
CEO  
Washington Technology Industry Association

A handwritten signature in black ink, appearing to read "Tahmina Watson".

Tahmina Watson  
Founding Attorney  
Watson Immigration Law



*Heather Redman  
Angel Investor*



## ***International Entrepreneurs Rule***

**PURPOSE OF COMMENTS:** To improve the new proposed rule for international entrepreneurs as published in the Federal Register docket USCIS-2015-0006 by ensuring that said rule establishes and implements achievable requirements. We wish to facilitate successful application of the proposed rule in order to effectively create American jobs by immigrant entrepreneurs.

**WHO WE ARE:** We are leaders in the technology and entrepreneurship field in Seattle, Washington. We are venture capitalists, angel investors, startup accelerator investors/mentors, entrepreneurs, and professionals assisting people in the technology industry. Individually, each person has anywhere between 10 and 30 years of experience in their respective fields. Combined, we have over 100 years of experience. Our comments and suggestions are based on our experiences specifically working with rapid growth startups. Please find here a brief description of each group supporting these proposals:

***Washington Technology Industry Association*** (WTIA) is the unifying voice in technology in Washington State. Our mission is to inform and motivate industry, education and government professionals; to collaborate productively in building education systems, physical infrastructure, and business climate; and ensure our region continues as one of the world's most influential technology hubs.

***Watson Immigration Law*** is a boutique immigration law firm based in Seattle, Washington founded by Tahmina Watson. Our practice is primarily employment-based immigration law with an emphasis on startups and entrepreneurs. Tahmina Watson is the author of the book *The Startup Visa: Key to Job Growth and Economic Prosperity in America*.

***Zoic Capital*** is a venture capital company that funds entrepreneurs and startups. We review over one thousand applications each year and select only the best for our portfolio. Our portfolio includes companies that have breakthrough technology and innovation that are changing the world. Our specialty lies in life sciences.

***9 Miles Labs*** is one of the premier high-tech accelerators based in Seattle, Washington focused on enterprise, B2B software and cloud technologies.

***Heather Redman***, Angel Investor, is an experienced investor who been behind numerous successful companies. She is an accomplished lawyer, investor and community leader. Among other things, Heather serves as a director of the boards of WTIA and 9 Miles Labs.

**SUMMARY:** Our work and experience demonstrate our passion for entrepreneurship and all that entrepreneurs offers. We especially recognize the talent of immigrant entrepreneurs and the economic benefits they bring to the United States. According to research from the Ewing Marion Kauffman Foundation, startups create the most net jobs in the United States<sup>1</sup>. Kauffman research further confirms immigrants are almost twice as likely to start businesses as native-born Americans. Research confirms 28.5 percent of new entrepreneurs in 2014 were immigrants, which is up from 13.3 percent in 1997 and about one-quarter of the engineering and technology companies started in the United States between 2006-2012 had at least one key founder who was an immigrant<sup>2</sup>. Research also confirms that immigrant-founded engineering and technology firms employed approximately 560,000 workers and generated \$63 billion in sales in 2012. We can say with confidence that some of these companies have been part of our own portfolios.

We believe immigrant entrepreneurs are crucial for economic growth and innovation. We have long felt the frustration that our immigration system does not include a path for entrepreneurs. Therefore, we applaud the Administration for creating the International Entrepreneur Rule. We support many of the provisions as reasonable and implementable. In this document, we address the provisions that we believe should be amended to ensure successful implementation and workability of the rule in practice. We also would like to note that many of our recommendations align with the provisions as drafted in the INVEST Visa provisions of S. 744 (113<sup>th</sup>) Border Security, Economic Opportunity, and Immigration Modernization Act (hereinafter referred to as S. 744).

### **RECOMMENDATIONS:**

1. Formation of startup entity at time of initial application to be no more than 5 years.
2. Allow for revenue as consideration at the initial application stage.
3. Qualified investment amount should be reduced at the initial application stage.
4. Modify requirement of qualified investors.
5. Eliminate ‘catch all’ provision to allow applicant to apply or renew without meeting full requirements.
6. Reduce household income to 125% and allow savings as an alternative option.
7. Allow initial parole period to be 3 years.
8. Allow equity of applicant to fall below 10%.
9. Re-parole requirements of revenue generation and job creation.
10. Recognize ‘bootstrapping’ and provide guidance.
11. Guidance for those entrepreneurs who ‘exit’ during the parole period.
12. Reduce filing fees from \$1200, allow Premium Processing, and suggested filing and adjudication procedures.

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<sup>1</sup> Tim Kaine, *The Importance of Startups in Job Creation and Job Destruction*, Ewing Marion Kauffman Foundation, July 2010.

<sup>2</sup> Jason Wiens, *The Economic Case for Welcoming Entrepreneurs*, Kauffman Foundation, Ewing Marion Kauffman Foundation, September 2015.

## **DETAILED COMMENTS:**

### **1. Formation of startup entity at the time of initial application to be no more than 5 years.**

- The initial stage of a startup is experimental. It takes significant time to develop the startup to a stage where it can seek funding. To require that the entity is no more than 3 years old will exclude many entities that required time to obtain funding. Often 3 years is not enough time to have raised the requisite funding amount necessary to be eligible for these rules.
- In practice, a startup can only be productive after the first round of funds is received. Some companies call themselves startups up until IPO, examples of which include companies like Apptio, Inc.

*We suggest that the startup must be formed no more than 5 years from the time of application.*

### **2. Allow revenue as an alternative requirement for initial eligibility.**

- Some startup entities are successful from the outset. Such entities often will have generated significant revenue and American jobs. Such entities may not have needed to raise funds from qualified investors, or if they had, they did not need much funding. The bootstrapping model (which we address below) is an example of revenue growth before raising funds.
- In past startup visa bills introduced in Congress over the last 6 years, revenue was a consistent eligibility option. S.744 allowed eligibility of \$250,000 revenue in the last 2 years and the creation of 3 qualified jobs.

*We propose that a similar requirement be allowed so that those entrepreneurs who have proven themselves by generating revenue and jobs are afforded the opportunity to apply for parole with a combination of revenue and job creation already accomplished.*

*Therefore, we suggest that the requirement be aligned with S.744 as \$250,000 and 3 qualified jobs in the last 2 years.*

### 3. Qualified investment amount should be reduced at the initial application stage.

- While the range of investment can vary significantly, most technology companies will raise \$250,000 on average.
- \$250,000 was the amount listed in the very first Startup Visa Act 2010 S. 3029.
- S.744 outlined measures for a non-immigrant X-visa. The X-visa required \$100,000 as an initial investment. Past bills had proposed requirements that were more aligned with general practice.
- WTIA conducted research specifically for submission with these comments<sup>3</sup>. The research was based on WTIA's database of funding information. It found that of 116 tech companies founded in 2013, 98 of them received funding within 3 years and the average deal size across the 116 companies was \$2.1 million. Of the 116 companies, 18 did not receive any funding at all. If we were to go with the International Entrepreneur Rule the way it's currently written, only 56% of the businesses got at least \$350k in funding within 3 years and **this includes all founders, both foreign- and American-born**. Of the 860 tech companies founded 2010-2016, 487 received funding, 127 received no funding, and 246 didn't have any deal data. This means the average deal size across all companies was \$3.89 million. This includes companies that may have received funding in the 6<sup>th</sup> year. The research shows that it can take more than 3 years to receive funding for some technology companies.
- In addition, foreign-born founders generally have more difficulty in obtaining funding. This is because they have less access to and connection to angels and venture capitalists.

*Reducing the initial funding requirement will be more practical for immigrant entrepreneurs. We therefore recommend the initial funding threshold be reduced to \$250,000.*

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<sup>3</sup> Research was conducted by Julie Pham, Vice President of Community Engagement & Marketing, Washington Technology Industry Association. Research based on data from Pitchbook on Washington State startups and funding results.

#### **4. Modify requirement of qualified investors.**

- The proposed rules as drafted define qualified investors as venture capital firms, angel investors, and startup-accelerators. Organizations must be controlled by U.S. citizens or legal permanent residents (LPRs). Angel investors must be U.S. citizens or LPRs. The requirements further qualify this category by requiring the investor to have made similar investments in the last 5 years and that at least 2 of the investments have generated at least \$500,000 or 5 full time jobs.

*We request you to remove this condition of revenue/job creation.*

- Most qualified investors as defined in these rules will have made previous investments. Most investors will likely also be able to demonstrate past revenue/job creation. But many able and experienced investors may believe that the burden is too high. While we appreciate the reason for setting such stringent restrictions is to prevent fraudulent investments, it will be an unnecessarily difficult condition. For example, it is standard practice in non-immigrant temporary work visa applications such as H-1B or L-1s for USCIS to request payroll taxes, W-2s, W-3s, etc. In EB-5 petitions, one must prove job creation with similar documents including form I-9s. To implement this, the qualified investor will have to obtain documents from an unrelated entity and share documents that are otherwise confidential. The practical impact will be burdensome not only to the investor but also to the unrelated third parties. As such, it could prevent investors from participating.

*Therefore, we suggest that the additional alternative requirement of past revenue generation and job creation for similar startups is removed because it will prevent the successful use of the rule.*

#### **5. Eliminate ‘catch all’ provision to allow applicant to apply or renew without meeting full requirements.**

- Entrepreneurs who do not successfully meet the requirements should not be allowed re-parole. If a startup has not met the above requirements, it may be an indication that the startup does not have the potential of rapid growth. It may lead to affording opportunities to undeserving candidates who may not have the potential of significant public benefit.
- The combination of lowering the initial investment amount and lengthening the parole period to 3 years will enable the right applicants to prove themselves.

*Based on the above information, we suggest this provision be eliminated as long the initial parole period is extended to 3 years.*

## 6. Reduce household income to 125% and allow savings as an alternative option.

### Income:

- Entrepreneurs are known to live frugally and will save every penny for their startups. They will house-share, live with parents, and find ways to live beneath their means. In addition, for maximum success of the startup, founders will often pay their employees or make business expenses before taking a salary.
- As such, requiring 400% above the poverty guideline is unreasonable and will prevent almost all international entrepreneurs from utilizing the parole.

*Instead, we suggest aligning this requirement to be consistent with other areas of immigration law. For example, we were happy to see that the proposed rule allows for 240 days of work authorization during the pending period of the re-parole application. Earlier this year, through executive action, your agency brought this consistency to all non-immigrant work visas, such as E-3 and H-1B1 applications. Using the same idea to keep rules consistent where they can be, the household income rules should be consistent with current family-based immigration law.*

- Family-based immigration law requires a sponsor of a relative to demonstrate a household income of \$125% above the poverty guidelines<sup>4</sup>.

*Therefore, we also suggest that the entrepreneur be allowed to show a household income of 125% above the poverty guideline.*

### Savings:

- In addition, in keeping with family-based immigration law, allow applicants to show savings as an alternative option. We suggest that, aligned with the income requirement, one year's salary at 125% of the Federal Poverty Guideline is shown in savings as an alternative.
- The Canadian Startup Visa was based on the first bill presented in U.S. Congress in 2010<sup>5</sup>. The Canadian Startup Visa has been in effect since in April 2013 and has seen much success. It requires the entrepreneur to have savings referred to as 'settlement funds'<sup>6</sup> which appear to be based on a similar poverty guideline. There is no household income requirement in the Canadian visa requirement. We suggest that this model be used as an alternative requirement. The below chart (next page) is what the Canadian website states regarding settlement funds:

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<sup>4</sup> <https://www.uscis.gov/i-864p>

<sup>5</sup> S.3029 The Startup Visa Act of 2010

<sup>6</sup> <http://www.cic.gc.ca/english/immigrate/business/start-up/eligibility.asp>

**Bring sufficient settlement funds**

The Government of Canada does not provide financial support to new Start-up Visa immigrants. You must show that you have enough money to support yourself and your dependents after you arrive in Canada. You cannot borrow this money from another person. You will need to provide proof that you have the money when you submit your application. The amount you will need depends on the size of your family. These amounts are updated every year.

<b>Number of Family Members</b>	<b>Funds Required (in Canadian dollars)</b>
1	\$12,164
2	\$15,143
3	\$18,617
4	\$22,603
5	\$25,636
6	\$28,913
7 or more	\$32,191

How much money should you bring?

Find out [how much it costs to live where you are planning to settle](#) in Canada.

Applicant's spouse's income:

- We applaud that the entrepreneur's spouse will be given work authorization and that the spouse's income will be considered as part of the household income. However, it is unclear from the proposed rules, whether the spouse's income in the foreign country will be taken into account. Please clarify.

*We suggest that foreign income can be relied upon to meet the household income threshold.*

**7. Allow initial parole period to be 3 years.**

- An average startup needs approximately 3 years to achieve the measures listed in these rules to qualify for parole. As such, 2 years is insufficient time.
- In addition, most other employment-based non-immigrant work visas allow a maximum 3-year period of approval.

*To bring consistency with other areas of temporary work visas, and to provide sufficient time to demonstrate success, allow the initial period of the parole to be 3 years.*



## 8. Allow equity of applicant to fall below 10%.

- Prominent entrepreneur Peter Thiel teaches the following: Building a valuable company is a long journey. A key question to keep your eye on as a founder is dilution. The Google founders had 15.6% of the company at IPO. Steve Jobs had 13.5% of Apple when it went public in the early '80s. Mark Pincus had 16% of Zynga at IPO. If you have north of 10% after many rounds of financing, that's generally a very good outcome. Dilution is relentless<sup>7</sup>.
- It is vitally important to know how many shares the entrepreneur held during the initial parole. However, upon accepting further investments, those shares would be diluted and can fall below 10%. Holding this standard could render the parole rules ineffective.
- More than 80% of the startups in the Seattle area founded by immigrants were founded by teams, not individuals. Therefore, a 10% equity stake could be a fair and relevant standard if applied to the founding team. Consider the case where 10% as an individual stake would be reasonable on the day of formation with a team of four founders, where each owns 25%. However, after a seed round which is typically 30% dilution and an A round which is typically 45% dilution including the ESOP required by almost every Venture Capitalist, those same 4 founders would already be below the 10% equity rule despite great success in raising money and creating jobs. On the other hand, the 4 founders together still would own north of 36% of the company.

*We suggest that this requirement is removed or reduced significantly.*

## 9. Re-parole requirements of revenue generation and job creation.

- We support the funding/revenue/employment numbers in these rules for re-parole. They are reasonable **in the tech industry so long as the initial parole period is 3 years.**

*We support the re-parole requirements, given that the initial parole period be 3 years.*

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<sup>7</sup> <http://blakemasters.com/post/21742864570/peter-thiels-cs183-startup-class-6-notes-essay>)

## 10. Recognize ‘bootstrapping’ and provide guidance.

- Bootstrapping is a common way to create a startup. In this model, the founder starts with savings or funds from friends and family. It then acquires customers and generates revenue. In due course, as the business expands, it seeks funding<sup>8</sup>. Seattle is specifically known for its bootstrapping startups. Many such startups are successful and would be considered rapid growth companies. A recent modern example of such a company is Dry Bar. Dry Bar, based in California, is not a technology company but a hair salon providing hair drying services only. It currently employs 1000 stylists in 43 locations<sup>9</sup>. Other successful bootstrap enterprises include Facebook, Microsoft, Dell, etc.
- Bootstrapping companies may be able to raise sufficient revenue and thus may meet the requirements of these proposed rules. This is another reason to allow revenue generation as an alternative requirement for eligibility.

*Given that bootstrapping is a different but successful model for rapid growth companies, recognition and guidance of such a model must be included in these rules.*

## 11. Guidance for those entrepreneurs who ‘exit’ during the parole period.

- The ultimate goal for founders and qualified investors is to exit the startup. Exits can be in the form of IPOs or acquisitions. The average timeframe for an IPO is about 7 years from first financing<sup>10</sup>. The average exit can take anywhere between 4 to 8.6 years<sup>11</sup>.
- Should the startup entity be 3 (or 5 years as we suggest) years at the time of filing for parole, it is not inconceivable that there could be an exit during the parole or re-parole period.

*We suggest that guidance and options are provided for such entrepreneurs who clearly will have contributed to the significant public benefit of the United States and should not be subject to immediate termination of parole.*

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<sup>8</sup> Ian Harvey, *Companies That Succeeded With Bootstrapping*, Investopedia, August 28, 2014

<sup>9</sup> Meghan Casserly, *Drybar: How One Woman and a Hair Dryer became a \$20 Million Operation*, Forbes, November 1, 2012.

<sup>10</sup> <https://www.cbinsights.com/blog/venture-capital-exit-timeframe-tech/>

<sup>11</sup> <http://entrepreneurship.org/resource-center/startup-premoney-valuation--the-keystone-to-return-on-investment.aspx>

## 12. Lower filing fees from \$1200, allow Premium Processing, and suggested filing and adjudication procedures.

### Filing fees:

- While we appreciate that entrepreneurs will be given an opportunity to file for parole and work on their startups, a \$1200 filing fee is high. Other employment-based visa application fees based on Form I-129 are significantly lower at \$325 with additional supplemental fees depending on visa type. For example, an L-1 visa application fee including the requisite supplemental fee is \$825 (\$325 + \$500 fraud fee); an H-1B fee is \$1525 (\$325+500+750); an O-1 is \$325.

*Parole is not a visa and will not confer any status. The fee should reflect the admission benefit and not be high simply because a new benefit is being created. We suggest that the fee is reduced.*

### Premium Processing:

- In addition, we suggest that Premium Processing is allowed in these cases. Startups often will lose opportunities without swift action. Also, startup founders will not be able to work on their startups if they are already in the U.S. on a different non-immigrant visa. As such, Premium Processing will allow quick transition into working for the startup and thus working towards rapid growth and significant public benefit.

### USCIS Entrepreneur in Residence Team:

- We also take the opportunity to request that these applications are adjudicated by the USCIS Entrepreneur in Residence team. In 2012, when the USCIS EIR team was instituted, immigration officers were trained specifically on entrepreneurship issues. That training and understanding is reflected in their adjudication and will be invaluable in adjudicating international entrepreneur parole application.

### Creation of a “Known Qualified Investor” program:

- Investors often will invest in same or similar companies and will likely have a series of investments in different immigrant founded companies. We believe it will be efficient for USCIS as well as the investor to create a ‘known qualified investor’ program, similar to the ‘Known Employer Pilot’ program recently created by USCIS<sup>12</sup>. Under the Known Employer Pilot, employers will file an application to request that USCIS predetermine certain requirements of select immigrant and non-immigrant visa classifications that relate to the employer itself. These requirements generally relate to the employer’s corporate structure, operations, and financial health. This pilot process means that in adjudicating an individual petition or application, a USCIS officer will not need to review those approved employer eligibility requirements unless the facts have changed since USCIS made its predetermination or there are indications of fraud or material misrepresentation. Instead, the officer will only have to decide on the remaining requirements of an individual petition or application, such as the nature of the job offered and the employee’s qualifications<sup>13</sup>.

*We suggest that a similar program for qualified investors will assist the overall adjudication process, and believe that creating such a program at the outset of implementation of the rule will be helpful in the long run.*

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<sup>12</sup> <https://www.uscis.gov/working-united-states/known-employer-pilot>

<sup>13</sup> Much of this text is from the website: <https://www.uscis.gov/working-united-states/known-employer-pilot>

## **CONCLUSION:**

We applaud the Administration for introducing the proposed rule for international entrepreneurs; it will fill a significant void in our current immigration system. However, we believe that our above comments and suggestions would make the proposed rule more effective.

Should you wish to contact any of us, we would be happy to provide more information.

We thank you in advance for the efforts in preparing such complicated new policy.

### ***Supporters***

<b>Group</b>	<b>Contact Name</b>	<b>Website</b>	<b>Location</b>
Washington Technology Industry Association	Michael Schutlzer CEO	<a href="http://www.washingtontechnology.org">www.washingtontechnology.org</a>	Seattle, Washington
Watson Immigration Law	Tahmina Watson Immigration Attorney	<a href="http://www.watsonimmigrationlaw.com">www.watsonimmigrationlaw.com</a>	Seattle, Washington
Zoic Capital	Neal Mody Managing Partner	<a href="http://www.zoiccapital.com">www.zoiccapital.com</a>	Seattle, Washington
Heather Redman	Heather Redman Angel Investor	<a href="http://www.linkedin.com/in/hredman">www.linkedin.com/in/hredman</a>	Seattle, Washington
9 Miles Lab	Sanjay Puri Co-founder	<a href="http://www.9milelabs.com">www.9milelabs.com</a>	Seattle, Washington