# USCIS TO BEGIN ACCEPTING APPLICATIONS UNDER THE INTERNATIONAL ENTREPRENEUR RULE

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Foreign entrepreneurs can soon apply to stay in the United States under a federal rule aimed at smoothing their path to grow their companies in the United States. On December 14th, the U.S. Citizenship and Immigration Services (USCIS) announced that it is taking steps to implement the International Entrepreneur Rule (IER), in accordance with the ruling issued on December 1, 2017 by the U.S. District Court for the District of Columbia in National Venture Capital Association v. Duke.

The District Court's decision is a result of litigation filed on September 19, 2017 by the National Venture Capital Association (a trade association of venture capitalists) which challenged the delay in implementing the IER, arguing that the Trump administration had bypassed proper procedures when it delayed the IER's implementation. The District Court ordered the Department of Homeland Security (DHS) to rescind its delay in implementing the IER. Although the IER was scheduled to become effective on July 17, 2017, it did not take effect because the DHS issued a final rule on July 11, 2017, delaying the IER's effective date until March 14, 2018 in order to give the USCIS time to review the IER and, if necessary, to issue a rule proposing to eliminate any implementation of the IER.

The requirements for the entrepreneurs to qualify under the IER—which will equate to the potential of significant public benefit—are as follows:

**Entrepreneur with a Qualifying Start-up Entity**

> (1) You have a central and active role in the operations of a start-up entity, such that you are well-positioned, due to your knowledge, skills, or experience, to substantially assist the U.S. start-up entity with the growth and success of its business;
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> (2) You possess at least a 15 percent ownership stake in the U.S. start-up entity (10% if filing an amended application after being granted parole), and that the entity:
>
> > (a) Was recently formed (for example, created within the three years immediately preceding the filing date of your Parole Application) and has been lawfully doing business within the United States during any period of operation since its date of formation; and
> >
> > (b) Has substantial potential for rapid growth and job creation, evidenced by the receipt of significant capital investment, grants or awards.

**Substantial Investment, Grant or Award.**

You may also be considered for parole if you demonstrate that your start-up entity has received a minimum investment amount or qualified award or grant as described below:

> (1) The start-up entity has received a qualified investment, within the 365 days immediately preceding the filing of your application, of at least $345,000 from one or more qualified investors;

(2) The start-up entity has received, within the 365 days immediately preceding the filing of your application, an amount of $100,000 or more through one or more qualified government awards or grants; or

(3) If your start-up entity partially meets one or more of the above criteria, you may still be considered for entrepreneur parole by providing other reliable and compelling evidence of the start-up entity's substantial potential for rapid growth and job creation, but you will also need to show that your entity has: (a) received a substantial level of investment (although less than $345,000), or (b) received a substantial level of government funding (although less than $100,000).

Under the IER, entrepreneurs that meet the above-mentioned criteria may be granted a stay of up to two years to run their companies on U.S. soil. A foreign entrepreneur that wishes to remain or enter the U.S. for the first time to establish their business can submit their application to the DHS for review. Applications will be reviewed on a case by case basis.

For more information on this topic, please contact the author, Adriana Kostencki, on the firm's Government and Regulatory Team.

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