Advisory

SEPTEMBER 2016

If you have any questions about this Advisory, please contact:

NAJIA KHALID
203.498.4314
nkhalid@wiggin.com

Proposed Immigration Rule for Entrepreneurs with Emerging Companies

In November 2014 President Obama announced a series of executive actions regarding immigration reforms, stating that the U.S. Citizenship and Immigration Services ("USCIS") should make efforts with respect to "modernizing, improving and clarifying immigrant and nonimmigrant programs to grow our economy and create jobs." This initiative was to focus on, among others, foreign investors and entrepreneurs. There is not yet any defined process or timeframe for implementation of all aspects to this initiative. However, on August 31, 2016, USCIS published a notice of proposed rulemaking in the Federal Register regarding the **"International Entrepreneur Rule."** There will be a 45-day public comment period, and then if the process moves forward, the proposed rule will take effect on a future specified date.

Under the proposed rule, USCIS will evaluate entrepreneurs who have **at least a 15% ownership** interest and are **actively involved** in critical operations/management of emerging companies **formed in the U.S. within the past 3 years,** where the emerging company has **"substantial and demonstrated potential for rapid business growth and job creation."** Supporting evidence should demonstrate that within 365 days prior to application submission the enterprise has received **at least $345,000 investment of capital** from **"qualified U.S. investors with established records** of successful investments" or **at least $100,000 in awards or grants** from **"qualified federal, state or local government entities."** If USCIS determines that one or both criteria are satisfied, or partially satisfied with additional supporting evidence of rapid business growth and job creation, then such entrepreneurs may be authorized to enter the U.S. for **up to 2 years** to develop and expand the start-up enterprise. USCIS will then permit a request for **re-parole for up to 3 additional years** if the entrepreneur and the startup entity continue to provide a "significant public benefit" by virtue of additional substantial capital investment, revenue (i.e. increase of 20%), or the creation of at least 10 full-time jobs for U.S. workers.

Although the entrepreneur U.S. entry authorization, or "parole" is n**ot a visa or immigrant status**, it will enable eligible entrepreneurs, their spouses, and their minor children the ability to enter the country; entrepreneurs the ability to develop U.S. enterprises; and spouses the ability to apply for employment authorization. This discretionary parole is an effort to address the lack of U.S. visa options for startup founders, and may benefit up to approximately 3,000 entrepreneurs annually.

Wiggin and Dana's Immigration and Nationality Law and Compliance Practice Group will provide updates and details about the application process, criteria, and supporting evidence required once the International Entrepreneur Rule is finalized and USCIS implements an application process. Please contact Najia Khalid at 203.498.4314 or nkhalid@wiggin.com if you have any questions.