The Fate of the International Entrepreneur Rule Remains Uncertain, But There May Be Hope

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The Obama-era International Entrepreneur Rule ("IE Rule"), which had been scheduled to go into effect on July 17, 2017, would allow qualifying foreign entrepreneurs to come to the US to establish, oversee, and grow their businesses. To be eligible, applicants would have to demonstrate:

- At least a 10 percent ownership in the business and a central role in its operations; and
- That the company has received a "significant investment" of $250,000 or more from qualified US investors or significant grants from government entities, totaling $100,000 or more; or
- If the applicant who partially meets the above must then provide compelling evidence that their business would provide a significant public benefit with substantial potential for rapid growth and job creation.

If the applicant could demonstrate these requirements, the applicant may be granted advance parole to enter the US and work authorization for up to total of five years, as well as a potential path to permanent residence.

However, six days before the IE Rule was set to take effect, the Trump Administration published its own rule delaying its implementation until March 14, 2018, and indicated that it was likely going to rescind the IE Rule. National Venture Capital Association, Omni Labs, Peak Laboratories LLC, and two foreign entrepreneurs from the UK who had launched LotusPlay filed suit in federal court to enjoin the Trump Administration's delay of the IE Rule on the grounds that the delay was implemented without giving the public the required notice and chance to comment. The US District Court for the District of Columbia recently agreed, ruling that the Trump Administration had implemented the delay without following the necessary Administrative Procedures Act (APA) Notice and Comment Period regulations. The District Court issued an order enjoining the delay and ordering the implementation of the IE Rule.

DHS announced on December 14, 2017 that it is taking steps to implement the IE Rule to comply with the court order. However, the agency simultaneously announced that it is in the final stages of drafting a notice of proposed rulemaking to repeal the rule. The repeal of the IE rule can take several months, so it is unclear if anyone will be granted this discretionary admission in the meantime, and if granted, what that could mean to their admission to the US if the IE is eventually revoked. We will continue to monitor both the agency's implementation of the rule and the regulatory process.

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