

DHS Moves One Step Closer to Rescinding International Entrepreneur Rule

May 8, 2018

The U.S. Department of Homeland Security (DHS) has taken the first step on its path to rescinding the International Entrepreneur Rule (IER), a program that allows qualifying foreign entrepreneurs an opportunity to stay in the United States while building start-up businesses.

The U.S. Department of Homeland Security (DHS) has taken the first step on its path to rescinding the International Entrepreneur Rule (IER), a program that allows qualifying foreign entrepreneurs an opportunity to stay in the United States while building start-up businesses. The proposed rescission cleared the Office of Information and Regulatory Affairs (OIRA) on May 2, 2018. DHS is expected to publish a formal notice of the rule in the *Federal Register* in the coming weeks.

The IER was [enacted by the Obama administration](#) in an effort to “increase and enhance entrepreneurship, innovation, and job creation in the United States.” The rule gave DHS discretionary authority to allow certain foreign entrepreneurs of start-up businesses with a “demonstrated potential for rapid business growth and job creation,” to enter under a parole status and stay in the United States to oversee and grow their start-up businesses. Days before the rule’s July 17, 2017, effective date, DHS filed a new rule [delaying the implementation of the IER](#) until March 14, 2018. DHS cited President Trump’s “[Border Security and Immigration Enforcement Improvements](#)” [executive order](#) as the reason for the delay. DHS explained that the executive order requires that parole be granted only on a case-by-case basis “when an individual demonstrates urgent humanitarian reasons or a significant public benefit derived from such parole.”

On December 1, 2017, Judge James E. Boasberg of the U.S. District Court for the District of Columbia invalidated DHS’s delay rule, finding that DHS had violated the Administrative Procedure Act by not providing notice or an opportunity for advance public comment on the rule. As a result, U.S. Citizenship and Immigration Services (USCIS) launched the IER and began accepting applications. In a statement appearing on the USCIS website, DHS makes clear its intention to rescind the IER “because it is not the appropriate vehicle for attracting and retaining international entrepreneurs and does not adequately protect U.S. investors and U.S. workers.” That statement also provides that “while DHS complies with the court order and

implements the IER parole program, DHS is also in the final stages of publishing a notice of proposed rulemaking seeking to remove the IER.”

Once the proposed rule is published in the *Federal Register*, the rule will be opened up to the general public for comment, usually for a period of 30 or 60 days. After the comment period, DHS must resubmit its final rule to OIRA for one last review before the final rule can be published in the *Federal Register*. This process will likely take several months.

[Ogletree Deakins’ Immigration Practice Group](#) will continue to monitor developments with respect to the International Entrepreneur Rule and will post updates on the [Immigration blog](#) as additional information becomes available.

TOPICS

[Immigration](#)