

October 17, 2016

The Niskanen Center  
820 1st ST NE, Suite 675  
Washington, DC 20002

VIA ELECTRONIC SUBMISSION

Mr. Steven Viger  
Adjudications Officer  
Office of Policy and Strategy, U.S. Citizenship and Immigration Services  
Department of Homeland Security  
20 Massachusetts Avenue NW., Suite 1100  
Washington, DC 20529-2140  
RE: DEPARTMENT OF HOMELAND SECURITY 8 CFR Parts 103, 212 and 274a [CIS No. 2572-15; DHS Docket No. USCIS-2015-0006] RIN 1615-AC04 International Entrepreneur Rule

Dear Mr. Viger,

This letter is in response to the Department of Homeland Security's request for comments on the DEPARTMENT OF HOMELAND SECURITY 8 CFR Parts 103, 212 and 274a [CIS No. 2572-15; DHS Docket No. USCIS-2015-0006] RIN 1615-AC04 **International Entrepreneur Rule**.

### **Overview**

Encouraging entrepreneurs to create and develop promising start-up entities in the United States is a critical component to economic growth. The Niskanen Center<sup>1</sup> supports the premise that allowing foreign entrepreneurs entry in the U.S. to launch innovative, financially sound start-up businesses will facilitate research and development in the United States, create employment opportunities at home and abroad, and positively benefit the U.S. economy in a multitude of other ways.

After conducting outreach with investors, non-profits, entrepreneurs, lawmakers, and foreign graduates, the Niskanen Center has concerns about a number of substantive and procedural provisions in the rule, detailed below. Fine-tuning certain provisions of the rule will help increase legitimacy of the program and further the purpose of the rule.

### **Detailed Recommendations**

For your consideration, we submit comments for your review below.

---

<sup>1</sup> The Niskanen Center is a libertarian 501(c)(3) nonprofit think tank founded in 2014 and located in Washington D.C.

## ***Overview of Parole for Entrepreneurs***

An overarching concern about the feasibility of the rule is the circularity of requiring prior investment as a condition for obtaining a visa, when investors are hesitant to make an investment in an entrepreneur without a visa.

Anecdotally, countless qualified investors have voiced hesitation about investing funds in a business with an individual who is outside of the United States, and who only has a pending visa application. Similarly, foreign students currently studying in American universities shared the difficulty they experience securing investments due to the uncertainty associated with their visa status.

## ***Recent Formation of Start-up Entity***

The creation of a start-up often takes time, and inevitably involves failures that push entrepreneurs to improve their products and processes. The ‘recent formation’ provision requires that a U.S. business entity was created within the 3 years immediately preceding the filing date of the entrepreneur’s application for parole. This may unreasonably exclude entrepreneurs whose businesses were founded before the three-year window, but which only recently became viable startups more by adjusting constructively to feedback and failure. We suggest including a case-by-case provision allowing for submissions that may satisfy the requirement.

Furthermore, the business entity definition may exclude viable crowdfunding Kickstarter type startups that are not organized in a legal capacity. For example, Kickstarter is ‘a platform for creative projects.’ Accountability for these projects is found not in the filing of legal licensure, but in the creator bio section of each project, where a potential investor can find additional resources, like links to websites, relevant background information, and in some cases, a connected Facebook account. For projects that launched after May 19, 2014, there is also a verified name with a check mark next to it. This person is the creator of the project or a part of the company or team behind it, and they verified their identity through an automated process.<sup>2</sup>

It is our recommendation that ‘other entity’ explicitly recognize crowdfunded and Kickstarter campaigns as legitimate business entities.

## ***Capital Investment or Government Funding Criteria***

Ensuring that investors are qualified protects both the investors, the entrepreneurs, and the public. However, a number of the current criteria may work to disqualify a significant number of potential investors.

For example, ‘angel investors’ often invest in early stage or start-up companies in exchange for an equity ownership interest. Angel investing in startups has been accelerating, fueled by high profile stories of investments in success stories like Uber and WhatsApp. For this reason, many

---

<sup>2</sup> Kickstarter Accountability. Last visited September 30, 2016. Available at: [https://www.kickstarter.com/help/faq/kickstarter+basics?ref=faq\\_nav#Acco](https://www.kickstarter.com/help/faq/kickstarter+basics?ref=faq_nav#Acco).

angel investors make multiple bets with the hopes of getting outsized returns. Thus, their investments usually range from \$25,000-100,000.<sup>3</sup>

For startups outside of the technology sector, it is nearly impossible to raise \$345,000, even when the average period of investment for most startups is 7 years. It is a rare occurrence for an entrepreneur to receive one substantial investment, even from venture capitalists at the same firm, and it disqualifies potential one-time investors—like a rich relative—from investing. There may also be significant issues demonstrating proof of previous investments and jobs created, considering that nearly 9 in 10 startups fail.

An enormous obstacle that could prohibit *most* entrepreneurs from securing requisite investors is that many potential investors require federal and state securities filings, as well as tax IDs, prior to investment, but foreign entrepreneurs may find it difficult to produce these before obtaining a visa.

### ***Income-Related Condition on Parole***

Proposed in the current rule is an individual parolee household income requirement of 400 percent of the federal poverty line for his or her household size. This requirement is too high, and may exclude many individuals who are scrupulous with funding, and may unnecessarily punish those willing to make a significant financial sacrifice to get their startup off the ground. We recommend a household income threshold consistent with current federal immigration law.

The Department of Homeland Security (DHS) and U.S. Citizenship and Immigration Services (USCIS) Poverty Guidelines for Affidavits of Support requires 125 percent of the federal poverty line for his or her household size to determine the minimum income requirement needed to sponsor most family-based immigrants and some employment-based immigrants. This is satisfactory income to show adequate means of financial support and are not likely to rely on the U.S. government for financial support.<sup>4</sup>

If you have any questions regarding the comments, please contact Ms. Kristie De Peña, Immigration Policy Counsel, at 202-899-1174 or by emailing [kdepena@niskanencenter.org](mailto:kdepena@niskanencenter.org).

Sincerely,

Ms. Kristie De Peña  
Immigration Policy Counsel  
Niskanen Center

---

<sup>3</sup> Richard Harroch. “20 Things All Entrepreneurs Should Know About Angel Investors.” Forbes. February 2015. Available at: <http://www.forbes.com/sites/allbusiness/2015/02/05/20-things-all-entrepreneurs-should-know-about-angel-investors/4/#75e0d5c57653>.

<sup>4</sup> I-864P, HHS Poverty Guidelines for Affidavit of Support. Last visited October 4, 2016. Available at: <https://www.uscis.gov/i-864p>.