

October 17, 2016

The Honorable Jeh Johnson
Secretary
U.S. Department of Homeland Security
20 Massachusetts Avenue, NW
Washington, D.C. 20529

RE: Proposed International Entrepreneur Rule, DHS Docket No. USCIS-2015-0006

Dear Secretary Johnson:

New and young companies create nearly all of the net new jobs in the American economy.¹ It is therefore in the public interest for government to implement policies that reduce barriers to new business creation and facilitate the growth of young firms. The Department of Homeland Security's proposed International Entrepreneur Rule recognizes both the importance of entrepreneurship generally, and the role of immigrant entrepreneurs specifically.

Informed by research, the Ewing Marion Kauffman Foundation has advocated for the creation of a start-up visa that allows immigrant entrepreneurs to start businesses in the United States after satisfying certain funding, employment, or other requirements.² Immigrants are nearly twice as likely to start businesses as native-born Americans³ and many immigrant-founded firms make big economic impacts.⁴ We commend DHS for proposing a process by which parole could be granted to immigrant entrepreneurs who will provide significant public benefit to the United States. Yet, the proposed rule has shortcomings that will limit its effectiveness. We continue to believe that the best course of action is to enact federal legislation that creates a clear, clean, and reasonable pathway for immigrants to start businesses of all kinds in the United States. The International

¹ Haltiwanger, John, Ron S. Jarmin, and Javier Miranda. "Who Creates Jobs? Small Versus Large Versus Young." *The Review of Economics and Statistics* Vol 95, No. 2 (May 2013) pp. 347-361.

² Stangler, Dane and Jason Wiens. "The Economic Case for Welcoming Immigrant Entrepreneurs". *Ewing Marion Kauffman Foundation*. September 2015 and Schuck, Peter H., John E. Tyler. "Making the Case for Changing U.S. Policy Regarding Highly Skilled Immigrants." *Fordham Urban Law Journal* Vol 38, No. 1 (November 2010) pp 327-362.

³ Fairlie, Robert, Arnobio Morelix, E.J. Reedy, and Josh Russell. "Kauffman Index: Start-up Activity." *Ewing Marion Kauffman Foundation*. August 2016.

⁴ Anderson, Stuart. "Immigrants and Billion Dollar Start-ups." *National Foundation for American Policy*. March 2016.

Entrepreneur Rule in no way diminishes the need for congressional authorization of a startup visa.

This letter, in response to the request for public comment on the International Entrepreneur Rule, addresses aspects of the rule related to:

- the definition of a start-up entity;
- the investment required to demonstrate substantial potential for rapid growth and job creation;
- the role of revenue in granting parole or re-parole; and
- start-up culture, the alternative criteria, and the term “parole”.

The intent of our comments is to ensure that the benefit of the rule is conferred onto the greatest number of qualified immigrant entrepreneurs.

Start-up Entity

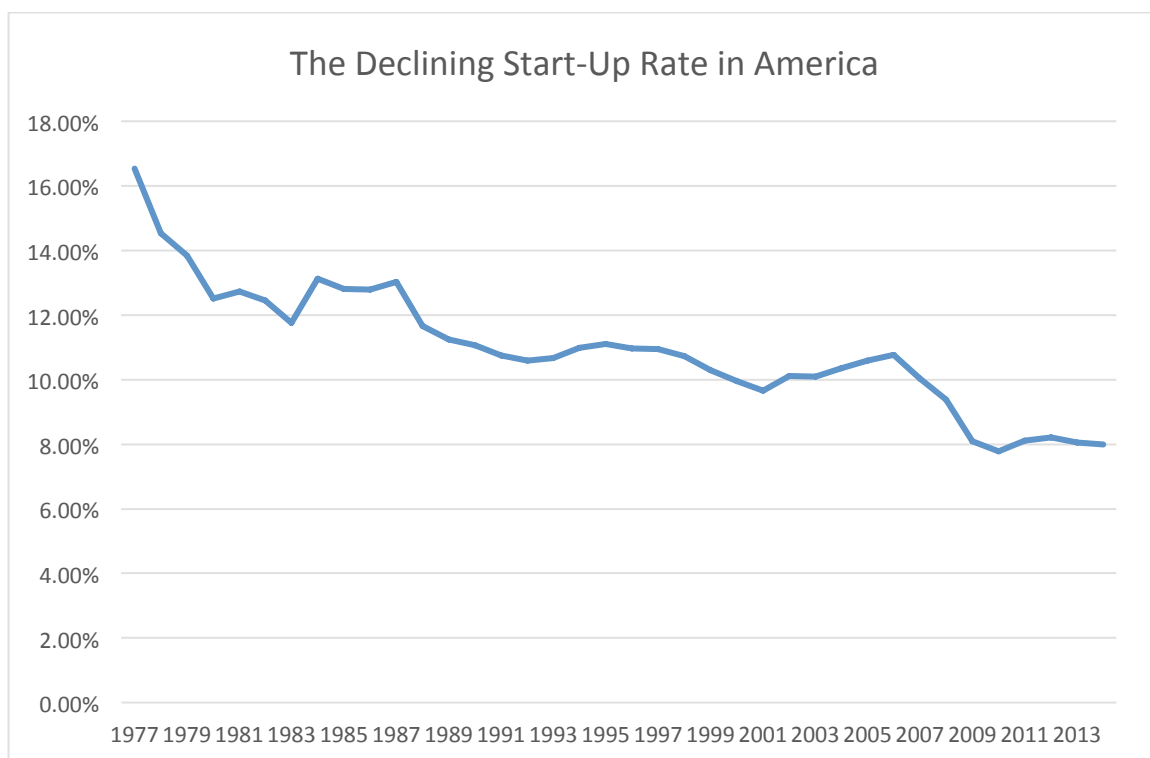
The proposed rule appropriately defines a start-up entity as a business created within the United States less than three years before the founder applies for parole. Since the stated purpose of the proposed rule is to increase entrepreneurship, innovation, and job creation, the focus on firms under age three is appropriate. Young firms, defined as those less than five years old, spur innovation⁵ and are responsible for almost all net new job creation.⁶

Given the important role start-ups and young firms play in the American economy, it is especially concerning that the rate of new business creation has been steadily falling in the United States for decades.⁷ In fact, the start-up rate today is roughly half what it was at its peak.

⁵ Acemoglu, Daron, Ufuk Akcigit, Nicholas Bloom, and William R. Kerr. “Innovation, Reallocation and Growth.” *National Bureau of Economic Research*. April 2013.

⁶ Haltiwanger, John, Ron S. Jarmin, and Javier Miranda. “Who Creates Jobs? Small Versus Large Versus Young.” *The Review of Economics and Statistics*. May 2013.

⁷ United States Census Business Dynamics Statistics, with Kauffman Foundation calculations.



Source: Business Dynamics Statistics, with Kauffman Foundation calculations.

By creating a path for immigrant entrepreneurs to remain in America, the proposed rule has the potential to boost falling rates of entrepreneurship in the United States. Parole for immigrant founders of young firms as opposed to small firms is a subtle distinction, but important to whether or not the rule spurs new job creation and increases innovation.

Substantial Investment from Qualified U.S. Investors

We recognize the proposed International Entrepreneur Rule must meet the legal requirements to justify parole for only those that will provide significant public benefit. Yet, predicting those entrepreneurs whose firms will rapidly grow and create a substantial number of jobs is a very difficult task. Even the best venture capitalists in the world have a difficult time predicting which firms will grow.⁸

The proposed rule uses investment from qualified U.S. investors with a history of successful investments as a primary way to identify those firms that will quickly

⁸ Mulcahy, Diane, Bill Weeks, and Harold S. Bradley. "We Have Met the Enemy ... And He is Us". *Ewing Marion Kauffman Foundation*. May 2012.

grow and create jobs. There is evidence in the research that receiving capital from qualified investors does benefit firms in unique ways. Studies have found, for example, that compared to firms that did not receive venture capital investment, venture-backed companies have greater sales,⁹ faster employee growth,¹⁰ and faster times to market.¹¹

Yet, investment in a business of any kind is also associated with positive firm outcomes. Businesses that have at least \$100,000 in start-up capital are 23 percent less likely to fail than firms with \$5,000 or less in start-up capital.¹² This capital can come from a variety of sources—not just angel or venture capital.

Only a small percentage of startup capital comes from venture capital or outside private investment. The Kauffman Firm Survey, which is the longest and largest longitudinal study of entrepreneurs, followed 5,000 companies and found that only 5.8 percent of start-up funding came from angel investors, while 4.4 percent of start-up funding came from VCs.¹³

Similarly, a 2014 Kauffman Foundation survey of the fastest growing companies in America, as identified by Inc. magazine, found only a small portion¹⁴ of these successful companies received angel investment (7.7 percent), venture capital (6.5 percent), or government grants (3.8 percent). The majority of these fast-growing companies used personal savings (67.2 percent) and bank loans (51.8 percent) to finance their businesses' growth. Moreover, since 1985 only 37 percent of companies that made an initial public offering (one of the predominate measures of a successful high-growth company) were VC-backed.¹⁵ While that is a substantial portion of all IPOs, the remaining six out of every ten firms that IPO never received funding from venture capital.

⁹ Tyebjee, Tyson T. and Albert V. Bruno. "A Model of Venture Capitalist Investment Activity". *Management Science* Vol 3, Issue 9. (September 1984) pp. 1051-1066.

¹⁰ Davila, Antonio, George Foster, and Mahendra Gupta. "Venture Capital Financing and the Growth of Start-up Firms". *Journal of Business Venturing* Vol. 18 Issue 6 (November 2003) pp. 689-708.

¹¹ Hellmann, Thomas and Manju Puri. "The Interaction between Product Market and Financing Strategy: The Role of Venture Capital." *The Review of Financial Studies* Vol. 13, Issue 4 (2000) pp 959-984.

¹² Fairlie, Rob, and Alicia Robb. "Race and Entrepreneurial Success: Black-, Asian- and White-Owned Businesses in the United States". *The MIT Press*. 2008.

¹³ Morelix, Arnobio. "Three Facts You Probably Didn't Know About Venture Capital and Entrepreneurship." *Ewing Marion Kauffman Foundation*. May 2016.

¹⁴ Wiens, Jason and Jordan Bell-Masterson. "How Entrepreneurs Access Capital and Get Funded." *Ewing Marion Kauffman Foundation*. June 2015.

¹⁵ Ritter, Jay R. "Initial Public Offerings: VC-backed IPO Statistics Through 2015." January 2016.

Another potential problem with the requirement that funding come from a qualified U.S. investor is that there are large disparities in who receives this type of funding. Venture capital investment is concentrated in a select few geographic areas¹⁶ and rarely extends to women and people of color. Focusing on this measure could exacerbate disparate geographic and demographic experiences in the United States.

There is also a potential problem with the requirement that qualified investors demonstrate a record of successful investments as measured by the jobs created or revenue generated by the firms the investor funded. Proving this requirement places added burdens on the investor that may dissuade some investors from backing immigrant-founded firms. In the 113th Congress, S. 744, the Border Security, Economic Opportunity, and Immigration Modernization Act, defined qualified investors as *active* investors. This distinction between *active* and *successful* is important and could be adopted in this rule. The process of providing evidence of qualified investments should be simple and minimally invasive.

As crafted, we expect the International Entrepreneur Rule to facilitate the American-based growth of some firms started by immigrant entrepreneurs that might have otherwise been started in another country. However, many more potentially high-growth firms started by immigrants will not qualify for parole or re-parole because the business did not receive an investment from a qualified U.S. investor or because the amount of capital raised was under the threshold.

While determining if the firm is sufficiently capitalized is important to assessing the likelihood the immigrant entrepreneur will confer significant benefit to the American people, the rule should seek to establish criteria that will include as many potential high-growth firms as possible. A requirement of \$345,000 for initial capitalization runs the risk of being too steep for immigrant entrepreneurs and thus excluding those that will still successfully grow their company. We encourage the Department of Homeland Security to expand the definition of a qualified U.S. investor to include more sources of capital and to lower the investment thresholds.

¹⁶ Florida, Richard and Karen King. "Rise of the Global Startup City: The Geography of Venture Capital Investment in Cities and Metros around the World". *Martin Prosperity Institute*. January 2016.

The Role of Revenue

While the proposed rule relies on investment as the primary criterion for initial parole, it also states that satisfaction of the funding requirement should be supplemented by other evidence, including significant revenue generation.

Revenue generation is an important indicator of a business' success and viability. In fact, in many cases, it may be more meaningful than the amount of outside capital invested in a firm.

Revenue generation is a relatively straightforward proxy of value creation: customers only purchase those products and services that have some value to them. A business that generates revenue has identified a market.

Revenue amounts vary greatly and are influenced, in part, by the industry in which the business operates. In 2012, 24.1 percent of all firms had revenues greater than \$100,000 and 8.8 percent of firms had more than \$500,000 in revenue.¹⁷ Entrepreneurs with companies that exceed these thresholds are creating value and can confer significant benefit to the American people.

Rather than seek or receive capital from qualified investors, many entrepreneurs use revenue as their investment capital. This common method of start-up financing, called bootstrapping, involves the reinvestment of profits into the growth of the business. Among its benefits, bootstrapping allows owners to maintain greater control of their business and enables them to focus more on their customers, rather than investors.

The proposed rule's requirement that immigrant entrepreneurs must maintain household income greater than 400 percent of the federal poverty level while on parole will make bootstrapping difficult. Rather than invest profits into the business, immigrant entrepreneurs would have to pay themselves in order to maintain this condition of parole. For a family of four, that means the required household income must be at least \$97,000—a high bar for entrepreneurs.

We encourage the Department of Homeland Security to recognize bootstrapping as a legitimate way entrepreneurs finance business growth by lowering the income requirement and give equal weight to the role of revenue generation when making parole determinations.

Start-up Culture, the Alternative Criteria, and 'Parole'

¹⁷ Survey of Business Owners 2012 with Kauffman Foundation calculations.

The proposed rule vests significant authority in United States Citizenship and Immigration Service adjudicators, who will be given the task of evaluating the totality of evidence presented by an immigrant entrepreneur seeking parole. Given the unique nature of entrepreneurship and the many roles an entrepreneur often plays at a start-up, we encourage USCIS adjudicators to proactively familiarize themselves with entrepreneurial and start-up culture. Within this culture, there exist powerful indicators (perhaps more powerful than capital or number of employees) of growth potential. For example, mentors, peer-networks, and connectivity to support organizations are all extremely influential in the success of a new business¹⁸ and should be accounted for in some manner.

It is also important to understand that failure is a real and necessary part of entrepreneurship, innovation, and the entrepreneurial culture generally. Some entrepreneurs even credit their failures as preparing them for their later success.¹⁹

As the proposed rule is currently drafted, the immigrant entrepreneur that fails to acquire another \$500,000 in funding, or generate significant revenue, or increase the number of employees is not eligible for re-parole. This would effectively punish entrepreneurs that have learned important lessons and stand poised to succeed in the future.

The Kauffman Foundation understands the purpose of parole is to promote promising entrepreneurial ventures and that this mechanism cannot be used to perpetually allow an immigrant to apply for and receive parole. Yet, the rule should not unduly punish failure to meet the proposed thresholds. Adjudicators should be given clear authority and guidance that allow them to grant re-parole to immigrant entrepreneurs who are running ongoing businesses but have yet to reach the thresholds outlined for re-parole. It would be unfortunate to allow an entrepreneur to learn important lessons about starting and running a business while here in the United States, only to lose that entrepreneur to another nation when he or she is more seasoned.

The Kauffman Foundation is happy to suggest resources to USCIS and to welcome adjudicators to Kauffman-hosted and sponsored entrepreneurship events in order to interact with and learn from early-stage entrepreneurs.

¹⁸ Motoyama, Yasuyuki, and Jason Wiens. "Guidelines for Local and State Governments to Promote Entrepreneurship". *Ewing Marion Kauffman Foundation*. March 2015.

¹⁹ Schragger, Allison. "Failed Entrepreneurs Find More Success the Second Time Around". *Bloomberg.com*. July 28, 2014. Retrieved September 21, 2016.

Finally, while we understand that “parole” is the term used in statute, this term can carry negative connotations. We fear that “parole” in the immigration context may be confused with “parole” in the criminal justice context and this confusion may make the process of starting a business, securing funders, and finding collaborators more challenging. We encourage the Department of Homeland Security to use another term. “Conditional” and “provisional” are, for example, preferred alternatives.

* * *

Before concluding, we encourage the Department of Homeland Security to convene a focus group of immigrant entrepreneurs currently building companies in the United States to seek and receive feedback on the proposed rule. Such a gathering promises to further educate regulators about the unique challenges facing immigrant entrepreneurs.

In summation, the proposed International Entrepreneur Rule is a positive development that may help immigrant entrepreneurs, benefit Americans via the creation of new jobs and increased economic activity, and improve our country’s chances at attracting and retaining the world’s best and most innovative entrepreneurs. Lowering the investment thresholds, expanding the sources of qualified investment, recognizing bootstrapping, and giving greater weight to revenue generation would allow more immigrant entrepreneurs to qualify for parole and magnify the public benefits of this action. In addition to these modifications, an understanding of start-up culture will help adjudicators make informed determinations that result in significant public benefits.

Sincerely,

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