

New DHS Rule Seeks to Attract Foreign Entrepreneurs to the U.S.

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On August 29, 2016, the U.S. Department of Homeland Security (DHS) issued a proposed rule which, if adopted in its present form, would ease the ability of foreign national (FN) entrepreneurs to temporarily enter the United States to invest in and grow start-up businesses. At the present time, there is no temporary visa classification that permits FNs to make significant investments in new or growing businesses and then remain here to manage them. In announcing this proposed rule, DHS indicated that it was intended to spur business growth and job creation at a time when the U.S. economy is posed to attract this type of capital.

To qualify under the proposed rule, a FN entrepreneur would need to establish that his or her admission to this country would provide a significant public benefit because he or she has created a new start up entity here within the past three years in which the FN has a “substantial” ownership interest and which has a significant potential for rapid growth and job creation. Each application would be assessed on a case by case basis. Under the proposed rule, a FN with at least a 15% ownership interest in the start-up entity would be deemed to have a substantial ownership interest. Any start-up which had received at least \$345,000 within the past year from qualified U.S. investor(s), or at least \$100,000 in qualified government grant(s) or award(s) would be considered a qualified investment.

Under the proposed rule, qualified FN entrepreneurs would receive an initial stay of two years, and this could be extended for up to another three years if the startup continued to provide a significant public benefit, as demonstrated by an increase in investment capital and/or job creation. Comments on the proposed rule are due by October 13, 2016.

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