New Entrepreneur Rule Gives Foreign Investors Another Immigration Option

By MICHAEL BOSHNAICK AND CHAD BLOCKER

A fter years of Congressional inaction on immigration, in November 2014, President Obama introduced a number of proposals that together would have paved the way for significant reform of the U.S. immigration system. Although the U.S. Supreme Court recently struck down a key proposal that would have protected millions of undocumented individuals in the U.S., the Obama Administration is moving forward with a number of other immigration proposals. Among them is a mechanism, technically known as “Parole,” that would allow foreign entrepreneurs to come to the U.S. to establish businesses. After almost two years of waiting, on August 31, 2016, the Obama Administration issued the long-awaited details of the proposed entrepreneur rule. Specifically, it creates a temporary immigration program for foreign investors, researchers, and entrepreneurs who are planning to establish a startup business in the U.S. with substantial U.S. investor funding or with potential innovation or job creation.

This article provides an overview of the proposal, which will not become final until public comments are fully considered later in the Fall.

WHAT IS “PAROLE?”

Parole is a technical term in immigration law that refers to permission granted by U.S. Citizenship and Immigration Services (USCIS) to an individual to enter or remain physically in the U.S. temporarily for a specific purpose, without being admitted in an actual visa category.

THE PROPOSED RULE

Under the new rule, the entrepreneur must have established a U.S. startup business in the three years prior to applying for Parole. The entrepreneur must have at least a 15% ownership interest in the startup, and must play an active and central role in the business operations.

The startup must have received a capital investment of at least $100,000 grants or awards from qualifying U.S. federal, state, or local government entities. If the foreign entrepreneur only partially satisfies one or both funding criteria, he or she could show evidence of the startup’s substantial potential for rapid growth and job creation.

The startup must have received a capital investment of at least $100,000 from qualified U.S. investors or at least $345,000 from qualified U.S. investors or at least $100,000 in grants or awards from qualifying U.S. federal, state, or local government entities. If the foreign entrepreneur only partially satisfies one or both funding criteria, he or she could show evidence of the startup’s substantial potential for rapid growth and job creation.

The entrepreneur’s investment would not count toward the investment threshold.

Once approved, the entrepreneur would be allowed to enter and remain in the U.S. for an initial period of up to two years to oversee and grow the business and would only be authorized to work for the startup entity. Spouses and children would be allowed to accompany the entrepreneur to the U.S., and spouses would be eligible to apply for a work permit. An additional three years of Parole could be granted if it can be shown that the entity continues to operate; that the entrepreneur continues to play a central role in the business; and that the business has created jobs, received substantial additional funding, and/or generated substantial revenue.

If at any time the startup business stops operating or ceases to provide a significant public benefit to the U.S., USCIS could revoke the entrepreneur’s Parole.

OTHER OPTIONS?

While the new Parole program is a welcome and long-overdue mechanism to allow entrepreneurs to come to the U.S., unfortunately it does not allow for an individual’s long-term stay in the U.S. To that end, there are other options the entrepreneur may wish to consider. These include permanent resident options such as the National Interest Waiver, which requires that the individual’s work is in the country’s national interest (economic and otherwise). In addition, the entrepreneur could consider the extraordinary ability petition, which requires a showing that the individual is extraordinary in his or her field. Yet another permanent resident option is the EB-5 program, which requires the investment of $1 million (or $500,000 if the business is in a high unemployment area) and the creation of ten full-time jobs.

Temporary visa options include the E-1 and E-2 visa categories, which result from bilateral treaties the U.S. shares with certain countries around the world. The E-1 visa is a Treaty Trader visa requiring the person entering the U.S. to carry on trade in goods, services and technology, principally between the U.S. and the individual’s home country. The E-2 visa is a Treaty Investor visa available to foreign nationals making a substantial investment in a U.S. enterprise. Those entering on an E-1 or E-2 visa may come as the owner, executive, manager, or as an essential employee. For the E-1 and E-2 visa, the trade or investment must be “substantial,” which can be somewhat subjective but typically is evaluated based on the nature of the business and how much is typically required to establish such a business.

IN CONCLUSION...

Providing an avenue for foreign entrepreneurs and innovators to come to the U.S. to start a business is not only good immigration policy but also sound economic policy. While balancing national security interests, we encourage the government to do everything it can to promulgate a final rule that creates an entrepreneur Parole program that is efficient, user-friendly, and not administratively burdensome.

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International Travel for the Small Business Owner

With today’s reliance on technology and increased state of security awareness, international travel brings its own set of challenges. Furthermore, American electronics often won’t work on international power outlets and location-based websites will usually display in the language of the country you’re in. With the help of Adam Bates, vice president of Insure4Trips.com, here are five tips to help make international travel a breeze:

• Download travel assistance apps for your smartphone. These can include sites like the U.S. Department of State’s Smart Traveler app, which can help you find a foreign embassy, receive travel alerts and warnings, and help you stay safe in foreign lands.

• Download apps and save websites before leaving. Since overseas access can be complex, Bates recommends loading up on apps on your smartphone and saving relevant websites as favorites before leaving on your trip. Some apps Bates recommends are currency exchange calculators, navigation apps, translation apps, and travel review apps.

• Check your international coverage. “When preparing your trip, I recommend contacting your cellular provider and checking if you have voice and data coverage at your destination(s) as well as the additional cost,” Bates suggests. Often cell providers will allow you to switch to a more reasonable international plan for the duration of your trip.

• Invest in a quad-band phone. If you travel often, consider finding a phone that will work with various types of SIM providers. This is also known as GSM technology, which works in many locations throughout the world, including Europe and Asia. Tri-band phones will work in at least one network in these locations, but will be more limited than quad-band phones. Also, consider that some countries operate on different electricity from the States. You’ll not only need a converter to make your plug fit, but you’ll also need to check the voltage on your device to make sure it supports the voltage in the area you’re visiting.

• Plan for every contingency, including losing your laptop and cell phone. How would you access information on your local U.S. embassy? Bates provides travel insurance, as well as assistance, to those traveling abroad and advises they have access to live assistance in the event they need it. Anything can happen to someone traveling abroad, including medical emergencies, natural disasters, and political situations. By being prepared, a small business owner can travel abroad safely.

• While planning your trip, keep in mind you may not have access to a store to meet your electronics needs. Before packing, make a list of every conceivable item you’ll need and check off each item as you pack it. Be sure to include all chargers and cables. If you have special devices designed only for use on your international trips, leaving them in a suitcase specifically geared toward your overseas trips can help save time in the long run. Just be sure you test them several days before each trip so you can address any new problems before traveling far from home.

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A Look at International Business: Q&A with the Expert

GORAN LUKIC
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It's terms of business, the world is constantly getting smaller. And the rules, playing field and best practices for success in international commerce continue to change — seemingly by the day.

To shed more light on the ever-evolving global landscape and the expectations and unpredictable realm it represents, the Los Angeles Business Journal has turned to one of the leading experts on international business – Goran Lukic, Director of the International Services Office for RSM US LLP. Here’s how Lukic answered our questions.

◆ Of course, one of the biggest pieces of news on the international scene is Brexit — what is the impact of Brexit on the middle market?

LUKIC: Once the separation is final, the depression of the currency should boost exports via the trade channel for manufactured goods and financial and insurance services, which should partially offset losses of economic activity elsewhere. You should expect more price competition if your competitors are in the UK, and pricing pressure on your business’ products/services. If your client base is in Europe, from a UK perspective, service costs will increase. This will require a large number of free-trade agreements with the other 27 members of the EU, the U.K.‘s largest trading partner, in a relatively short period of time. It is possible that, after a modest period of contraction, and as the economy shifts to a lower growth path, forward-looking policymakers may choose the opportunity to put in place reforms in entitlement spending, regulation and taxes that will result in a more efficient allocation of capital, thus spurring growth.

◆ How does BEPS compliance affect middle market companies globally?

LUKIC: While smaller MNEs will not need to comply with all of the disclosure requirements resulting from the BEPS Project, they will still have to deal with the same substance and international tax changes that affect other companies. They may even need to restructure operations. Furthermore, the impact of BEPS is broader than just tax. Its impact can be felt across balance sheet, pricing methodologies, and implicates compliance, controversy and M&A deals.

Businesses doing business in foreign countries need to track what is happening in each jurisdiction in which they operate. Companies should take a look at their global operational and tax footprints, engage in strategic planning in order to be flexible enough to adapt to changes, and evaluate current systems in light of preparedness for compliance obligation changes.

◆ What are the top risks facing middle market global companies?

LUKIC: The economic slowdown in China is deeper than what is indicated by official statistics. We’re seeing significant outreach across finance, treasury and geographies, and implicates compliance, controversy and M&A deals.

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◆ What is the risk around the negative interest rate policy?

LUKIC: Risks to the financial sector and the middle market via negative interest rate policies cannot be overstated. A negative interest rate policy would cause issues with tax planning for middle market firms. Under such conditions, middle market firms would likely turn to making prepayments on taxes and utilities to avoid the costs of holding cash. Under a framework of such policies, the benefits are limited but clear. Lower real rates thus stimulate overall economic activity through the credit channel and trade channel via devaluation of the domestic currency and an improvement in competitiveness for domestic exporters. The risks around the policy, however, are asymmetric and fall under four general categories — avoidance and bordering, policy alignment; avoidance of; and asset bubbles.

◆ How do companies protect themselves in terms of money exchange when dealing with foreign companies?

LUKIC: US companies are increasingly dealing with foreign companies. We see this with small and mid-sized businesses becoming more global today than ever before.

This globalization exposes companies to fluctuating FX rates. There are many factors that cause fluctuation, all of which are beyond a company’s control, but can have a material impact on a company’s bottom line and long term viability.

Companies need a sound corporate FX risk management strategy. They need to develop an understanding of exposures to fluctuating rates as well as the options available to mitigate risk. Many companies that do this successfully rely on specialists for advice and execution.

Prospective risk management is important especially in times of increased volatility. The June 2016 Brexit vote is a prime example. Overnight, the unexpected outcome of the British vote caused GBP to fall by over 12% against USD. Over the past 12 months the range was 20%.

◆ Describe some of the typical tax implications that international companies experience.

LUKIC: One of the beauties of doing business internationally is discovering all the creative ways that governments find to tax goods and services. You may seek to outsource services from Country X to a lower cost jurisdiction, but Country X considers that “exporting jobs and services to another country” and will tax those outsourced services at 35%.

Also when staffing new foreign operations, keep in mind, your definition of a “foreign contractor” may be a foreign country’s definition of an “employee.”

◆ What resources should be pursued by a company that is looking to expand internationally?

LUKIC: Let’s define “resources” in terms of “who should be at the table” rather than financial resources. Resources to bring to the table include legal, international tax planning, accounting, HR, Sales & Marketing, Operations and Supply Chains. This is all internal and external. Regardless of the reason for entering a foreign country (i.e., my client told me that we need to be there), a cost-benefit analysis is essential. Outside marketing resources can help a company create effective marketing strategy and understand “what is the upside.” Inside marketing can assess to what degree current clients can be leveraged by sales or introductions. International tax expert during this phase is vital to analyzing the ITAX implications associated with expansion. A company should call on a lawyer or an accountant to ensure that risks are being mitigated properly. Finally, a management consultant can help with assessing the options and minimizing that you’ve identified along the way.

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