

International Entrepreneur Parole

June 22, 2021

International Entrepreneur Parole

A) What visa options exist based on investment?

1. E-2 Treaty Investor Visa

- a) The statute requires the investment of a "substantial amount of capital."
- b) A particular amount of investment is not stipulated. The amount depends upon the scope of the venture.
- c) The E-2 visa applicant must demonstrate the capability to "develop and direct" the enterprise.
- d) "Passive" investments like in undeveloped real estate are not E-2 visa eligible.
- e) The investment cannot generate only enough income to create a job for the E-2 investor.

International Entrepreneur Parole (continued)

f) The visa can be valid for six months to five years depending on the Department of State's Reciprocity Schedule.

g) An E-2 investor cannot be the beneficiary of a labor certification application – the usual first step in the employment-based permanent residence procedure – because the Department of Labor's position that an owner is not an "employee."

h) The major deficiency of the E-2 visa category is that it is limited to citizens of countries which have an investment treaty with the United States. There are no E-2 visa treaties with China or India.

International Entrepreneur Parole (continued)

2. EB5 Employment Creation Immigrant Visa

- a) The investor must commit \$1,800,000 to a new commercial enterprise.
- b) The amount is reduced to \$900,000 if investment is located in a "targeted employment area": a rural area or a high (150 percent of the national average) unemployment rate.
- c) Litigation is pending that challenges the regulation that increased the required amounts from \$1,000,000 and \$500,000.
- d) At least ten new jobs for U.S. workers must be created.
- e) The investor must be engaged in either day-to-day managerial control or policy formation.

International Entrepreneur Parole (continued)

- f) The shortcomings of the EB5 immigrant visa are:
 - i. The difficulty of securing the necessary capital to invest.
 - ii. Excessive documentation requirements.
 - iii. Unpredictable and inconsistent adjudications.
 - iv. Very slow processing.

International Entrepreneur Parole (continued)

3. EB1-A Aliens with Extraordinary Ability

a) This is an employment-based immigrant visa category – not an investment visa *per se*.

b) However, the EB1-A applicant can demonstrate high achievement in "business" and a job offer and labor certification are not required.

c) The EB1-A applicant must have a documented, successful career. This category is not available to new, aspiring entrepreneurs.

International Entrepreneur Parole (continued)

4. EB2 Professional Holding Advanced Degrees – "National Interest Waiver" Exemption

- a) This classification also is not an investment visa category *per se*.
- b) The EB2-NIW applicant can self petition: neither a job offer nor a labor certification is required.
- c) Typical areas on which EB2-NIW adjudications are looked upon favorably are national defense and health care.
- d) The EB2-NIW challenges are the requirements of a Master's and Ph.D. degree and the difficulty of establishing that a new company is already capable of advancing the U.S. "national interest."

International Entrepreneur Parole (continued)

5. H-1B "Specialty Occupation" Visa

a) A U.S. corporation is its own "legal person." Therefore, an entrepreneur can establish a new company, which can then file an H-1B visa petition on the investor's behalf.

b) The difficulties with this strategy are numerous:

- i. The new entity's H-1B visa petition must win the "visa lottery" in April.
- ii. The entity must be able to demonstrate that the investor/employee will be supervised, perhaps by the Board of Directors.
- iii. The new entity may not have the funds to pay the investor/employee the "required wage." The "required wage" is high for executive level positions.

International Entrepreneur Parole (continued)

iv. The USCIS adjudicator may determine that the offered position is not a "specialty occupation" because it does not require at least a bachelor's degree in a particular field of study.

International Entrepreneur Parole (continued)

6. "International Entrepreneur Parole" is designed to create a vehicle for younger entrepreneurs who may not have capital but can attract it.

a) "Parole" is neither an immigrant (permanent residence) nor nonimmigrant (temporary) visa category. Instead, it is a special permission to enter and remain in the United States.

b) The short history of IEP is complicated:

i. The Obama USCIS created it on July 17, 2017.

ii. The Trump USCIS postponed its effective date.

International Entrepreneur Parole (continued)

iii. A federal court nullified the postponement because the Trump USCIS had not complied with the requirements of the Administrative Procedures Act.

iv. USCIS was required to accept and process IEP applications. However, few applications were filed because the Trump USCIS did propose to eliminate the IEP program in compliance with the Administrative Procedure Act.

v. The Trump administration did not complete the required steps to terminate IEP before its term expired.

vi. Last month, the Biden USCIS withdrew the pending rulemaking to eliminate IEP.

International Entrepreneur Parole (continued)

- c) There is no longer a cloud over the IEP program. The Biden USCIS will now look favorably on IEP applications.
- d) An entrepreneur is potentially eligible for two 30-month grants of IEP.
- e) The requirements for the first 30 months are:
 - i. The alien applicant must own at least 10% of an entity created in the past five years.
 - ii. The alien applicant must have an active and central role in the entity's operation.

International Entrepreneur Parole (continued)

- iii. It must be established that the entity has substantial potential for rapid growth and job creation by:
- a) Investment of at least \$250,000 by venture capital firms, angel investors or start-up accelerators.
- OR
- b) Federal, state or local grants of at least \$100,000.
- OR
- c) Partial satisfaction of "a" or "b" plus additional reliable and compelling evidence that the new entity has the potential for rapid growth and job creation.

International Entrepreneur Parole (continued)

- f) The requirements for the second 30-month period are:
 - i. The start-up entity must have continued in operation and continue to display the potential for rapid growth and job creation.
 - ii. The alien applicant must continue to own at least 5% of the start-up entity.
 - iii. The alien applicant must continue to have an active and central role in the operation of the start-up entity.

International Entrepreneur Parole (continued)

iv. One of the following must be established:

a) Additional investment or government grants of at least \$500,000.

OR

b) Annual revenue reached of at least \$500,000 with average annualized revenue growth of at least 20%.

OR

c) The creation of at least five full-time jobs for US workers.

OR

d) Partial satisfaction of "a," "b" or "c" plus additional reliable and compelling evidence of the potential for rapid growth and job creation.

International Entrepreneur Parole (continued)

- g) At any time during the five-year period, the International Entrepreneur can qualify for any other nonimmigrant or immigrant visa.
- h) The IEP applicant can be inside or outside the U.S. when filing the application.
- i) The investment may not come from a family member or from an entity controlled by a family member.

Thank you



John S. Brendel
Shareholder

john.brendel@dentons.com

412-297-4987

Lawrence M. Lebowitz
Shareholder

larry.lebowitz@dentons.com

412-297-4979

Dentons Cohen & Grigsby P.C.
625 Liberty Avenue, 5th Floor
Pittsburgh, PA 15222-3152

Dentons is the world's largest law firm, connecting talent to the world's challenges and opportunities in more than 75 countries. Dentons' legal and business solutions benefit from deep roots in our communities and award-winning advancements in client service, including [Nextlaw](#), Dentons' innovation and strategic advisory services. Dentons' polycentric and purpose-driven approach, commitment to inclusion and diversity, and world-class talent challenge the status quo to advance client and community interests in the New Dynamic. www.dentons.com