U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services *Customer Service and Public Engagement Directorate* (MS 2260)
Washington, DC 20529

U.S. Citizenship and Immigration Services

Teleconference Questions

Future "Significant Public Benefit" Parole Program For Entrepreneurs
Thursday, June 25, 2015
2:30 – 4 p.m. (Eastern)

Consistent with Section 2(c) of Executive Order 13563 directing agencies, when feasible, to seek the views of the public prior to a possible rulemaking, USCIS invites stakeholders to provide input on a proposal to apply "significant public benefit" parole to certain inventors, researchers and founders of start-up enterprises.

Refer to the attached details on how to register for the teleconference.

We also encourage you to submit answers to the questions below, either before or after the engagement. Send your responses to Public.Engagement@uscis.dhs.gov.

About the Future "Significant Public Benefit" Parole Program

Secretary of Homeland Security Jeh Johnson directed USCIS to propose a program to consider parole on a case-by-case basis, pursuant to the Secretary's existing statutory parole authority, , for inventors, researchers and founders of start-up enterprises who may not yet qualify for a national interest waiver, but who:

- Have been awarded substantial U.S. investor financing; or
- Otherwise hold the promise of innovation and job creation through the development of new technologies or the pursuit of cutting-edge research.

Parole would allow these individuals to temporarily pursue research and engage in the development of promising new ideas and business in the United States. See Secretary Johnson's November 20, 2014, memorandum titled Policies Supporting U.S. High-Skilled Businesses and Workers.

During this engagement, USCIS representatives will seek input that will help us develop the program.

USCIS is particularly interested in the topics listed below. We encourage stakeholders to provide data, fact-based evidence and any other written information relevant to this effort. We are not seeking any group or consensus advice during this stakeholder meeting, but only individual thoughts and feedback.

Topics

Qualifying U.S. Investors

Please provide us with your feedback on how you would identify a qualifying U.S. investor for purposes of the entrepreneur parole program.

- How would you identify a legitimate and credible investor, incubator or accelerator, and what mechanisms would you suggest using to monitor these entities for fraud or abuse?

  National Venture Capital Association Response:

  The USCIS should certainly develop standard definitions that are designed to objectively identify and categorize legitimate and credible investors who invest in or otherwise provide support to bona fide entrepreneurial businesses in the U.S. An example of such a legal definition for a qualifying U.S. investor is the definition of "Qualified Venture Capitalist" as set forth in Exhibit A. The NVCA helped develop this definition in connection with the Senate bill that was proposed in 2013 to establish an employment-based immigrant visa program for alien entrepreneurs who have received significant capital from investors to establish a business in the U.S. Standard definitions setting forth criteria for various categories of qualifying U.S. investors would be useful for establishing safe harbors that could be relied upon to qualify for the entrepreneur parole program without necessarily having to go through a regulatory approval process that may otherwise be expensive and cause delays.

  Any definition that incorporates a minimum amount of capital raised from third party investors would be a legitimate criterion since raising capital from arms-length investors is likely an objective indication that the fund has credibility. To avoid any definitions that are unnecessarily under-inclusive, the USCIS should not set the minimum to be raised above a reasonable level such as $10 million. Alternatively, another criterion could be that a fund has a track record of investing at least $10 million over the past five years. These types of alternative criteria could more easily accommodate investors that are not necessarily institutional but nevertheless are genuine, active investors such a family offices or smaller angel funds.

  While standard legal definitions and metrics may be used to establish a safe harbor to qualify for the entrepreneur parole program, the USCIS should also consider legitimate, alternative criteria that track actual practice today to fund entrepreneurial companies. For example, many early stage investments are not made by institutional funds, but rather are made by individual "angel" investors. An objective metric for such investors may be the filing of a Form D with the Securities and Exchange Commission ("SEC") pursuant to Regulation D of the Securities Act of 1933. Such a filing typically reflects that the company raising capital has done so through "accredited investors" as such term is defined under Regulation D. In addition, the acceptance of funds from Small Business Investment Companies ("SBICs") pursuant to the SBIC program of the Small Business Administration may be another criterion. Further, research grants of above a minimum dollar threshold from universities, corporate or other recognized sponsors, as well as Small Business Innovation Research ("SBIR") awards and other government research grants, may be legitimate criteria for a company to qualify for the entrepreneur parole program.

The USCIS should also consider criteria that would encourage the formation of capital that accelerates entrepreneurship and attracts talented immigrants. For example startup funds without an established record should be able to sponsor immigrant entrepreneurs provided such funds meet minimum criteria. We suggest that encouraging new startup funds (like Unshackled) to form just to invest in immigrant entrepreneurs could provide substantial benefits to the US economy. The benefits from entrepreneurial ventures are well-documented.

Finally, the USCIS should consider accelerators and incubators as important organizations that should qualify for the entrepreneur parole program. Accelerators and incubators provide critical guidance and support to entrepreneurs at very early stages and often at times when no or minimal funds are otherwise available to the entrepreneur. These organizations, such as Y Combinator, are an essential part of the "ecosystem" for entrepreneurship. Eligibility for such organizations may include an established track record of "graduating" companies over a reasonable period of time as well as a minimum capital base such a $10 million as discussed above.

Substantial U.S. Investor Financing

Please provide your feedback and supporting information regarding U.S. investor financing in startup entities in the United States and what amount you would consider to be substantial.

General NVCA Response: As discussed above with respect to criteria to identify legitimate investors, objective criteria to establish safe harbors to qualify for the entrepreneur parole program based on the nature of investment should be supplemented with other criteria that is sufficiently flexible such that it accurately depicts realistic methods of capital raising by entrepreneurs. Along these lines, while we have provided historic data in response to the questions below, the NVCA suggests that the USCIS should not become overly focused on such metrics. We have offered guidance below for what we believe would be appropriate metrics for eligibility for the entrepreneur parole program.

- What are the types of investments that investors in start-up entities typically contribute (e.g., equity, convertible debt)?

National Venture Capital Association Response:

Start-up companies that are formed as corporations typically issue capital stock in the form of common and/or preferred stock. Those that are formed as limited liability corporations or limited partnerships issue similar securities albeit in the form of membership or limited partnership units, respectively. It is also increasingly customary for such start-up entities to issue promissory notes, also referred to as "bridge debt", that are convertible into an underlying equity security. Often such convertible debt is issued in connection with additional securities such as warrants. We believe all of the foregoing securities should be included in the definition of the types of securities issued in financings by start-up entities. We do not believe, however, that conventional debt which is not otherwise convertible into an underlying equity security should be included by the USCIS as eligible criteria to qualify for the entrepreneur parole program.

- What is the average and median investment amount (including grants) for the average start-up in each round of financing (e.g., seed, Series A, B and C)? Please disaggregate by round of financing and by industry.

  National Venture Capital Association Response: We have provided this information in Exhibit B. As discussed in our general comment above, we caution the USCIS to not over emphasize such data. For example, many successful early stage start-ups historically have raised much less than the average listed for "seed" stage companies in 2014 as set forth in Exhibit B (the seed funding amounts in Exhibit B are typically reported by venture funds and therefore are larger and not necessarily representative of a typical seed stage funding). These averages can fluctuate from year to year and can be skewed by disproportionately large raises in certain years by a limited number of companies that are not otherwise representative of standard investing patterns. In the past several years there have been a number of high-profile companies such as Uber that have raised significant amounts of money at extremely high valuations. These so-called "unicorns" drive the average round sizes higher than the prevailing investment sizes throughout the rest of the industry to levels that are not representative.

- To what extent is there a correlation between the amount of investment received and whether the start-up entity generates significant revenue and experiences significant job creation?

  National Venture Capital Association Response: There is not necessarily a correlation between dollars invested in a business and job creation. In fact, failure is generally the rule and success the exception for entrepreneurial ventures. As depicted in Exhibit B, while there are typically well over a 1,000 companies that receive first time funding annually, the number of exits through an initial public offering or sale is much lower. Despite typical due diligence and review, a promising entrepreneur receiving funding from a venture capital fund has no guarantee of success. There are many reasons for failure including unseen and unforeseen competitors, rapid obsolescence, operational issues, non-competitive economics, inadequate later stage financing, etc. No venture capitalist would invest in a company without strong expectations of likely success. But an analysis of Thomson Reuters historical data suggests that fewer than 15% of companies ultimately go public (less these days), and fewer than 11% of them are successfully sold to a strategic buyer for a good return. That leaves roughly three quarters of the companies of the companies failing for very good reasons. Failure is part of the process. In fact, a popular mantra in Silicon Valley is "fail fast" which acknowledges that failure is part of the process and therefore if a business model is not viable, the entrepreneur should make such a determination as soon as possible. Many, but not all, of the most visible venture-backed successes were led by serial entrepreneurs whose first venture(s) may not have succeeded. Just because an entrepreneur fails at one venture, he/she may well have learned from such prior failure, continue to innovate and ultimately succeed in the next venture.

While establishing a minimum investment threshold would make sense to validate eligibility (perhaps $500,000), subsequent investments should not be mandatory. Some companies only require a single financing before breaking even while other companies can become self-sustaining on research and academic grants, or non-recurring engineering ("NRE") payments (especially healthcare or science-based companies).

The USCIS may also want to consider non-financial factors that not only lead to job creation but provide broader societal benefits. For example, innovation through the development of intellectual property has a well-documented record of creating broad public benefits. Metrics such a patent applications and patents awarded may be measurable and potentially valid factors to establish eligibility criteria to qualify for the entrepreneur parole program. In addition, the development of mobile applications and software code generally may also be the basis for consideration by the USCIS. There are many "paths to success" that may be legitimate bases for eligibility.

- What is the average and median fully diluted equity stake held by entrepreneurs in start-up entities following each round of financing (e.g., seed, Series A, B, and C)? Please disaggregate by round of financing and by industry.

  National Venture Capital Association Response: The NVCA does not believe this data is publicly available. More important, we do not believe such data would otherwise be meaningful for purposes of establishing future success or otherwise as a filter for legitimacy. Dilution is a function of valuation which can vary greatly by sector and due to economic cycles. Such macro factors make any inference from such data less valuable.

- What percentage of investors in start-up enterprises in the United States realize a return on their investment? How long does it take the average investor to exit with a return? Please disaggregate by industry.

  National Venture Capital Association Response: Venture investors realize a return when an investee company effects an initial public offering (IPO) or is acquired (M&A). These exit milestones typically take a number of years. We provide investment return data in Exhibit B. As provided in our general comment above, we do not believe such data is meaningful for purposes of establishing eligibility criteria for the entrepreneur parole program. Part of the explanation is the unreliability of short-term returns due to the nature and duration of investment exits as set forth in Exhibit B. Return on investment and duration to exit are subject to significant measurement problems and will not be subject to reliable standards. For example, returns based on private company valuations prior to a liquidity exit are subjective by nature. Venture returns can also fluctuate greatly over short periods of time. High returns in the short run may not ultimately be representative of long-term success nor may negatives returns in the short-run be indicative of investment failure.

After the investor has achieved an exit, the proceeds are distributed to the venture fund and then to that fund's investors. Historically, investors in venture capital funds have significantly outperformed the public markets. It is important to note, however, that in many sectors whether a company will be successful will necessarily take many years to determine. For example, a medical device may require many years to develop and a company cannot know whether its device will ultimately receive or be denied FDA approval. The same reality applies to drug development. In software, for example multiple ride-sharing or online merchants could spend years building markets but perhaps just one or two may ultimately survive and prevail.

We believe more reliable criteria to establish eligibility for the entrepreneur parole program should focus on funding and job creation as more accurate indicators for entrepreneurial success. As discussed above, the USCIS may also want to create metrics that attempt to measure innovation, such as the development of intellectual property, particularly given the well-documented societal benefits from innovation.

- What percentage of start-ups in the United States go on to earn at least $1 million in annual revenue? How long does it take on average to reach this level? Please disaggregate by industry.

National Venture Capital Association Response: We are not aware of any publicly available data for these questions. Moreover, many very successful companies do not reach meaningful revenue for decades, such as in the biotech sector. The NVCA believes that funding and job creation targets should be sufficiently reliable criteria for the USCIS. Alternatively, if the USCIS believes revenue targets should be included, a reasonably minimum threshold should be set such as $1 million in three to five years from formation.

Promise of Innovation and Job Creation

Please provide your feedback and supporting information regarding average growth trends for start-ups, particularly related to the number of jobs created, amount of investment received and amount of revenue generated.

National Venture Capital Association Response: As discussed above, we do not believe that the amount or frequency of subsequent fundings is meaningful. Given that many successful companies do not require subsequent financings, we believe future funding is less reliable as an indicator. While initial funding is an important milestone, we also believe other metrics such as job creation and the development of intellectual property are important criteria for success.

- Are you aware of entrepreneurs who might be interested in this proposed program, in the absence of other immigration options?

National Venture Capital Association Response: The NVCA believes there would be strong interest in the entrepreneur parole program by immigrant entrepreneurs. There are already several funds, such as Unshackled, and startups like Bridge.us, that are focused on would-be immigrant entrepreneurs.

- How many jobs would a start-up be expected to create at year 3, year 4 and year 5 to show rapid growth?

  National Venture Capital Association Response: It is hard to generalize as job growth will vary by sector and by company. We believe reasonably attainable benchmarks would be appropriate such as the creation of 10 jobs by the end of Year 3 and 25 jobs by end of Year 5. The definition of "jobs" should include independent contractors who report income on Form 1099 (such as those hired by on-demand marketplaces). These positions could be quantified through FTE calculations. Also the definition of jobs should be jobs for US citizens and green card holders if only to avoid criticism that the program is only benefiting foreigners. The USCIS may also want to consider addressing job permits for the immigrant entrepreneur's spouse in order to be competitive with other countries' programs.

- What is the average amount of investment that a start-up would need to receive at year 3, year 4 and year 5 to show rapid growth?

  National Venture Capital Association Response: As discussed above, we believe any focus on subsequent fundings would be misplaced. Eligibility for the parole program should not depend on subsequent investment. Any such requirement could actually penalize companies that achieve early success and do not require additional capital. This could also penalize companies in downturns when it becomes more difficult to raise capital.

- What is the average amount of revenue that a start-up would expect to generate at year 3, year 4 and year 5 to show rapid growth?

  National Venture Capital Association Response: While important, revenue as a metric may be useful for some sectors but may be unfair for others that require long lead times such as health care, medical devices and biotech. For companies outside of such sectors, however, a revenue threshold of $1 million in 3-5 years may be a reasonable criterion.

- How do the average investment, job creation and revenue amounts vary from industry to industry? From state to state?

  National Venture Capital Association Response: We have provided investment data by industry sector in Exhibit B. We are not aware of reliable data on job creation and revenue growth for private companies as such data is generally not publicly available. We do believe that job creation and revenue growth will vary more by individual company than by industry sector or geography, with the possible exception of Silicon Valley due to the high concentration of venture capital in such location.

Please provide any other research, data or reports that you believe should help inform the development of this program.

Stakeholders are welcome to send responses to these questions to Public.Engagement@uscis.dhs.gov either before the engagement on Thursday, June 25, 2015, or afterward.

For more information on the executive actions on immigration, visit uscis.gov/immigrationaction. We strongly encourage you to subscribe to receive an email whenever additional information on these initiatives is available on our website.

We look forward to engaging with you!

Exhibit A

A venture capital fund is a Qualified Venture Capitalist if:

- The fund (a) is a "venture capital operating company" or VCOC under Section 25110.3-110(d) of title 29, Code of Federal Regulations or (b) has management rights (as defined in, and to the extent required by, Section 25110.3-110 (d)) in its portfolio companies;
- The fund's investment advisor, as defined under the Investment Advisors Act of 1940, has its primary office location in the United States;
- The fund's investment advisor is owned, directly or indirectly, by individuals the majority of whom are US citizens or green card holders;
- The fund has capital commitments of not less than $10 million;
- The fund's investment advisory has been advising this or other funds for at least 2 years, and
- This or other funds that are advised by the fund's investment adviser have made at least 2 investments of not less than $500K during each of the most recent 2 years.

Exhibit B

Recent returns for Institutional Grade US Venture Capital Funds

US Venture Capital Funds - 12/31/2014	1 Qtr	1 Year	20 Year
All US Venture	9.90%	21.50%	35.40%
Segment: Early stage funds	10.90%	23.10%	56.70%
Segment: Later and Expansion stage	4.60%	8.90%	11.30%
Segment: Multi-Stage Focus	9.80%	23.00%	13.80%
U.S. Growth Equity	1.60%	11.60%	N/A
Comparison: DJIA	5.20%	10.40%	10.50%
Comparison: NASDAQ Composite	5.40%	13.40%	9.60%
Comparison: S&P 500	4.90%	13.70%	9.90%

Source: Cambridge Associates/NVCA

Chart shows annualized Internal Rates of Return (IRRs) net to investors in venture capital funds such as pension plans, endowments, family offices, high net worth individuals. Time periods are all leading up to and end date of 12/31/2014.

Exits by sector - 2014 Exits (IPOs and Acquisitions)
Source: Thomson Reuters/NVCA

MoneyTree Sector	# IPO Companies	Years from first financing to IPO	Ave IPO Amount $Million	# Acquired Companies	Years from 1st Financing to Acquisition	Ave Acq Amount $Million
Biotechnology	65	7.2	81.64	36	5.7	243.42
Computers and Peripherals				5	4.0	1,880.71
Consumer Products and Services	2	5.1	1,269.16	10	4.3	1,090.06
Electronics/Instrumentation				4	9.0	1.00
Financial Services	3	8.3	433.92	2	5.0	117.00
Healthcare Services	2	7.3	135.83	1	-	-
Industrial/Energy	1	12.0	82.50	29	6.4	63.83
IT Services	4	6.9	106.97	55	5.5	162.46
Media and Entertainment	6	7.8	121.68	58	5.7	103.17
Medical Devices and Equipment	9	9.1	65.16	19	7.1	242.70
Networking and Equipment	2	8.6	139.46	5	9.7	53.13
Retailing/Distribution	2	5.0	243.43	7	12.1	575.33
Retailing/Distribution				14	10.7	131.17
Software	20	8.0	172.57	202	5.8	712.48
Telecommunications				15	7.2	332.94
Total	**116**	**7.5**	**133.29**	**470**	**6.2**	**346.33**

IPOs and Acquisitions in 2014
Source: Thomson Reuters/NVCA

MoneyTree Sector	# IPO Companies	# IPOs over $1 Million Valuation	# Acquired Companies	# Acquisitions over $1 Million Valuation
Biotechnology	65	65	36	25
Computers and Peripherals			5	1
Consumer Products and Services	2	2	10	1
Electronics/Instrumentation			4	3
Financial Services	3	3	2	1
Healthcare Services	2	2	1	1
Industrial/Energy	1	1	29	12
IT Services	4	4	55	13
Media and Entertainment	6	6	58	19
Medical Devices and Equipment	9	9	19	12
Networking and Equipment	2	2	5	3
Retailing/Distribution	2	2	7	3
Retailing/Distribution			14	6
Software	20	20	202	35
Telecommunications			15	5
Total	**116**	**116**	**470**	140

Information Technology MoneyTree Sectors - 2014 Investment
Source: PricewaterhouseCoopers/National Venture Capital Association MoneyTree™ Report, Data: Thomson Reuters

2014 Company Development Stage	# Companies Funded	Average per company $Million	$M Invested
Seed	91	2.87	261.30
Early Stage	1299	7.21	9,363.70
Expansion	698	23.37	16,310.44
Later Stage	414	17.63	7,298.07
	2480	13.40	33,233.52

Biotechnology, Pharmaceutical, and Medical Device MoneyTree Sectors - 2014 Investment
Source: PricewaterhouseCoopers/National Venture Capital Association MoneyTree™ Report, Data: Thomson Reuters

2014 Company Development Stage	# Companies Funded	Average per company $Million	$M Invested
Seed	61	5.66	345.46
Early Stage	284	14.68	4,169.90
Expansion	101	11.19	1,130.66
Later Stage	186	16.58	3,084.21
	620	14.08	8,730.23

Where are they Now? Outcomes for first venture fundings in 2005 and 2010 (10 years and 5 years in portfolios)
Source: PricewaterhouseCoopers/National Venture Capital Association MoneyTree™ Report, Data: Thomson Reuters

		Companies receiving first fundings in 2010
Total number of companies		1097
% gone public	23	2%
% acquired	223	20%
% known failed	8	1%
% remaining in portfolios or quietly failed	843	77%