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**DEPARTMENT OF HOMELAND SECURITY**

**8 CFR Parts 103, 212 and 274a**

**[CIS No. 2572-15; DHS Docket No. USCIS-2015-0006]**

**RIN 1615-AC04**

**International Entrepreneur Rule: Delay of Effective Date**

**AGENCY:** U.S. Citizenship and Immigration Services, DHS.

**ACTION:** Final rule with request for comment; delay of effective date.

**SUMMARY:** The Department of Homeland Security (DHS) is temporarily delaying the effective date of the International Entrepreneur Final Rule (82 FR 5238). This delay will provide DHS with an opportunity to obtain comments from the public regarding a proposal to rescind the rule pursuant to Executive Order (E.O.) 13767, “Border Security and Immigration Enforcement Improvements.”

**DATES:** The effective date of the regulation entitled International Entrepreneur Rule, published in the Federal Register on January 17, 2017, 82 FR 5238, is delayed from July 17, 2017 to March 14, 2018, except for amendatory instruction 6.a revising 8 CFR 274a.2(b)(1)(v)(C)(2), which will go into effect on July 17, 2017. Written comments must be received on or before [Insert date 30 days from date of publication in the FEDERAL REGISTER].

**ADDRESSES:** You may submit comments, identified by DHS Docket No. USCIS-2015-0006, by any one of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the website instructions for submitting comments.

- Mail: You may submit comments directly to U.S. Citizenship and Immigration Services (USCIS) by sending correspondence to Samantha Deshommes, Chief, Regulatory Coordination Division, Office of Policy and Strategy, UCSIS, DHS, 20 Massachusetts Avenue, NW, Washington, DC 20529. To ensure proper handling, please reference DHS Docket No. USCIS-2015-0006 in your correspondence. This mailing address may be used for paper, disk, or CD-ROM submissions.

**FOR FURTHER INFORMATION CONTACT:** Steven Viger, Adjudications Officer, Office of Policy and Strategy, USCIS, DHS, 20 Massachusetts Avenue, NW, Suite 1100, Washington, DC 20529-2140; telephone (202) 272-8377.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On August 31, 2016, the Department of Homeland Security (DHS or Department), U.S. Citizenship and Immigration Services (USCIS) published the International Entrepreneur Notice of Proposed Rulemaking in the *Federal Register*. See 81 FR 60129. On January 17, 2017, DHS published the International Entrepreneur Final Rule (the IE Final Rule) in the *Federal Register*. The effective date is July 17, 2017. See 82 FR 5238.

The IE Final Rule amended DHS regulations to include criteria that would guide the implementation of the Secretary of Homeland Security's discretionary case-by-case parole authority as applied to international entrepreneurs. Specifically, it applied to international entrepreneurs who can demonstrate that their parole into the United States under section 212(d)(5) of the Immigration and Nationality Act (INA) would provide a significant public benefit to the United States. In accordance with the final rule's criteria, such potential would be indicated by, among other things, the receipt of significant capital investment from U.S.

investors with established records of successful investments, or obtaining significant awards or grants from certain Federal, State or local government entities. In addition to defining criteria for the favorable exercise of the Secretary's discretionary parole authority, the IE Final Rule established a period of initial parole stay of up to 30 months (which may be extended by up to an additional 30 months) to facilitate the applicant's ability to oversee and grow his or her start-up entity in the United States.

On January 25, 2017, the President issued Executive Order (E.O.) 13767, *Border Security and Immigration Enforcement Improvements*, prescribing improvements to border security and immigration enforcement. See 82 FR 8793 (Jan. 25, 2017). Section 11(d) of the E.O. requires the DHS Secretary to "take appropriate action to ensure that parole authority under section 212(d)(5) of the INA (8 U.S.C. 1182(d)(5)) is exercised only on a case-by-case basis in accordance with the plain language of the statute, and in all circumstances only when an individual demonstrates urgent humanitarian reasons or a significant public benefit derived from such parole."

After review of E.O. 13767, DHS decided to delay the effective date of the IE Final Rule, to further consider it in light of E.O. 13767. The new effective date for the IE Final Rule, with one minor exception, is March 14, 2018. Additionally, DHS will issue a Notice of Proposed Rulemaking soliciting public comments on the proposal to rescind the IE Final Rule. The delayed effective date will provide an opportunity for the notice and comment rulemaking to take place.

As indicated above, DHS is not delaying the effective date with respect to one provision in the IE Final Rule. In the IE Final Rule, DHS revised 8 CFR 274a.2(b)(1)(v)(C)(2) to add the Department of State Consular Report of Birth Abroad (Form FS-240) to the regulatory text and

to the “List C” listing of acceptable documents for Form I-9 verification purposes. *See* 82 FR 5238, 5241 & n.3. As part of the IE Final Rule, DHS also revised the accompanying form instructions to reflect this change. As this provision is unrelated to entrepreneur parole under the IE Final Rule, this one provision will go into effect on July 17, 2017, as originally provided.

## **II. Administrative Procedure Act**

The Administrative Procedure Act (APA) authorizes agencies to issue a rule without notice and comment upon a showing of good cause. 5 U.S.C. 553(b)(B). The APA’s good cause exception to public participation applies upon a finding that those procedures are “impracticable, unnecessary, or contrary to the public interest.” 5 U.S.C. 553(b)(B).

DHS has good cause to forego notice and comment rulemaking to delay the effective date for the implementing provisions of the IE Final Rule, because notice and comment rulemaking would be contrary to the public interest. For the same reason, DHS has good cause to dispense with the 30-day delayed effective date. DHS, however, is nevertheless soliciting post-promulgation public comments on the decision to delay the IE Final Rule.

Undertaking notice and comment rulemaking to delay the IE Final Rule is contrary to the public interest for multiple reasons. If DHS does not delay the effective date immediately, USCIS would be required to expend limited agency resources to implement the IE Final Rule. Those resources are otherwise needed for USCIS to effectively and efficiently carry out its many existing immigration benefit programs facilitating lawful migration into United States. For example, implementing the program would require USCIS to establish a new business line for the processing of entrepreneur parole applications, hiring and training additional adjudicators, modifying intake and case management information technology systems, modifying application and fee intake contracts, developing guidance for the adjudicators, and communicating with the

public. Given that DHS will be proposing to rescind the IE final rule, and may ultimately eliminate the program, the expenditure of these resources is unlikely to ever be recouped from filing fees under the new program. USCIS derives approximately 96 percent of its operating budget from fees, and would be required to absorb the costs of the IE program within its existing operating budget, possibly impacting efficiency and effectiveness in other programs. An inefficient use of limited resources is not conducive to the security and economic interests of the United States. Therefore, it is necessary for DHS to immediately suspend the effective date of the IE Final Rule.

Undertaking notice and comment rulemaking to delay the IE Final Rule while DHS considers rescinding the rule also would be contrary to the public interest for other reasons: doing so would sow confusion and would likely cause the waste of resources by multiple stakeholders with interests in this rulemaking. *See generally Am. Hosp. Ass'n v. Bowen*, 834 F.2d 1037, 1045 (D.C. Cir. 1987) (observing that exceptions to notice and comment, although construed narrowly, are designed for “situations where the policies promoted by public participation in rulemaking are outweighed by the countervailing considerations of effectiveness, efficiency, expedition and reduction in expense”) (quotation marks omitted). Courts have found “good cause” under the APA when an agency is moving expeditiously to eliminate uncertainty or confusion that, if left to linger, could cause tangible harm or hardship to the agency, the program, program users, or other members of the public. *See Mid-Tex Elec. Coop. v. FERC*, 822 F.2d 1123, 1133–34 (D.C. Cir. 1987) (agency had good cause to promote continuity and prevent “irremedial financial consequences” and “regulatory confusion”).

Allowing the IE Final rule to go into effect while the agency undertakes notice and comment rulemaking to delay its effective date in order to consider a rescission would lead the

public to continue to rely on the rule. Such reliance would include expending significant effort and resources in order to establish eligibility under the criteria promulgated by the IE Final Rule. These criteria include establishing a start-up entity in the United States and demonstrating that the entity has secured significant U.S. capital investment or government funding. In the event the IE Final Rule is rescinded – which the Department believes is highly likely – individuals who satisfied these and other requirements of the IE Final Rule would quite possibly do so without being able to reap benefits from the rule. Therefore, providing notice and comment in this case is contrary to public interest.

### **III. Executive Order 12866, Regulatory Planning and Review**

This rule is not “significant” under E.O. 12866, *Regulatory Planning and Review*.

### **IV. Paperwork Reduction Act**

DHS is delaying the effective date for all proposed changes to the Form I-131, I-765, and I-941, from July 17, 2017, to March 14, 2018. Proposed changes to the Form I-9, with the exception to those changes specific to IE parole, will be effective July 17, 2017.

Under the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13, all Departments are required to submit to the Office of Management and Budget (OMB), for review and approval, any reporting requirements inherent in a rule. See Pub. L. 104-13, 109 Stat. 163 (May 22, 1995). This final rule involves a new information collection and makes revisions to the existing information collections as follows:

#### **A. Overview of information collection, Application for Entrepreneur Parole, Form I-941:**

The IE Final Rule published on January 17, 2017, requires that an applicant requesting entrepreneur parole complete an Application for Entrepreneur Parole, Form I-941 which is a new

information collection under the PRA. USCIS did receive one comment regarding the time burden of this form and, upon review of the work involved to review the form, gather necessary information to support the submission, and the time required to complete and submit the form, USCIS revised the estimated hour burden per response to 4.7 hours. The Form I-941 is being delayed until March 14, 2018.

a. Type of information collection: New information collection.

b. Abstract: If implemented, this collection would be used by individuals who file an application for entrepreneur parole under INA section 212(d)(5)(A) (8 U.S.C. 1182(d)(5)(A)) and new 8 CFR 212.19. Such individuals, other than those filing an application on the basis of a material change, would be subject to biometric collection in connection with the filing of the application.

c. Title of Form/Collection: Application for Entrepreneur Parole, Form I-941.

d. Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection: Form I-941, U.S. Citizenship and Immigration Services.

e. Affected public who will be asked or required to respond: Businesses and other for profit; Not-for-profit Institutions.

f. An estimate of the total annual numbers of respondents: 2,940.

g. Hours per response: The estimated hour per response for Form I-941 is 4.7 hours; the estimated hour burden per response for the biometric processing is 1.17 hours.

h. Total Annual Reporting Burden: The total estimated annual hour burden associated with this collection is 17,258 hours.

**B. Overview of information collection, Application for Travel Document Form I-131,**

**OMB Control No. 1615-0013:**

The IE Final Rule published by DHS on January 17, 2017 revised this information collection (i.e. Form I-131) by including spouses and children seeking parole on the basis of an entrepreneur parolee.

In addition to revising the form and form instructions, the IE Final Rule revised the estimate of total burden hours which had increased due to the addition of this new population of Application for Travel Document, Form I-131, filers, and the increase of burden hours associated with the collection of biometrics from these applicants. The changes made to Form I-131 are being delayed until March 14, 2018.

a. Type of information collection: Revised information collection.

b. Abstract: If implemented, this collection would be used by dependents of individuals who file an application for entrepreneur parole under INA section 212(d)(5)(A) (8 U.S.C. 1182(d)(5)(A)) and new 8 CFR 212.19. Such individuals would be subject to biometric collection in connection with the filing of the application.

c. Title of Form/Collection: Application for Travel Document, Form I-131.

d. Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection: Application for Travel Document, Form I-131, U.S. Citizenship and Immigration Services.

e. Affected public who will be asked or required to respond: Individuals or households.

f. An estimate of the total annual numbers of respondents: 594,324.

The total number of respondents includes the additional population of 3,234 individuals as estimated previously in the analysis in Section IV.C.

g. Hours per response: The estimated hour per response for Form I-131 Supplement is 1.9

hours; the estimated hour burden per response for the biometric processing is 1.17 hours; the estimated hour burden per response for the passport-style photographs is .5 hours.

h. Total Annual Reporting Burden: The total estimated annual hour burden associated with this collection is 1,372,928 hours.

**C. Overview of information collection, Employment Eligibility Verification, Form I-9, OMB Control No. 1615-0047:**

In accordance with revised 8 CFR 274a.2(b)(1)(v)(C)(2), the IE Final Rule published on January 17, 2017 updated the Employment Eligibility Verification (Form I-9) Lists of Acceptable Documents, List C and the Document Title table to reflect the most current version of the certification or report of birth issued by the Department of State, Form FS-240 Consular Report of Birth Abroad. DHS also made clarifying changes in the form instructions by removing “the end of” when describing the day on which Form I-9 completion is required and revising the Office of Special Counsel for Immigration-Related Unfair employment Practices to its new name of Immigrant and Employee Rights Section (IER) in the Department of Justice’s Civil Rights Division. These changes to the Form I-9 will go into effect on July 17, 2017 as currently scheduled.

The changes made to Form I-9 and instructions associated with new 8 CFR 274a.2(b)(1)(v)(A)(5) promulgated by the IE Final Rule are being delayed until March 14, 2018. Those changes concern the acceptable List A document described as the following: for an individual authorized to work for a specific employer because of his or her status or parole, a foreign passport and Form I-94 (or Form I-94A) that has the same name as the passport and has an endorsement by DHS indicating such employment-authorized status or parole, as long as the period of endorsement has not yet expired and the employment is not in conflict with the individual’s employment-authorized status or parole. Specific changes to the form that are being

delayed until March 14, 2018 also include revisions to the Form I-9 Lists of Acceptable Documents, List A item 5 to replace “nonimmigrant alien” with “individual,” to replace “alien’s nonimmigrant” with “individual,” and to add “or parole” after “status” in List A item 5.b.(2).

a. Type of information collection: Revised information collection.

b. Abstract: This form was developed to facilitate compliance with section 274A of the Immigration and Nationality Act, which prohibits the knowing employment of unauthorized aliens. This information collection is necessary for employers, agricultural recruiters and referrers for a fee, and state employment agencies to verify the identity and employment authorization of individuals hired (or recruited or referred for a fee, if applicable) for employment in the United States.

c. Title of Form/Collection: Employment Eligibility Verification.

d. Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection: Form I-9, U.S. Citizenship and Immigration Services.

e. Affected public who will be asked or required to respond: Business or other for-profit; Individuals or households; State, local or Tribal Government.

f. An estimate of the total annual numbers of respondents: 78 million employers and 78 million individuals. (The total number of responses will be only 78 million responses. Each response involves an employer and an individual who is being hired.)

g. Hours per response:

- Time Burden for Employees – 10 minutes (.17 hours) total;
- Time Burden for Employers – 20 minutes (.33 hours) total;
- Time Burden for Recordkeeping – 5 minutes (.08 hours) total

h. Total Annual Reporting Burden: approximately 40,600,000 total annual burden hours.

**D. Overview of information collection, Application for Employment Authorization, Form I-765, OMB Control No. 1615-0040:**

The IE Final Rule published on January 17, 2017 made minor revisions to the form instructions to reflect changes made by that rule that allow spouses of an entrepreneur parolee to request employment authorization. Those changes to Form I-765 are being delayed until March 14, 2018.

a. Type of information collection: Revised information collection.

b. Abstract: If implemented, this collection would be used by individuals who file an application for entrepreneur parole under INA section 212(d)(5)(A) (8 U.S.C. 1182(d)(5)(A)) and new 8 CFR 212.19. Such individuals would be subject to biometric collection in connection with the filing of the application.

This form was developed for individual aliens to request employment authorization and evidence of that employment authorization. The form is being amended to add a new class of aliens eligible to apply for employment authorization, specifically a spouse of an entrepreneur parolee described as eligible for employment authorization under this rule. Supporting documentation demonstrating eligibility must be filed with the application. The form lists examples of relevant documentation.

c. Title of Form/Collection: Application for Employment Authorization, Form I-765.

d. Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection: Form I-765, U.S. Citizenship and Immigration Services.

e. Affected public who will be asked or required to respond: Individuals or households.

f. An estimate of the total annual numbers of respondents: 2,139,523.

This total represents the aggregate estimate for this information collection, to include the additional estimate of 2,940 respondents under this rule.

g. Hours per response: The estimated hour per response for Form I-765 is 3.42 hours; the estimated hour burden per response for biometric processing is 1.17 hours; the estimated hour burden per response for Form I-765 WS is .5 hours; the estimated hour burden per response for passport-style photographs is .5 hours.

h. Total Annual Reporting Burden: The total estimated annual hour burden associated with this collection is 8,985,859 hours.

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John F. Kelly,  
Secretary.

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