



October 17, 2016

The Honorable Jeh Johnson
Secretary of Homeland Security
Washington, DC 20528

RE: DHS Docket No. USCIS-2015-0006; *International Entrepreneur Rule*

Dear Secretary Johnson,

Thank you for the opportunity to provide feedback on the proposed International Entrepreneur Rule (“the Rule”). This critical proposal will foster increased entrepreneurship and startup growth in the U.S.

Introduction

Engine is a technology policy, research, and advocacy organization that bridges the gap between policymakers and startups and works to support the development of technology entrepreneurship. Engine’s nation-wide network of advisors, supporters, and members includes entrepreneurs, startups, venture capitalists, technologists, and technology policy experts.

Tech:NYC is a non-profit trade group that represents the technology industry in New York. Tech:NYC’s more-than 300 member companies include large technology firms, small startups, venture capital firms and large financial services institutions. Tech:NYC’s five founding member companies are AOL, Bloomberg, Facebook, Google, and Union Square Ventures and several of its members were founded by immigrant entrepreneurs including Uber, Expa, and Sprinklr.

Both of our organizations strive to foster forward-looking government policies and a regulatory environment in which innovative, new companies, with the potential to make an outsized impact on our economy, can launch, scale, and thrive throughout the U.S. As such, we submit this testimony in strong support of the proposed International Entrepreneur Rule. We believe the Rule, if implemented, will have a significant positive impact on startup, technology, venture capital, and related industries in the U.S., as well as a positive impact on the U.S. economy overall. In addition to noting our support in this comment, we include several recommendations that we believe will improve the proposed rule and ensure that it will be as effective as possible in achieving its laudable goals.

Value of Immigrant Entrepreneurs to the U.S. Economy

Immigrant entrepreneurs play a significant role in the American economy. A recent analysis found that the United States was home to almost 2.9 million immigrant entrepreneurs in 2014.¹ These individuals generated \$65.5 billion in business income that year.²

This important role extends to the technology and startup sectors. Immigrants are more than twice as likely to start a business as the native-born population.³ Immigrant entrepreneurs started, in whole or in part, some of the most important technology companies of our time including Google, Intel, Yahoo!, eBay, and WhatsApp. More than half of the companies on the current list of U.S. startups valued at \$1 billion or more were started by immigrants.⁴ Each of these companies is responsible for creating, on average, 760 jobs within the United States.⁵ Immigrant entrepreneurs also started a significant percentage of venture-backed companies that go public, and that percentage is growing: 33 percent of U.S. venture-backed companies that became publicly traded between 2006 and 2012 were started by an immigrant.⁶ Among these companies were Facebook, LinkedIn, Tesla Motors, and Zipcar. That percentage is a significant increase over the 20 percent of such companies started before 2006 and 7 percent before 1980.⁷

The Technology Sector's Value to the U.S. Economy

The technology sector is a vital and growing part of the U.S. economy and, as recent employment and income data illustrates, there is a strong argument that the U.S. should take measures to ensure that technology companies continue to develop and make their home here. In 2015, the technology industry provided roughly 6.7 million jobs in the U.S., a total workforce that exceeds many other important sectors such as construction, finance and insurance, motor vehicle manufacturing, and food manufacturing.⁸ Technology sector jobs have grown consistently since the Great Recession, with five straight years of growth from 2009 through

¹ The Partnership for a New American Economy, "Reason for Reform: Entrepreneurship," (October 2016), http://www.renewoureconomy.org/wp-content/uploads/2016/10/NAE_Entrepreneurship.pdf.

² *Id.*

³ The Partnership for a New American Economy, "Open For Business: How Immigrants Are Driving Small Business Creation In The United States," (August 2012), <http://www.renewoureconomy.org/research/open-for-business-how-immigrants-are-driving-small-business-creation-in-the-united-states-2/>.

⁴ National Foundation for American Policy, "Immigrants and Billion Dollar Startups", (March 2016), <http://nfap.com/wp-content/uploads/2016/03/Immigrants-and-Billion-Dollar-Startups.NFAP-Policy-Brief.March-2016.pdf>.

⁵ *Id.*

⁶ National Venture Capital Association and National Foundation for American Policy, "American Made 2.0, How Immigrant Entrepreneurs Continue to Contribute to the U.S. Economy," <http://www.nfap.com/pdf/American%20Made%202.0.Final.pdf>.

⁷ *Id.*

⁸ CompTIA, "Cyberstates 2016, The Definitive State-by-State Analysis of the U.S. Tech Industry," (2016), <https://www.comptia.org/docs/default-source/advocacydocs/cyberstates/comptia-cyberstates-2016-vfinal-v2.pdf?sfvrsn=2>.

2015.⁹ Notably, at a time when wage stagnation is so prevalent in the U.S., technology sector jobs pay significantly higher wages when compared with average private sector wages: average annualized wages for the U.S. technology industry were \$105,400 in 2015, more than double the average private sector wage for all other private industries that year.¹⁰ Technology jobs also have a ripple effect across the economy. According to research done by Engine, the creation of 1 high tech job is projected to create 4.3 other jobs in a local economy.¹¹

Value of the Proposed International Entrepreneur Rule

The startup community has been advocating for years for reforms that would allow the world's brightest innovators to start and scale their companies here in the United States. There currently exists no visa program specifically designed to encourage immigrant entrepreneurs to build their startups in America. The Government Accountability Office (GAO) has written about "cases in which entrepreneurs attempting to establish very early-stage technology start-ups were unable to obtain H-1B or other work visas for themselves and either relocated the project abroad or had to abandon the start-up."¹²

The International Entrepreneur Rule proposed by the Department of Homeland Security will allow talented foreign-born entrepreneurs to build their companies in the U.S., in turn creating jobs and driving economic transformation.¹³ We support the proposal fully and outline a number of recommendations below that we believe will enhance the effectiveness of the program.

Recommendations and Suggested Modifications

Streamline Adjudication Process by Providing Additional Clarity

As there is no precise formula for a successful startup, it is necessary that the proposed rules grant some flexibility in making a determination as to whether an entrepreneur should qualify for parole.¹⁴ Each entrepreneur is unique and there will be cases where an immigrant has lower capital needs or may not meet the specified thresholds, but whose startup will still provide a significant public benefit.

⁹ *Id.*

¹⁰ *Id.*

¹¹ Engine Advocacy and Bay Area Council Economic Institute, "Technology Works: High-Tech Employment and Wages in the United States," (December 2012), <http://documents.bayareacouncil.org/TechReport.pdf>.

¹² Government Accountability Office, "H-1B Visa Program: Reforms Are Needed to Minimize the Risks and Costs of Current Program, GAO-11-26," (January 2011), p. 23, <http://www.gao.gov/products/GAO-11-26>.

¹³ Department of Homeland Security, International Entrepreneur Rule, DHS Docket No. USCIS-2015-0006, (hereinafter "International Entrepreneur Rule"), available at https://www.uscis.gov/sites/default/files/USCIS/Laws/Articles/FR_2016-20663_793250_OFR.pdf.

¹⁴ While the Rule establishes clear benchmarks for the program (such as a minimum investment threshold and ownership stake), the Rule suggests that even when these benchmarks are met, an entrepreneur's application will be subject to ad hoc evaluation by USCIS adjudicators: "In all cases, whether to parole a particular individual under this rule would be a discretionary determination that would be made on a case-by-case basis." International Entrepreneur Rule, p. 6.

However, the significant discretion afforded to adjudicators in granting parole applications is in many ways the biggest impediment to the utility of the rule. As discussed further *infra*, the Rule's proposed investment threshold of \$345,000 is quite high, and it is unlikely that many investors would be willing to commit such significant capital to a potential investment with little certainty as to whether an entrepreneur's parole will be approved in a timely fashion. In the tech sector, a six month delay can be as debilitating to the success of a startup as a six year delay.

In short, a successful parole rule will provide flexibility to encompass the wide range of companies and entrepreneurs that can drive the American economy forward while still providing a bright-line pathway for entrepreneurs to quickly obtain parole in appropriate circumstances. The proposed Rule does not outline the timeline or sequencing of the adjudication process, and we are concerned that the complexity of the Rule may result in extended timelines. We propose two modifications that will maintain the agency's discretion in granting parole while facilitating and streamlining the work of adjudicators in evaluating companies.

Create a Whitelist of Qualified Investors

First, we propose that the agency create a whitelist of qualified investors and modify the Rule such that any startup receiving an investment from a whitelisted investor proceed through an expedited review process. As the Rule is currently written, an investment from a qualified investor is necessary but not sufficient to obtain parole. Even if a startup receives an investment that meets the proposed capital threshold, the entrepreneur must go through the discretionary review process, which will likely take several months. The inevitable delay in parole application processing will by itself decrease the likelihood that a startup will find the investment necessary to qualify under the rule.

Allowing an investor to pre-qualify for a whitelist such that his or her investments are presumed to have a high likelihood of success will both streamline the parole process and diminish the burden on adjudicators to analyze the merits of often complicated technology companies.¹⁵ Investors are in a far better position than startups to deal with a time-consuming approval process and are more equipped than USCIS adjudicators to evaluate the potential of a particular startup's business. The qualification process for such an investor whitelist could be significantly more robust than the rule's current definition of "qualified investor" and should be updated on an annual or biannual basis to ensure that approved investors are useful indicators of a startup's suitability under the parole rule. USCIS would maintain close control and significant discretion over the parole process by thoroughly evaluating whitelisted investors (and entrepreneurs receiving funding from non-whitelisted investors), and investors would have more certainty that substantial investments in foreign entrepreneurs would not be held up in a lengthy parole evaluation process. By creating a thorough, discretionary process for determining whether an investor should qualify for the whitelist, USCIS can ensure that the parole process is both flexible and discerning, while still being expeditious enough to be valuable for startups.

¹⁵ Entrepreneurs seeking parole upon receiving a qualifying investment from a whitelisted investor could, for example, be presumed to provide a substantial public benefit under the rule and would qualify for parole subject to a background check.

Clarify Alternative Investment Criteria

Second, we recommend that the agency clarify the alternative investment criteria. DHS states in the proposal that the agency “is not proposing to define the specific types of evidence that may be deemed ‘reliable and compelling’ at this time, as the Department seeks to retain flexibility as to the kinds of supporting evidence that may warrant the Secretary’s exercise of discretion in granting parole based on significant public benefit.”¹⁶ While we support this effort to maintain flexibility in granting parole, we propose a two-tiered approach that maintains this flexibility while also providing a more bright-line set of alternatives that demonstrate an entity’s “substantial potential for rapid growth and job creation” and could qualify an entrepreneur for parole.

Suggested alternative criteria:

- I. **Entity accepted into reputable startup accelerator.** DHS’s proposal notes that “evidence that an entity has been accepted to participate in, is participating in, or has graduated from one or more established and reputable start-up accelerators (or incubators) may serve as, depending on the accelerator’s success rate and other factors, a strong indicator of the entity’s potential.”¹⁷

We agree that participation in a reputable accelerator is a good indicator of a startup’s potential for growth. According to research from Emory’s Entrepreneurship Database Program, accelerated startups received 50% more investment capital than their non-accelerated counterparts.¹⁸ Additionally, according to researcher Ian Hathaway:

During the 2005 to 2015 period, these 172 US-based accelerators invested in more than 5,000 U.S.-based startups with a median investment of \$100,000. These companies raised a total of \$19.5 billion in funding during this period—or \$3.7 million per company on average—reflecting both the relatively small investments made in these early-stage companies by accelerators, and the fact that many go on to raise substantial amounts of capital later on.¹⁹

Research has also shown that participation in a top accelerator program increases the speed of exit and increases the speed of receiving follow-on funding from VC investors.²⁰

Based on this evidence, we recommend that DHS accept participation in a reputable accelerator or incubator as evidence of “significant potential for rapid growth and job

¹⁶ International Entrepreneur Rule, p.50.

¹⁷ *Id.*, p.51.

¹⁸ Entrepreneurship Database Program at Emory University, “2016 Mid-Year Data Summary,” (September 2016), http://media.wix.com/ugd/4d837d_92ded6b3e5914f71b4d7aad7c17ee43c.pdf.

¹⁹ Ian Hathaway, “Accelerating growth: Startup accelerator programs in the United States,” Brookings Institution, (February 2016), <https://www.brookings.edu/research/accelerating-growth-startup-accelerator-programs-in-the-united-states/>.

²⁰ Sheryl Winston Smith and Thomas J. Hannigan, “Swinging for the fences: How do top accelerators impact the trajectories of new ventures?” Druid Society, (June 2015), http://druid8.sit.aau.dk/acc_papers/5ntuo6s1r5dvprf032x24x5on5lq.pdf.

creation.” In order to facilitate adjudication, DHS should create a process for approving established, reputable accelerators. Evaluation could include criteria such as age of accelerator, deal flow, amount invested in each startup, among other indicators. The agency could create the whitelist of approved accelerators in conjunction with the Small Business Administration (SBA) or an advisory group comprised of experts on the accelerator industry, such as the Kauffman Foundation, the Brookings Institution, the Seed Accelerator Rankings Project, and others. The SBA has already done a good amount of research on this topic.²¹

- II. **Company has positive revenue generation or growth.** The current proposal’s capital requirements focus on investments from U.S. investors with established records of successful investments, such as venture capital funds or angel investors. However, many entrepreneurs choose to forgo outside capital in order to retain control of their company.²²

DHS should recognize “bootstrapping” as a legitimate path to success and take into account revenue generation or growth as evidence of “potential for rapid growth and job creation.” The agency should provide clear guidance to applicants regarding specific revenue generation or growth thresholds. The revenue threshold for initial approval could be tied to what is required for re-parole, taking into account the final rule’s required growth rate and the length of the initial parole period.

- III. **Company has created jobs.** Job creation is also a compelling measure of a startup’s potential. We recommend that DHS take into account the number of jobs already created by the startup as a measure of the company’s “potential for rapid growth and job creation.”
- IV. **Entrepreneur holds advanced degree from accredited American university.** For too long, we have trained the world’s brightest and best at America’s top universities, only to send them back to their home countries or to countries with more welcoming immigration policies after they complete their degrees. Education and training of foreign nationals by American universities represents an investment in an individual. Therefore, we recommend that DHS recognize an advanced degree from an accredited American university as an indicator of “significant potential for rapid growth and job creation.”

The list proposed above is not exhaustive, and we recommend that DHS work with an advisory group of industry experts (including investors, think tanks, non-profits, and other relevant government agencies) to create a more comprehensive list of alternative criteria. The

²¹ Small Business Administration, “Innovation Accelerators: Defining Characteristics Among Startup Assistance Organizations,” (October 2014), <https://www.sba.gov/sites/default/files/rs425-Innovation-Accelerators-Report-FINAL.pdf>.

²² See Erica Swallow, “How One Startup Grew a \$100M Business Without Spending Venture Capital,” *Forbes*, (December 2012), <http://www.forbes.com/sites/ericaswallow/2012/12/27/bootstrapping-startup-venture-capital/#20ce0eed7fc3>; Susan Payton, “5 Companies That Bootstrapped Their Way to Success,” *Yahoo! Abaco for Small Business*, <https://www.aabacosmallbusiness.com/advisor/5-companies-bootstrapped-way-success-080000422.html>; 37Signals, “Bootstrapped, Profitable, and Proud,” <http://37signals.com/bootstrapped>.

Administration could take a number of approaches with this alternative criteria. For example, DHS could simply require that if an entity only partially meets the sub-criteria for investment or government funding, it must meet a certain number of the alternative criteria developed by the agency. Alternatively, the agency could require that an entity that has raised less than \$300,000 in qualifying capital investment should have to meet a certain number of the proposed alternative criteria, while an entity that has raised less than \$200,000 should have to satisfy a larger number of the proposed alternative criteria, and so on. This would fit with the agency's desire to tie the amount of requisite evidence to the degree to which an applicant meets one or both of the investment/funding sub-criteria.

Modify Threshold for Initial Capital Investment

We recommend that DHS reduce the initial capital investment threshold from \$345,000 to \$250,000 because the current threshold will limit the extent to which foreign entrepreneurs can take advantage of this new program. We believe that data and historical context support lowering the threshold.

The main source cited by DHS for determining the \$345,000 threshold is the University of New Hampshire Center for Venture Research 2015 angel investment report. \$345,000 is rounded from the actual figure \$345,390, which is the 2015 average for all angel investments nationally.²³ However, the national average does not reflect the fact that investments vary greatly by industry and geography. Certain industries require significantly lower capital amounts than more capital-intensive industries. For example, "software as a service" companies require much less upfront capital than biotech or clean energy startups that require expensive equipment or a large labor force.

In terms of geography, traditional sources of growth capital are highly concentrated in just a few areas. A large portion of early stage deals take place in the San Francisco area, New York City, or Boston, pushing the national average higher.²⁴ Moreover, 57 percent of venture investment flowed to California in 2015, and 78 percent went to California, New York, and Massachusetts—areas where capital needs tend to be higher, resulting in higher raises and valuations.²⁵ This means that those regions have a significant advantage over other regions where high amounts of capital may not be as readily available. If the goal of the proposed rule is to encourage economic growth across the U.S. and across industries, a lower threshold would acknowledge these differences in funding requirements and allow for a more diverse range of companies to meet the capital requirement.

The current investment threshold also makes it more difficult for companies in accelerator programs to use the rule, despite evidence that startups that go through accelerator programs find more success than peer companies. DHS suggests in the proposal that accelerators should be eligible as qualified investors under the Rule. However, few accelerators award \$345,000 to

²³ International Entrepreneur Rule, p. 43.

²⁴ Katie Hamburg, "The 2015 Annual HALO Report," Angel Resource Institute at Willamette University, <http://www.angelresourceinstitute.org/~media/Files/Halo%20Report%202015%20Annual%20vFinal.pdf>.

²⁵ SSTI, "Useful Stats: Venture Capital Dollars and Deals by State, 2010-2015," (February 4, 2016), <http://ssti.org/blog/useful-stats-venture-capital-dollars-and-deals-state-2010-2015>.

participants. Y Combinator, one of the most established accelerators in the country, invests \$120,000 into each participating startup.²⁶ Techstars, another reputable accelerator, also invests \$120,000.²⁷ According to a report from the Brookings Institution, from 2005 to 2015, the median investment by an accelerator into a startup was \$100,000. This lower investment level does not indicate that the companies participating in accelerator programs are any less promising. In fact, as noted above, accelerator participants tend to have higher levels of follow-on funding in later rounds. Lowering the existing threshold to \$250,000 would make it easier for startups participating in accelerator or incubator programs to reach the capital threshold.²⁸

Data from the SBA's Growth Accelerator Program also supports lowering the threshold to \$250,000. The SBA's Growth Accelerator Program invests capital into qualified accelerators, which then invest that capital into startups. Over 3,500 startups either are participating or have participated in the program's funded accelerators. On average, each of these startups has raised \$239,428 in funding from the accelerators and outside sources.²⁹ A capital investment threshold of \$250,000 would more closely mirror this average funding amount.

Finally, historical context provides justification for lowering the capital investment threshold. There have been a number of legislative proposals in recent years that would create opportunities for immigrant entrepreneurs to start their companies in the U.S., including the *Startup Act*, the *EB-JOBS Act of 2015*, and the *Border Security, Economic Opportunity, and Immigration Modernization Act*. In the *Startup Act*, the capital investment threshold is \$100,000.³⁰ In the *EB-JOBS Act*, the threshold is either \$500,000 from an established venture capital firm or "qualified" employer (or super angel investor), or \$100,000 from a qualified seed accelerator.³¹ The average of those two thresholds is \$200,000. Finally, the *Border Security, Economic Opportunity, and Immigration Modernization Act*, which passed the Senate in 2013 with 68-32, sets the threshold for the bill's non-immigrant visa at \$100,000, and the threshold for the immigrant visa at \$500,000.³² Again, averaging those two amounts results in \$200,000. Each of these bills has found broad, bipartisan support in Congress and make a case for lowering the proposed capital requirement to \$250,000.

Create Flexibility for Ownership Threshold

²⁶ Y Combinator, "Frequently Asked Questions," (accessed October 17, 2016), <https://www.ycombinator.com/faq/>.

²⁷ TechStars, "Frequently Asked Questions," (accessed October 17, 2016), <http://www.techstars.com/faq/>.

²⁸ DHS could also consider creating lower investment requirements specifically for companies participating in certain qualified accelerators, since participation in such programs already provides a clear indicia of likely success, obviating the need for a higher investment threshold.

²⁹ Small Business Administration, "2015 Growth Accelerator Competition," (February 2016), <https://www.sba.gov/sites/default/files/FY2015-Growth-Accelerators-Report-to-Congress.pdf>.

³⁰ S. 181, Startup Act (114th Congress).

³¹ H.R. 3370, EB-JOBS Act of 2015 (114th Congress).

³² S. 744, the Border Security, Economic Opportunity, and Immigration Modernization Act (113th Congress).

We recommend that DHS introduce additional flexibility around the Rule's ownership criteria, for both initial parole and re-parole. In the proposed rule, DHS states that in order to be considered for parole, an entrepreneur must demonstrate that he or she is "well-positioned to advance his or her start-up entity's business."³³ In order to prove this, an applicant must show "that he or she both: (1) possesses a substantial ownership interest in the start-up entity, and (2) has a central and active role in the operations of that entity, such that his or her knowledge, skills, or experience will substantially assist the entity with the growth and success of its business."³⁴

While we agree that these two measures are good indicators of how active or central an individual is within a company, we believe that the Rule's current ownership threshold may limit eligibility, especially in capital-intensive industries or for teams with multiple co-founders.

Data has shown that the median total percentage of fully diluted ownership for a founder is 12 percent.³⁵ However, ownership by key members of a startup team can vary widely. Fred Wilson, co-founder of Union Square Ventures and one of America's top venture capitalists, writes on his blog that:

It will generally take three to four rounds of equity capital to finance the business and 20-25% of the company to recruit and retain a management team. That will typically leave the founder/founder team with 10-20% of the business when it's all said and done. The equity split at 20% for the founders will typically be; 20-25% for the management team, 20% for the founders, and 55-60% for the investors (angel all the way to late stage VC). That's a rule of thumb and it can be worse (I've seen founders end up with less than 5%) and it can be better (the google founders own >25% of the company after the dilution of an IPO). It all depends on the amount of capital a company needs to raise and the valuations it can raise it at and the timing of those financings.³⁶

After a few rounds, a founder could have as little as 5 percent ownership if the capital needs and fundraising amounts are particularly high. And with an *average* of 20 percent equity left over for the founders, divided between up to three founders (as the proposed rule allows) the threshold would not be met for parole or re-parole.

This dilution of equity is not necessarily a sign that the entrepreneur's role in the growth of the startup has diminished, and a founding team should not be punished under the Rule for successfully raising additional capital. As such, we recommend that DHS either lower the existing thresholds for parole and re-parole or introduce additional flexibilities for providing evidence that an applicant is "well-positioned to advance the entity's business." For example, an applicant could show that their share of equity is similar to that of other co-founders or C-level employees at the company. This would measure the importance of an applicant in the context of

³³ International Entrepreneur Rule, p. 9.

³⁴ *Id.*, p. 37.

³⁵ 2015 Private Company Compensation Report conducted by J. Thelander Consulting.

³⁶ Fred Wilson, "Founder Dilution – How Much Is 'Normal'?" (February 2009), <http://avc.com/2009/02/founder-dilution-how-much-is-normal/>.

the equity participation of other essential executives at the company, rather than measuring it against a fixed, arbitrary, benchmark.

Lengthen Parole Period

The proposed rule states that "DHS may parole the entrepreneur for a period of up to 2 years, with an opportunity to apply for one additional period of parole of up to 3 years upon showing that parole would continue to provide a significant public benefit."³⁷ We believe that the maximum parole period of 5 years is not adequate and recommend that the agency extend the parole period to 8 years, with an initial parole of 3 years and an additional period of re-parole of up to 5 years. If the agency is not able to extend the parole period, we recommend switching the parole and re-parole periods, resulting in a 3 year initial parole period and a 2 year re-parole period.

During a September 2 roundtable hosted by Engine and FWD.us and attended by entrepreneurs, lawyers, and venture capitalists, participants explained that investing in an entrepreneur who may not be able to stay in the country to see through the time-intensive stage of building a new company, or may be distracted by his or her immigration status, is high-risk.³⁸ The first 2 years of a startup's life require a founder's full attention and dedication, and requiring him or her to immediately begin working on a re-parole application will make it considerably harder for the company to grow.

Additionally, available data supports the need for an extended parole timeline. The amount of time it takes for a startup to successfully produce value for investors through an exit has increased significantly over the last two decades. From 1980 to 2000, the average number of IPOs in the United States was 310 per year. From 2001 to 2015 that number dropped to 111 per year.³⁹ This slowdown has disproportionately impacted small firms, which now have a lower probability of exit than larger firms.⁴⁰

Further, according to McKinsey, in 1999, the average IPO came 4 years after founding, but in 2014, it was 11 years.⁴¹ A report from Ernst & Young echoes this finding, showing that "6 to 10 years has become the norm" for median time to exit for startups.⁴² Until a small startup can

³⁷ International Entrepreneur Rule, p. 32.

³⁸ FWD.us, "FWD.us Hosts Roundtable on International Entrepreneur Rule, Connects White House with Tech Community," (September 6, 2016), <http://blog.fwd.us/supporting-international-entrepreneur-rule>.

³⁹ Xiaohui Gao, Jay R. Ritter, and Zhongyan Zhu, "Where Have All the IPOs Gone?" (January 2014), <http://www.kauffman.org/microsites/state-of-the-field/topics/firm-and-industry-dynamics/ma-and-ipos>.

⁴⁰ *Id.*

⁴¹ Begum Erdogan, Rishi Kant, Allen Miller, and Kara Sprague, "Grow fast or die slow: Why unicorns are staying private," McKinsey, (May 2016), <http://www.mckinsey.com/industries/high-tech/our-insights/grow-fast-or-die-slow-why-unicorns-are-staying-private>.

⁴² Ernst & Young, "Globalizing Venture Capital: Global venture capital insights and trends report 2011," (2011), [http://www.ey.com/Publication/vwLUAssets/Globalizing_venture_capital_VC_insights_and_trends_report_CY0227/\\$FILE/Globalizing%20venture%20capital_VC%20insights%20and%20trends%20report_CY0227.pdf](http://www.ey.com/Publication/vwLUAssets/Globalizing_venture_capital_VC_insights_and_trends_report_CY0227/$FILE/Globalizing%20venture%20capital_VC%20insights%20and%20trends%20report_CY0227.pdf).

determine a scalable model, it will likely stay private.⁴³ Because startups managed by immigrant entrepreneurs will have an imposed time period for required growth that is significantly shorter than the national average, this may lead to an inadvertent preference for new businesses in which the growth cycle is shorter.

Consequently, Engine recommends that DHS extend the parole period to 8 years. Not only is this proposed length of time an average of the 6 to 10 years found by Ernst and Young as the typical time to exit, 8 years is also the amount of time granted to immigrant entrepreneurs in the *Border Security, Economic Opportunity, and Immigration Modernization Act* (S.744).⁴⁴ The bill allowed for a maximum 8 year temporary status for foreign entrepreneurs: an initial three year temporary residency, which could be extended an additional three years if the immigrant was able to create three jobs and secure \$250,000 in “qualified” investments or revenue. The bill also presented the opportunity for further renewals (in addition to the preliminary two three-year periods) of up to two years. It passed the Senate in 2013 with broad, bipartisan support.

Allow Crowdfunding to Count as a Qualified Investment

Crowdfunding is becoming an increasingly attractive vehicle for startup financing. Rewards and donation-based crowdfunding platforms such as Kickstarter, Indiegogo, and Fundable have become part of a new digital landscape for entrepreneurs to promote and fund their ideas. Since its founding in 2010, Kickstarter has already helped raise over \$2.6 billion.⁴⁵ Companies like Oculus Rift and Pebble have used rewards-based platforms to raise millions of dollars.⁴⁶ And thanks to the *Jumpstart Our Business Startups Act* (JOBS Act), passed in 2012, companies are now able to crowdfund from unaccredited investors in exchange for equity.

A successful crowdfunding campaign, especially one that reaches the capital investment threshold under the Rule, is as much an indicator of a startup’s traction and potential for growth as similar investments from more traditional sources of seed capital. Particularly for consumer-facing firms that depend on a broad customer base, a successful crowdfunding campaign provides evidence of widespread consumer demand. Therefore, as the investment crowdfunding sector grows, DHS should consider crowdfunding campaigns to count as qualified investments under the rule.

Conclusion

Engine and Tech:NYC appreciate the opportunity to provide the above comments on the proposed International Entrepreneur Rule and thank the Administration, DHS, and USCIS for their tireless work to ensure that America remain a leader in innovation. We believe that the Rule will go a long way towards promoting entrepreneurship and economic growth in the U.S., and

⁴³ Erdogan, Kant, and Sprague.

⁴⁴ S. 744, the Border Security, Economic Opportunity, and Immigration Modernization Act (113th Congress).

⁴⁵ Kickstarter, “Stats,” (accessed on October 17, 2016), <https://www.kickstarter.com/help/stats>.

⁴⁶ Engine Advocacy, “Financing the New Innovation Economy: Making Investment Crowdfunding Work Better for Startups and Investors,” (October 2015), <http://static1.squarespace.com/static/571681753c44d835a440c8b5/57323e0ad9fd5607a3d9f66b/57323e14d9fd5607a3d9fb53/1462910484566/Crowdfunding-White-Paper.pdf?format=original>.

appreciate your consideration of the suggested modifications outlined in this submission, which we believe will allow the Rule to have an even greater positive impact.

Sincerely,

A handwritten signature in black ink, appearing to be 'Evan Engstrom', with a stylized, cursive script.

Evan Engstrom
Executive Director, Engine

A handwritten signature in black ink, appearing to be 'Julie P. Samuels', with a stylized, cursive script.

Julie P. Samuels
Executive Director, Tech:NYC