Immigration Solutions for Entrepreneurs

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Many entrepreneurs seeking to establish or expand a business into the United States encounter the same unexpected challenge: that while there are a variety of options, there is no dedicated U.S. startup visa. Rather than being applicable to a single immigration category designed for founders, entrepreneurs must determine which of the several immigration options best fits their business goals, qualifications and long-term objectives.

Fortunately, the U.S. immigration system offers several pathways that can enable entrepreneurs to establish or expand their business. Some of the most common paths taken by entrepreneurs are the E-1 Treaty Trader visa; E-2 Treaty Investor visa; L-1 Intracompany Transferee status; or O-1 Extraordinary Ability status. Each of these classifications serves a different purpose and can be the perfect match for entrepreneurs with different backgrounds, business structures and immigration objectives.

The available immigration pathways for entrepreneurs vary based on a variety of factors, including the nature of the business; the entrepreneur's qualifications; filing fees; the time it takes to obtain; whether an appropriate treaty exists to permit the specific status, based on their country of nationality; and the length of validity of the visa or immigration status. For example, entrepreneurs whose businesses are engaged in substantial trade between their home country and the U.S. may qualify for the E-1 Treaty Trader visa, while those who have made a substantial investment in a U.S. enterprise may instead pursue an E-2 Treaty Investor visa to direct and develop their investment.

Entrepreneurs who already own or operate an established business outside the U.S. may find the L-1 Intracompany Transferee status to be a suitable option for expanding into the U.S. market by transferring an executive, manager or employee with specialized knowledge to a related U.S. entity. In contrast, founders whose qualifications are rooted in their individual achievements rather than their investment or existing business operations may qualify for an O-1 visa by demonstrating extraordinary ability through sustained national or international recognition like a Pulitzer or Nobel Prize, or other significant professional accomplishments demonstrating a high level of distinction in their field.

While these visa classifications can provide easy, effective solutions for many entrepreneurs, they are not universally available to all of them. The E-1 and E-2 are limited to nationals of countries with an appropriate treaty of commerce and navigation with the U.S.; the L-1 requires a qualifying foreign business that will continue to operate; and the O-1 demands a high evidentiary standard that many early-stage founders may not yet meet. With this, entrepreneurs whose circumstances fall outside these traditional pathways may believe they have no options left to them.

Fortunately, there is still one more pathway many entrepreneurs can take. The International Entrepreneur Parole (IEP), although not a visa classification, is a viable alternative for foreign founders of U.S. startups who meet specific capital and ownership requirements. Through the Department of Homeland Security's parole authority, the IEP grants entrepreneurs a discretionary entry that permits physical presence in the U.S. without being admitted with a visa, allowing many entrepreneurs the time to develop and grow their business. While parole does not grant immigration status or provide a direct path to permanent residency, it can offer entrepreneurs a valuable 30-month stay in the U.S. with the opportunity to re-parole for another 30 months — giving them time to establish themselves in the U.S. and work towards building their business while planning for a longer-term immigration strategy.

Unlike traditional visa classifications, the IEP is intended to support startups that have strong potential to contribute to the U.S. economy through job creation, innovation and rapid growth. As a result of this, the eligibility for the IEP does not solely depend on the entrepreneur's role in the company, but also on the startup itself. While the entrepreneur must play a vital role and own at least 10 per cent of the startup, the startup must satisfy capital thresholds set by the United States Citizenship and Immigration Services (USCIS). These requirements are designed to demonstrate that the business has attracted meaningful financial support and possesses the potential to deliver significant public benefit. In most cases, this is established through qualifying investments from U.S. investors with a demonstrated record of successful startup investments or through qualifying government grants or awards. If a startup does not satisfy the given funding benchmarks, the USCIS may consider other reliable and compelling evidence that demonstrates the company's potential for rapid growth and job creation.

Although there is no dedicated U.S. startup visa, foreign entrepreneurs have a number of viable options. Depending on the entrepreneur's nationality, business structure, professional accomplishments and the stage of business development, there are several immigration pathways that may provide a suitable solution. Because every entrepreneur's circumstances are unique, selecting the most appropriate immigration strategy requires a careful evaluation of both the founders' qualifications and the startup's objectives. By understanding the full range of available immigration pathways, entrepreneurs can make informed decisions that position themselves and their businesses for long-term success in the United States.

For anyone exploring the best available option, it is highly recommended to seek competent immigration counsel to discuss how to start or where to go next in the process. The immigration team here at Lippes Mathias LLP is available and eager to be of assistance to you in these matters. For further guidance or questions on this process, contact Eileen M. Martin (emartin@lippes.com) or Elizabeth M. Klarin (eklarin@lippes.com).

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