ANGEL CAPITAL ASSOCIATION

October 17, 2016

Ms. Samantha Deshommes
Chief, Regulatory Division, Office of Policy and Strategy
US Citizenship and Immigration Services
Department of Homeland Security
20 Massachusetts Ave NW
Washington, DC 20529

Re: DHS Docket No. USCIS-2015-0006, International Entrepreneur Rule

Dear Ms. Deshommes:

Thank you for the opportunity to provide comments to the Department on the proposed International Entrepreneur Rule, which is a terrific step to grow America's entrepreneurial economy across the country. The Angel Capital Association is the leading professional and trade association supporting the success of accredited angel investors in high-growth, early-stage ventures. Our members are among the angels that invested an estimated $24.6 billion in 71,000[1] early-stage investments in 2015, with companies located in every state in the country.

ACA supports the proposed rules and look forward to a final rule later this year, although we have some suggestions to improve the rules for even more impact. Our comments today are in support of the nation's startup entrepreneurs, including those born in other countries, those who create the majority of net new jobs in the country[2] and many of the innovations that improve the quality of life throughout the world. It is vital that promising startups continue to attract angel capital, for their own growth and for the American economy as a whole. Angels recognize that foreign-born entrepreneurs and innovators are uniquely effective at building strong high growth businesses and appreciate the opportunity for more of these entrepreneurs to stay in the US longer to build companies that have the potential for significant public benefit. We see in practice the data the proposed rule includes about the impact of international entrepreneurs.

As angel investors provide up to 90 percent[3] of the outside equity for startup and early-stage companies, ACA believes it is important to point out that the need for having more international entrepreneurs in our country is truly a nation-wide need. It is not limited just to Silicon Valley or other regions that are usually thought of as venture capital centers – we see it in the Midwest, Southeast and

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[1] Center for Venture Research, University of New Hampshire, https://paulcollege.unh.edu/research/center-venture-research/cvr-analysis-reports
[2] John Haltiwanger, Ron Jarmin, and Javier Miranda, Jobs Created from Business Startups in the United States, 2008
[3] Ewing Marion Kauffman Foundation, *Why Entrepreneurs Need Angels – and How Angels are Improving*, Kauffman Thoughtbook, 2005.

Mountain West, in addition to California, Boston and New York. ACA members in many regions have experienced situations in which sophisticated angels were interested in investing in companies led by foreign born entrepreneurs, but the risk of those entrepreneurs having to leave the US made those deals untenable.

As Cincinnati, OH based angel investor Tony Shipley recommended in testimony[4] to the US House Small Business Committee in 2012: "Allow entrepreneurial immigrants to stay in the United States– Too often, smart people visiting from other countries have to return to their home countries because of American immigration laws. Not only does this country lose their great ideas and the jobs that could be created by their businesses, but we also see venture capitalists following them to those countries with their investment."

One of the concepts ACA most likes in the proposed rule is the flexibility and multiple options in determining which international entrepreneurs qualify for an initial grant of "parole" and also for extension of their status for additional time periods. These multiple routes are important to address the wide variety of ways entrepreneurial companies are funded and/or how they grow. For instance, in order to be considered for an additional period, the applicant must satisfy the requirement that their startup shows significant growth through **ONE OF** (emphasis added) of several ways, including additional investment, revenue generation, job creation **OR** (emphasis added) alternative criteria. This helps a startup in the life sciences sector, which might qualify through additional investment or employee growth, but would be less likely to have revenues while going through medical trials and government approval of their product(s).

<u>Recommendations for Improvement</u>

In order to better reflect how the entrepreneurial ecosystem works, we recommend several improvements and clarifications:

- **Size of investments from established US investors** – The minimum $345,000 in the draft rule appears larger than the mid-point of the various data and sources reviewed for the rule. If the Department's goal is to set a number that represents the mid-point of angel investments, please consider using the median angel investment numbers in these datasets, which might be in the $250,000 to $300,000 range. Our experience is that averages are often skewed by capital-intensive companies. As another commenter wrote, "This could benefit software startups that do not need very large initial capital investment to launch effectively."

- **Definition of "qualified investor"** – While the rule mentions that both individuals and organizations would qualify as investors, the criteria included – particularly the need for five years of operations and total investments of no less than $1,000,000 – effectively limit investors who qualify to Venture Capital firms, angel groups, syndicates and funds on online investing platforms for accredited investors, and individual "super angels" who possess extreme wealth. Thousands of sophisticated and active individual angels who have invested in great high growth startups would likely not be investor candidates for international entrepreneurs in the draft rule. The Department might consider tweaking this definition to require that the investor has been part of investments in at least three companies that had the potential to create similar public benefit as the applicant

[4] http://www.angelcapitalassociation.org/data/Documents/Public%20Policy/Testimony%20Shipley%2004-19-12%20Final.pdf

entrepreneur and his or her startup company. This should be enough to show investor seriousness and experience noting that some good investors have been investing for fewer than five years, and it also addresses the risky reality of investing in startups. Recent academic and third-party studies have found that two-thirds of both VCs and angel-backed companies are unsuccessful.[5] This is true for even the most sophisticated and experienced angels and VCs.

- **Increase term of original stay** – As mentioned, angels and VCs take big risks to invest in new companies. By establishing a more generous time period on the front end to three years rather than two, investors would have more confidence that international entrepreneurs will remain in the country during the critical initial period of a startups growth and not be as distracted with uncertain immigration status. This also reduces the risk in evaluating investment opportunities involving international entrepreneurs and increases the possibility of investing in their startup companies.

- **Connect this rule to securities regulations** – This is a technical point, but we recommend that this rule defines investors as "accredited investors" as defined by the Securities and Exchange Commission for both individuals (natural persons) and entities at https://www.sec.gov/answers/accred.htm. Angel investors and venture capitalists make their investments through the exemptions the SEC provides through Regulation D.

- **Clarify qualifications by investor syndicates** – We appreciate that the draft rules say that a qualifying investment may come "from *one or more* qualified U.S. investors." This is important because most angel investments require many angels to invest together in "syndicates" to provide the amount of capital needed by the entrepreneur. It is more and more common for a combination of angel groups and other investors or many angels to invest through an on-line platform for angels to do this. Often, the investment vehicle for such a syndicate is a special purpose vehicle, such as a Single Purpose Limited Liability Company, led by an angel group or platform. The point here is to ensure that the special purpose vehicle qualifies as an investor for the international entrepreneur.

- **Recognize ownership stake when multiple entrepreneurs lead startup** – ACA appreciates that the rules would allow up to three entrepreneurs per startup company to qualify. When three entrepreneurs are involved, the rules may need to be more flexible to ensure that the combination of the three have the required ownership percentage. We echo the comments of the National Venture Capital Association in this area: it is frequently the case that as a startup grows and goes through financings, increasing portions of the company are sold to venture and other investors. The fact that VCs or angels are investing in the startup—and therefore diluting the share of the company owned by its founders—is itself a sign the startup is prospering or has potential to do so. This dilution is not, however, a sign that the important *role* of the founder is diminished; quite the contrary, as many founders maintain leadership roles in a startup as the enterprise grows, even as their ownership percentage is decreasing. Therefore, we encourage DHS to adopt a flexible approach to ownership thresholds to account for the possibility that a startup with multiple founders may not meet the threshold simply because it has been successful in raising capital.

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[5] Via http://www.sethlevine.com/archives/2014/08/venture-outcomes-are-even-more-skewed-than-you-think.html

- **Entrepreneur salary requirement** – ACA respectfully requests that the Department recognize that entrepreneur compensation is a combination of salary, benefits and rewards tied to the growth and exit of the company. In order to incent entrepreneurs toward an acquisition or IPO exit for the company, top angels balance compensation toward financial returns toward an exit rather than large salaries. It may be that some entrepreneurs have salaries that are reasonably below four-times the poverty level for the number of people in their family. We think it makes sense to have some flexibility in consideration of this particular part of the rule.

Thanks for your work on this important rule. We appreciate the Department's review of all comments related to this proposed rule, and are available for further discussion on our concerns and recommendations.

Regards,

Marianne Hudson
Executive Director