



IMMIGRATION UPDATE - FEBRUARY 07, 2022

Posted on February 7, 2022 by Cyrus Mehta

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International Entrepreneur Update: National Advocacy Groups Recommend Streamlining Parole Program; House Passes Bill To Create New Visa

There have been several recent developments of interest to international entrepreneurs:

National Advocacy Group Recommendations

The Coalition for International Entrepreneurship, which consists of three dozen immigration and startup advocacy organizations and individuals, sent a letter on February 1, 2022, asking Department of Homeland Security (DHS) Secretary Alejandro Mayorkas to streamline the International Entrepreneur Parole (IEP) program. Signers included the American Immigration Lawyers Association, Carnegie Mellon University Graduate Student Assembly, the National Immigration Forum, and others.

As background, last year, the Biden administration rescinded a Trump-era rule that would have ended the IEP program. The program uses DHS's authority to grant parole to foreign nationals whose admission would be a public benefit. However, according to reports, obstacles remain, and the IEP remains a crucial program, especially in the absence of a U.S. start-up visa.

The coalition's letter makes five key recommendations:

1. Immediately establish premium processing for IEP applications so qualified entrepreneurs can rapidly launch their businesses in the United States.
2. Incorporate the use of the Validation Instrument for Business Enterprises (VIBE) program to streamline the qualification process for investors. The letter noted that this program is already being used to validate information about companies petitioning to employ nonimmigrant and immigrant workers through Forms I-129 (for the H-1B, for example), I-140, I-360, and I-485.
3. Modify U.S. Citizenship and Immigration Services (USCIS) guidance on the term "qualified investor" to ensure that investors with passive foreign limited partners are not unnecessarily excluded.
4. Restart the USCIS Entrepreneur in Residence initiative to develop routine feedback loops with stakeholders and consider a hybrid model with both virtual and in-person activities to improve entrepreneurs' ability to participate and decrease the agency's administrative and badging burdens.
5. Establish regular interaction with stakeholders in the academic, entrepreneur, legal, and investment communities to further refine the program. The letter suggested that increased interaction could include more events hosted by the Public Engagement Division, or the creation of an entrepreneurship subcommittee for the Homeland Security Academic Advisory Council (HSAAC).

America COMPETES Act Passes in House

Also, on February 4, 2022, the House of Representatives passed the America COMPETES Act of 2022 (H.R. 4521). The bill would exempt international science, technology, engineering, and mathematics (STEM) PhD graduates from the green card numerical cap, create a new visa category for entrepreneurs, and provide temporary protected status for Hong Kong residents. A conference

committee is expected to address significant differences between the House bill and the Senate's U.S. Innovation and Competition Act (S. 2012), according to NAFSA: Association of International Educators.

In addition, the Biden administration introduced measures on January 21, 2022, to attract and retain STEM international talent.

Details:

- Letter to Alejandro Mayorkas from the Coalition for International Entrepreneurship, Feb. 1, 2022, <https://progress.institute/wp-content/uploads/2022/02/CIE-Open-Letter.pdf>
- "Establishing a National Strategy for International Education," NAFSA: Association of International Educators, <https://www.nafsa.org/establishing-national-strategy-international-education>
- "Fact Sheet: Biden-Harris Administration Actions to Attract STEM Talent and Strengthen Our Economy and Competitiveness," White House, Jan. 21, 2022, <https://bit.ly/3uBAPT4>

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USCIS Releases Form I-9 Guidance for H-2B Workers Seeking to Change Employers

On February 4, 2022, U.S. Citizenship and Immigration Services released guidance on Form I-9, Employment Eligibility Verification, for H-2B workers seeking to change employers.

The guidance is related to a joint temporary final rule issued January 28, 2022, by the Departments of Homeland Security and Labor to increase the numerical limits on fiscal year 2022 H-2B nonimmigrant visas and temporarily provide portability flexibility for H-2B workers already in the U.S. to begin work immediately with a new employer after an H-2B petition (supported by a valid temporary labor certification) is received by USCIS and before it is approved.

Details:

- "Form I-9 Guidance for H-2B Workers Seeking to Change Employers," USCIS, Feb. 4, 2022,

<https://www.uscis.gov/i-9-central/covid-19-form-i-9-related-news/form-i-9-guidance-for-h-2b-workers-seeking-to-change-employers-0>

- Joint temporary final rule, DHS/DOL, 87 Fed. Reg. 4722 (Jan. 28, 2022), <https://www.govinfo.gov/content/pkg/FR-2022-01-28/pdf/2022-01866.pdf>

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ABIL Global: United Kingdom

The United Kingdom's (UK) new Global Business Mobility (GBM) route launch is fast approaching.

What can we expect from the UK's new GBM visa?

The intended launch of the GBM route is fast approaching. The Home Office promised a "cohesive system" for overseas businesses to assign employees to the UK for a range of business purposes by spring 2022. The new visa route will consolidate and expand on an array of existing immigration routes and introduce new opportunities for businesses both with and without a UK presence.

The GBM route will consist of five categories:

- **Senior or specialist worker**—for individuals whose skills are required in the UK for a specific business purpose;
- **Graduate trainee**—for individuals who are on a UK placement as part of a structured training program;
- **UK expansion worker**—for individuals who are on an assignment as part of a UK expansion of the business;
- **Secondment worker**—for business-specific secondments; and
- **Service supplier**—for individuals travelling to the UK to deliver a service in line with a UK trade commitment.

The requirements for the GBM visa will be based predominantly on those of the Intra-Company Transfer (ICT) route. This means that the UK business receiving the workers will require a sponsor license. The workers will need to satisfy salary and skill thresholds and should have completed a minimum period of employment overseas before applying. There will be no English language requirement. Although assignments on the GBM route will be temporary, there will be flexibility to switch to other permanent routes, such as

the Skilled Worker route.

The Home Office said that the exact requirements for the route will be subject to the Migration Advisory Committee's (MAC) review and may depend on the GBM subcategory in question. In its review of the ICT route in October 2021, the MAC made a series of recommendations, including increasing the minimum salary threshold and allowing time spent on the ICT route to count toward settlement. It will be interesting to see if these recommendations are incorporated within the GBM provisions under the Immigration Rules.

While some of the subcategories of the GBM visa mirror existing routes (the Graduate trainee, for example, is similar to the Intra-Company Graduate Trainee), others provide a new route for overseas businesses to send employees to the UK. The UK expansion worker, for example, is set to supplement the Representative of an Overseas Business route, allowing overseas businesses to send more than one worker and access the Sponsor Management System to manage assigned employees. However, unlike the Representative of an Overseas Business route, the UK expansion worker, and all the subcategories of the GBM visa, will be a sponsored route. This raises additional challenges—in terms of both logistics and costs—for employers and the Home Office, with the latter having to monitor the compliance of sponsor license holders located outside the UK.

In the coming weeks, further clarification is expected from the Home Office on how individuals and companies can apply under the GBM route and the permitted activities for a GBM migrant in the UK. It is hoped that the Home Office will also clarify the potential sponsor license system for overseas businesses and how it plans to carry out future compliance checks.

Details:

- "Intra-Company Transfer Report: October 2021," Gov.uk, <https://bit.ly/3uuXE2c>

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