Statement for the Record by Fiona McEntee

Submitted to the Immigration and Citizenship Subcommittee of the U.S. House of Representatives Committee on the Judiciary

For the Hearing on

Oh, Canada!
How Outdated U.S. Immigration Policies
Push Top Talent to Other Countries

June 22, 2021
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Thank you, Subcommittee Chair Zoe Lofgren, (D-CA), Ranking Member Tom McClintock (R-CA), and members of the House Judiciary Committee Subcommittee on Immigration and Citizenship for the opportunity to submit this written statement for the hearing on "Oh, Canada! How Outdated U.S. Immigration Policies Push Top Talent to Other Countries."

My name is Fiona McEntee, and I am a proud Irish immigrant and equally proud naturalized U.S. citizen. I came to the United States in my early twenties, as an international student, to attend law school. I graduated with my Juris Doctor from Chicago-Kent College of Law in 2007 and I have been practicing as an immigration attorney since I was sworn into the Illinois bar in November 2007.

I am the Chair of the Media Advocacy Committee of the nonpartisan American Immigration Lawyers Association[1]. Established in 1946, AILA is a voluntary bar association of more than 15,000 attorneys and law professors who practice, research, and teach in the field of immigration law. As part of its mission, AILA strives to advance this body of law and facilitate fairness and justice in the field.

I am also the Founder and Managing Attorney of McEntee Law Group[2] in Chicago. Our firm is a full-service immigration law firm and I focus my practice primarily on "extraordinary ability" immigration, in addition to representing and advising startups - both U.S.-grown and international - on their U.S. immigration options.

[1] https://www.aila.org/
[2] https://www.mcenteelaw.com/

As a former international student, I have been deeply committed to advocating for current international students. Over the course of my career, I have met with, and advised, thousands of international students from various universities including Illinois Tech, Northwestern University, and DePaul University.

I have also advised thousands of startup founders on their U.S. immigration options. I have been a mentor to startup ecosystems and incubators like 1871 in Chicago, previously ranked as world's number one private business incubator and most promising women founders[3] and also first in the world among university-affiliated business incubators for its impact among local startups and its dedication to diversity[4], 2112 - Chicago's first music, film/video and creative industry-focused technologies incubator - Northwestern University's "The Garage", Bank of Ireland's StartLab, and The PorterShed in Galway, Ireland.

I frequently speak and write on immigration matters and have had opinion pieces on international students and startup immigration issues published in USA Today - *Suspending work permits for foreign graduates would be a terrible mistake for US economy*[5] - and Crain's Chicago Business - *Immigrant entrepreneurs can fuel Chicago's COVID recovery*[6] – which I co-wrote with the Illinois Science and Technology Coalition.

Today's hearing is an essential forum for a much-needed discussion on how the outdated U.S. immigration policies push top talent to other countries. Additionally, for those who do manage to remain here, the current system often frustrates the entrepreneurial dream of many immigrants stifling the economic growth and the jobs these immigrants and their businesses could create. The outdated system regularly prevents immigrant entrepreneurs from establishing and growing their startups and can also prevent international startup founders from expanding their startups into the U.S.

Unlike many of our international peers[7], the current U.S. immigration laws do not provide a specific immigration option for startup founders — commonly known as a "startup visa." Instead, immigrant entrepreneurs are forced to navigate an antiquated system largely rooted in employer-sponsored visas, like for example the H-1B visa. The existing visa options do not readily accommodate the startup entrepreneur for many reasons the least of which includes the fact that they were all created over 30 years ago well before we had the internet on our phones, and before social media and apps.

Take the H-1B visa, these are limited in number every year and typically result in a lottery for selection. For those who are selected in the H-1B lottery, this option is not a great fit for entrepreneurs/founders of startups. The requirement to demonstrate an

[3] https://blog.1871.com/1871-becomes-1-private-business-incubator-in-the-world
[4] https://www.bizjournals.com/chicago/inno/stories/news/2018/02/23/1871-ranked-first-in-world-among-university.html
[5] https://www.usatoday.com/story/opinion/2020/06/22/immigration-international-students-work-permits-visas-american-universities-column/3158495001/
[6] https://www.chicagobusiness.com/opinion/immigrant-entrepreneurs-can-fuel-chicagos-covid-recovery
[7] https://startupswb.com/startup-visa-heres-15-countries-that-offer-the-startup-visa-to-foreign-entrepreneurs.html

employer/employee relationship can be difficult where the immigrant entrepreneur owns a substantial portion of the company. H-1B visas are also reserved for "specialty occupations" - those that require a bachelor's degree in a specific field. The CEO/founder type role is more general in nature and does not easily fit within the strict parameters of the H-1B specialty occupation definition.

Another option, the E-2 investor visa, can only be even contemplated for those from E-2 visa treaty countries[8]. Notably India, China, and Portugal are not on the list. Further, the E-2 visa requires the investor themselves to invest a substantial sum of money in the entity. The typical venture capital type fundraising that we see with many startups may not fit this requirement.

Finally, the O-1 visa for extraordinary ability immigrants excludes those startups/founders with high potential but who may not be at the very top of their field… *yet*. Given time, they may well be able to qualify for the O-1 visa, but they need an interim immigration option to enable them to grow their business, and resulting jobs, to get to that very high standard.

I have seen first-hand the gaping hole in our current immigration framework for these would-be entrepreneurs. The limited and uncertain immigration options often force entrepreneurs to abandon their innovative ventures and find employers who can sponsor their visas - turning job-creators into employees in the process. Additionally, some immigrant entrepreneurs leave the U.S. - or never come here at all - in search of a more welcoming and modern immigration system. I have no doubt that our neighbors to the north are the beneficiaries of our outdated system as they have updated and adopted their immigration system to attract startup founders and entrepreneurs.

Perhaps nowhere is the need for a startup visa more evident than at our universities. Take the state of Illinois for example - supported by a growing network of university entrepreneurship centers across Illinois, nearly 1,400 startups have been founded on campuses since 2010. These startups are advancing innovations in AI, biotech, renewable energy, and robotics - raising more than $1.9 billion and creating nearly 5,000 jobs in the process. Our universities attract some of the brightest talent from around the world, so it should come as no surprise that a staggering 40% of these university-born startups have a foreign-born founder.[9] However, many are forced to abandon their startups for the security of employer-sponsored visa options.

Recognizing the gross deficiency in the current system, the Obama administration attempted to address the problem by creating the International Entrepreneur Rule (IER). Despite clear need and widespread support, the Trump administration repeatedly tried to rescind the rule. Earlier this year, the Biden administration announced[10] that it would be fully implementing IER which, while welcome, may not be a readily accessible option

[8] https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/fees/treaty.html
[9] https://www.chicagobusiness.com/opinion/immigrant-entrepreneurs-can-fuel-chicagos-covid-recovery
[10] https://www.uscis.gov/news/news-releases/dhs-announces-continuation-of-international-entrepreneur-parole-program

for many given the logistics involved and the Department of State's pandemic-related backlogs.

The IER is a Department of Homeland Security (DHS) regulation and is based on the DHS Secretary's statutory authority to grant parole on a case-by-case basis for "urgent humanitarian reasons or significant public benefit." Stringent requirements mean that IER is reserved only for those high potential startups and founders. Immigrant entrepreneurs must have received significant funding from seasoned investors ($250,000) or through government grants ($100,000) or a combination of both[11]. They must also provide a significant public benefit through the substantial and demonstrated *potential for rapid business growth and job creation*.

Procedurally, immigrant entrepreneurs have to first file an IER application (Form I-941) with the U.S. Citizenship and Immigration Services (USCIS). If approved, applicants must make an appointment and visit a U.S. Embassy/Consulate to get a travel document (boarding foil) before then appearing at a U.S. port of entry for a final parole determination[12]. Notably, Canadian nationals traveling directly from Canada to a U.S. port of entry may present an IER approval notice at the U.S. port of entry without first obtaining a travel document/boarding foil.

As IER is based on DHS' limited parole authority - it is not a visa or status - applicants cannot change status to/from it in the U.S. They must leave to get the required boarding foil (Canadians aside) and then re-enter the U.S. I understand that the Obama administration likely did all they could when drafting the IER based on this statutory parole authority. However, the rule was written years before COVID, and the current conditions could never have been anticipated. Given the pandemic, and the tremendous backlogs for appointments at U.S. Embassies/Consulates, it is going to be a very long time before non-Canadian immigrant entrepreneurs can enter on this International Entrepreneur Parole. The U.S. is going to miss out greatly in the interim, especially when we so desperately need a post-pandemic economic boost.

In the immediate term, Congress could pass a law that enables immigrant entrepreneurs in the U.S. to change status to IER here without the need to leave and be paroled in. Premium processing should also be available for the IER applications. Additionally, Congress could remove the boarding foil requirement from the IER procedure thereby allowing *all* IER approved applicants abroad (not just Canadians) to present the IER approval notice to a U.S. port of entry.

In the midst of this devastating COVID-19 pandemic, we need immigrant entrepreneurs, especially innovative startup founders, more than ever. As we begin to imagine our life post-COVID, we should allow immigrant entrepreneurs the opportunity to create these high-potential startups, and the resulting jobs, right here on U.S. soil.

[11] https://www.federalregister.gov/documents/2017/01/17/2017-00481/international-entrepreneur-rule
[12] https://www.uscis.gov/humanitarian/humanitarian-parole/international-entrepreneur-parole

Ultimately, in the long term, only Congress can pass more robust startup visa legislation and create additional immigration pathways to ensure that the United States – and not somewhere else - attracts and retains these innovative international entrepreneurs.

Thank you for your time and attention to this critical immigration issue.

Sincerely,

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