



Startup Founders Beware: Participation in Incubators and Accelerators Is Drawing Increased Immigration Scrutiny

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For years, foreign entrepreneurs have followed a familiar path to launch their businesses in the US.

They come to the United States as students, visitors, or under the Visa Waiver Program (ESTA). They join an incubator or accelerator. They build relationships with mentors and investors. They refine their product. They develop traction. Then, once the company gains momentum, they seek an employment-authorized immigration pathway such as an O-1, H-1B, E-2, or another work-authorized status.

Increasingly, however, that pathway is becoming riskier.

At Grossman Young & Hammond, we have recently seen a troubling increase in immigration scrutiny directed at foreign nationals participating in startup incubators and accelerators while in visitor status (ESTA, B-1/B-2) or student status (F-1).

In some cases, scrutiny arises during consular visa applications or border inspections. In others, it appears in Requests for Evidence (RFEs), visa applications, or future immigration filings. Activities that founders often view as educational or exploratory are being examined through a very different lens: unauthorized employment.

For founders, students, investors, and startup programs alike, understanding where that line exists has never been more important.

Incubators and Accelerators: What's the Difference?

Although the terms are often used interchangeably, incubators and accelerators serve different purposes.

Incubators

Business incubators generally support entrepreneurs in the earliest stages of development. Participants may still be validating an idea, conducting market research, developing a prototype, or refining a business model.

The emphasis is often on education, mentorship, and experimentation.

Accelerators

Startup accelerators typically work with companies that already have a Minimum Viable Product (MVP) and some evidence of market validation.

Accelerator programs are usually shorter, more intensive, and focused on rapid growth. They often provide mentorship, investor introductions, networking opportunities, and seed funding.

Examples include:

- Y Combinator
- Techstars
- 500 Global

Participation in these programs can provide tremendous value. However, immigration law does not focus on the program's label. It focuses on what the individual is doing.

And that is where many founders encounter problems.

The Immigration Question Isn't Whether You Own a Company

Many founders assume that immigration law prohibits owning a business.

That is generally not true.

Foreign nationals can often:

- Form a U.S. company
- Own shares in a company
- Invest capital
- Serve as a passive investor

The problem arises when ownership becomes operational involvement.

Immigration authorities are not asking: "Do you own a startup?"

They are asking: "What work are you performing for that startup?"

And the definition of "work" is where the problem arises.

Activities That May Be Permissible

Certain preliminary activities have traditionally been viewed as permissible for visitors and, in some circumstances, international students.

Examples include:

- Conducting market research
- Customer discovery interviews
- Meeting prospective co-founders
- Meeting potential investors
- Attending networking events
- Participating in educational programming
- Negotiating contracts
- Incorporating a company
- Obtaining a federal tax id
- Establishing a mailing address
- Exploring business opportunities
- Applying for licenses

These activities generally resemble business planning rather than business operations.

However, founders should not assume that because an activity appears on a list of traditionally permissible activities it will automatically be viewed favorably by an immigration officer reviewing the facts years later.

Context matters.

Volume matters.

Intent matters.

And documentation matters.

The Critical Line: Planning a Business Versus Running a Business

Many founders accidentally cross the line when their startup begins gaining traction.

Once the company has customers, active projects, revenue-generating activity, employees, contractors, fundraising obligations, product development deadlines, or operational responsibilities, immigration risk increases substantially.

Examples may include:

- Managing employees
- Supervising contractors
- Performing services for clients
- Building products
- Writing production code
- Providing consulting services
- Delivering products to customers
- Managing daily operations
- Executing fundraising activities on behalf of the company
- Acting as CEO on a day-to-day basis

At that point, immigration authorities will likely view the founder as actively working.

And that requires work authorization.

A Growing Area of Concern: "I'm Not Getting Paid"

One of the most common misconceptions we hear is: "I'm not being paid, so I'm not working."

Unfortunately, immigration law is far more nuanced, and whether you are getting paid is not the key to whether the government considers you to be working.

The government may examine whether the activity is ordinarily compensated, whether it benefits a commercial enterprise, and whether you expect future compensation.

This creates significant risk for startup founders.

A founder may spend months:

- Building a product
- Acquiring customers
- Meeting investors
- Managing operations

while taking no salary.

From the founder's perspective, they are simply investing sweat equity.

From an immigration perspective, however, those activities may still be characterized as work.

Particularly concerning are situations where founders perform services today with the expectation that they will later receive:

- Salary
- Equity appreciation
- Founder shares
- Future distributions
- Future compensation after fundraising

The absence of immediate payment does not eliminate immigration risk.

Why Social Media Is Suddenly Becoming Evidence

Many founders focus heavily on what they tell immigration officers.

Increasingly, immigration officers are looking beyond the interview itself.

LinkedIn profiles, startup websites, accelerator biographies, conference materials, pitch decks, social media accounts, and press releases can all become evidence.

Consider some recent examples:

Case Study #1: The Founder Questioned at the Border

A foreign entrepreneur arrived in the United States as a visitor to attend meetings, networking events, and activities associated with a startup program.

During inspection, an immigration officer reviewed publicly available information about the traveler, including professional profiles and online biographies. The officer noted references to a U.S.-based startup, participation in entrepreneurial programs, and statements suggesting an active role in the business.

Although the founder explained that they were not employed by a U.S. company and were primarily participating in educational and networking activities, the officer questioned whether the founder's actual activities were consistent with visitor status.

The founder was ultimately admitted but left the inspection with a clear understanding that immigration authorities may closely scrutinize public-facing descriptions of startup involvement.

This case study demonstrates how immigration authorities increasingly review publicly available information when evaluating a traveler's activities and intentions.

Founders should carefully consider:

- How they describe their role in a startup

- Whether public profiles suggest day-to-day operational involvement
- Whether online biographies imply they are working from the United States
- Whether websites, pitch materials, or social media create the appearance of active employment

What may seem like ordinary marketing language to a founder can be interpreted very differently by an immigration officer reviewing the same information, and AI tools make it very easy for the government to retrieve these materials.

International Students Face Particular Risks

F-1 students are especially vulnerable.

Many universities actively encourage entrepreneurship through incubators, innovation centers, and accelerator programs.

Educationally, this makes perfect sense.

Immigration compliance, however, can become complicated.

Case Study #2: The Student Founder Receiving an RFE

An international student became involved in an entrepreneurial project through a university-sponsored innovation program. Over time, the project evolved from an educational exercise into a startup venture with potential commercial applications.

As the business gained momentum, the student participated in mentorship programs, engaged with potential customers and investors, and explored opportunities to commercialize the technology. The student believed these activities were consistent with their academic objectives and had not yet received compensation from the company.

Later, when seeking immigration benefits related to employment authorization, the student received a Request for Evidence seeking additional information about the nature and timing of the startup activities.

The student's concern was understandable. There was no single moment when the project clearly transformed from an academic endeavor into a business venture. Instead, the transition occurred gradually over time.

This scenario highlights a growing challenge for international student entrepreneurs. Universities increasingly encourage innovation and startup formation, but immigration rules do not always provide clear guidance regarding when educational activities become employment-related activities requiring work authorization.

As a result, student founders should be especially cautious when a class project, research initiative, or university-sponsored venture begins moving toward commercialization, customer engagement, product development, or revenue generation.

The Myth That You Can "Just Get a Visa Later"

Many founders assume they can participate in an accelerator first and address immigration issues later.

This assumption can be dangerous.

When founders eventually apply for:

- O-1 status
- H-1B status
- E-2 status
- Adjustment of status
- Visa renewals
- Consular visas

their prior activities may come under review.

The question may become:

"What were you doing before you obtained work authorization?"

If the answer appears inconsistent with the individual's immigration status at the time, significant complications can arise.

International Entrepreneur Parole Is Not the Answer for Most Founders

Sometimes clients ask us about International Entrepreneur Parole (IEP).

In theory, IEP was designed specifically for startup founders.

In practice, it is not a viable option.

Processing times are lengthy.

Approval rates are close to zero.

For most founders seeking practical immigration solutions, more traditional options such as O-1, E-2, H-1B, or carefully structured employment-authorized pathways remain far more useful.

Practical Recommendations for Founders

Before participating in an incubator or accelerator, foreign founders should carefully assess immigration risk.

Some practical considerations include:

- Visitor Status (ESTA, B-1/B-2)
- Limit activities to planning, networking, meetings, and exploratory business development.
- Avoid operational roles.
- Avoid performing services for clients.
- Avoid day-to-day management.
- Avoid describing yourself publicly as working in the United States.

F-1 Students

Work closely with university immigration advisors.

Obtain appropriate employment authorization before operational involvement begins.

Document the distinction between academic activities and commercial activities.

Exercise caution when startups evolve from class projects into operating businesses.

All Founders

- Audit LinkedIn and other social media profiles.
- Review accelerator biographies and company websites.
- Avoid assuming unpaid work is automatically permissible.
- Seek immigration advice before accepting operational responsibilities.
- Develop an immigration strategy before—not after—the startup gains traction.

The Bottom Line

Startup programs remain valuable opportunities for innovation and entrepreneurship.

But the immigration environment has changed.

Activities that once attracted little attention are now receiving increasing scrutiny from the U.S. government.

The greatest danger is not participating in an incubator or accelerator.

The greatest danger is failing to recognize when entrepreneurial exploration becomes entrepreneurial employment.

For foreign founders, that line can arrive much sooner than expected.

And once crossed, it may create immigration consequences that surface years later, long after the accelerator program has ended.