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US start-up visa: Is it finally on the way, and how long will it take to be enacted?

The US is reviving attempts to attract foreign entrepreneurial talent to its shores with a start-up visa to establish new businesses and create jobs. Moneycontrol examines the proposals that are on the table.

PARESH KARIA | FEBRUARY 19, 2022 / 05:43 PM IST



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The media has recently been abuzz with reports on the likely passage of a new Bill by the US Congress introducing a start-up visa that would make it easier for foreign entrepreneurs to move to the United States.

Such reports have created much curiosity and excitement among aspiring emigrants to the world's biggest economy.

Indeed, a **start-up visa** seems to be the flavour of the season. Developed countries like Canada, the UK, Australia and many European countries have introduced such travel documents in one form or another, to attract and retain entrepreneurial talent.

Many of these programs, especially in Canada and the UK, have proved to be very successful in attracting entrepreneurs to set up new businesses and create jobs, giving their economies a boost.

The US does not yet offer a start-up visa, although one has been in the making for over a decade now. The proposed Start-Up Visa Act was first introduced on February 24, 2010, but hasn't been passed. Subsequent attempts to introduce such a visa have been futile.

Following the success of such visa programs in other countries, particularly in neighbouring Canada, the US government is taking one more stab at it.

Proposed US legislation

On June 8, 2021, the Senate passed the US Innovation and Competition Act, a \$250 billion Bill to bolster scientific innovation and compete with China. This Bill did not contain any provisions for a start-up visa; a version of it passed by the House of Representatives did.

On July 26, 2021, US Congresswoman Zoe Lofgren introduced the Let Immigrants Kickstart Employment (LIKE) Act, which proposed the creation of a new class of visas for foreign entrepreneurs establishing a start-up in the US.

More recently, on February 4, 2022, the House of Representatives **passed** the America Competes Act, its own version of the US Innovation and Competition Act passed by the Senate. This proposed new Act is an elaborate piece of legislation that inter alia has provisions for introducing start-up visas on the lines of those in the LIKE Act.

The Bill proposes a new class of the W1 Visa to a foreign entrepreneur and essential employees of his or her start-up entity (W2) and their spouses and children (W3) for an initial three-year period, provided they meet the following conditions:

- 1) The alien possesses an ownership interest of not less than 10 percent in a start-up entity,
- 2) The alien will play a central and active role in the management or operations of the start-up entity,
- 3) The alien possesses the knowledge, skills or experience to substantially assist the start-up entity in the growth and success of its business,
- 4) During an 18-month period preceding the filing of the petition, the start-up entity must receive at least \$250,000 in qualifying investments from one or more qualified investors or at least \$100,000 in qualifying government awards or grants.

Conditions for visa extension

The Bill also lays down conditions for visa extension beyond the initial three-year period.

What is important is that the Bill also provides a pathway for the entrepreneur to receive permanent residency status, subject to meeting the following conditions :

- 1) The alien is present in the United States and has maintained a W1 non-immigrant or other non-immigrant status that forms the basis for employment with the start-up,
- 2) The alien has maintained an ownership interest in the start-up since its formation,
- 3) Plays an active and central role in the management or operations of the start-up,
- 4) The start-up has created at least 10 qualified jobs,
- 5) The start-up entity has
 - (a) raised not less than \$1.25 million in qualifying investments or
 - (b) generated not less than \$1 million in annual revenue in the United States in the two-year period preceding the filing of the petition.

Undoubtedly, this Bill is a major step forward in attempts by US lawmakers to introduce a start-up visa and boost innovation in the US.

A long way to go

Notwithstanding all the excitement it has generated, a US start-up visa still has a long way to go before it becomes a reality, given the fact that it is not a part of the Bill passed by the Senate.

There are other major differences in the two versions of the Bill which will have to be reconciled . The new Bill will then have to be passed into law by the US President.

Given the situation, the **Canada start-up visa** is an attractive option for Indian entrepreneurs wanting to set up a business in North America. The program is alive and kicking and hundreds of entrepreneurs have successfully moved to Canada.

The program also offers direct **permanent residency in Canada** to those meeting the initial requirements, and unlike the US start-up visa, does not create uncertainties by laying down conditions to be fulfilled in the future.

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TAGS: #America Competes Act #Let Immigrants Kickstart Employment Act #LIKE Act #start-up visa #US immigration #US Innovation and Competition Act #US permanent residency #US start-up visa #US Start-Up Visa Act #W1 Visa #W2 Visa #W3 Visa

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