E-2 Treaty Investor Visa

January 3, 2024
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Originally posted 11.2.20, content updated 1.3.24

An E-2 Treaty Investor visa[1] is a non-immigrant visa that allows foreign nationals of a treaty country to enter the U.S. to work on developing and directing the operations of a business. This visa is for an individual who wishes to invest by starting up or buying a business, small or large, in the U.S. In order to qualify for this visa, applicants must meet a series of requirements[2].

Six Requirements to be Eligible for the E-2 Visa:

1. The applicant must be a citizen of a treaty country. This visa is only available to individuals from the countries that the U.S. has a treaty agreement with. Visit the Department of State[3] website to view the complete list.
2. You must have invested or be in the process of investing funds. There are three requirements for these investment criteria:
    1. You must show legitimate possession and control of funds. The funds to be invested must have been obtained lawfully. You must provide evidence on how you acquired the funds, either earned or as a gift. Some examples of evidence include tax returns, bank statements, documents to support the source of money (e.g., proof of sale if you sold property), investment accounts, etc. This may be challenging in some countries that do not have records available.
    2. All funds invested are subject to risk and loss. This provides proof that you are irrevocably committed. At-risk money includes credit card, debit, or other loans as long as the debts are not secured by business assets.
    3. You must be close to starting the business. Although no work can be done prior to visa approval, the business should be ready. This may include a signed lease, a business bank account, an established website, and purchasing everything needed to start the business.
3. You must be in a position to develop and direct the business. The visa applicant must be the one to direct and run the business. This also means that the applicant must have the appropriate education or experience necessary for the position and business.
4. Your investment must be substantial. The U.S. Citizenship and Immigration Services (USCIS) has not defined what they mean by “substantial,” and there is no set minimum or maximum amount. This depends on several variables, including the total capital of investment in relation to the total amount required to set up the business. Only working capital (not cash sitting idle in a bank account) will be considered by the USCIS as part of an investment.
5. Your investment and business cannot be marginal; meaning, you cannot start a business just for you and your family. There must be a business plan in place to show growth over a 5-year period or that you plan to hire employees.

6. You must intend to return to your home country after the visa expires. To document this, provide a signed affidavit stating such. You do not need to show ties to your home country.

Applying for an E-2 Visa in the U.S. (I-129 Change of Status):

If you are in the U.S. on another status, you can file a petition with USCIS to change your status to an E-2 Visa. You must file an I-129 form[4], complete the E-2 visa supplement, and provide all documentation required to support your E-2 visa request. If your petition is granted, you will be in E-2 status, which typically lasts two years. To change the status of any dependents that are also in the U.S., you must file an I-539 form[5].

Applying for an E-2 Visa at a Consulate (An E-2 Visa):

If you wish to petition for an E-2 visa and are outside of the U.S., you will file an online application DS-160. You will also need to complete a DS-156E supplement. Instructions on how to do so are outlined on the website of the relevant consulate. Documentation to include is typically the same as those you would submit if filing in the U.S. However, you should still check with the consulate to see if other documents are required. Visas are typically granted between 2 and 5 years and allows for you to leave and enter the U.S. for travel. If you have dependents, they will file separate DS-160 applications.

Things to consider:

If you have been granted a change of status and then leave the U.S., you must reapply for the E-2 visa along will all supporting documentation (as if submitting a new application) at the consulate abroad. If the application is approved, you will receive an E-2 visa and will then be able to leave and reenter the U.S freely.

Some consulates are easier than others to get am E-2 visa approval. Some are unwilling to approve an E-2 if the investment is less than $100,000. For others, the threshold is even greater.

Common Questions:

1. How long does the visa last?

- If you received E-2 status through a change of status, it will generally last two years. If processed at the consulate, the visa can last five years.

2. How are family members treated?

- E-2 derivative visas are available for the spouse and children (under 21) of the E-2 Investor. Children may attend school in the U.S., but unlike the spouse, they are not authorized to work. Spouses are eligible to work by applying for an Employment Authorization Document (EAD).

3. Does an E-2 Visa lead to a green card?

- An E-2 visa is a non-immigrant visa and will not lead to a green card. However, renewals of the E-2 are allowed indefinitely so long as the business is still in operation. Since the visa is temporary, applying for another green card option while on E-2 status may show immigrant intent. If you are considering this option, please contact our office.

4. Do I need to hire U.S. employees?

- You do not have to hire employees immediately; however, your 5-year business plan should include information on when you plan to start the hiring process. There is no minimum number of U.S. employees needed. However, if no workers are hired, USCIS may consider that the business is established only to support the E-2 applicant and family and is as such “marginal” and not qualified. Therefore, it is important to at least hire some workers as reasonably necessary for the business to operate.

5. Do I have to invest $1,000,000 and hire 10 employees?

- No, that requirement is for the EB-5 immigrant (green card) visa. There is no specific amount of investment or number of employees required for the E-2 visa, unlike the EB-5 visa classification.[6]

6. Is there a minimum amount needed for the investment?

- There is no required amount necessary for the investment. There have been approvals of investments that were as low as $15,000 spent with $35,000 as working capital saved in the bank. Your investment amount depends more on your business; if you are a service business such as a consulting company, then the investment will be lower than a capital-intensive business such as a manufacturing plant.

7. Can I borrow money to start the business?

- Unlike the EB-5 visa, you can borrow money as long as the business is not overly leveraged.

8. Do you need a business plan to get the E-2 visa?

- Yes, a 5-year business plan is necessary for your visa petition to be considered.

9. Can a real-estate investment such as purchasing a home qualify for an E-2 visa?

- No, the investment must be for either starting a new business or purchasing an existing business in order to qualify for the E-2 visa. The business must be active in the U.S. Passive investments such as in real-estate or stock are do not qualify. Not-for-profit organizations are also excluded since it is required that your business make money.

10. How long does the process take to get an E-2 Visa?

- Since a number of USCIS forms and extensive supporting documents are needed, it can take time to prepare a successful filing. Once the filing has been submitted, the processing time can range from three weeks to three months (or longer). This time depends on where the consulate is that the applicant filed.

11. What kind of business is eligible for an E-2 visa?

- Any lawful and legitimate business that meets the requirements stated above. This could be anything from a wine distributor, law firm, or coffee shop.

Assistance on E-2 Process

E-2 visas are complicated and require careful revision of documentation for a successful petition. If you are interested in starting or investing in a business in the U.S., please contact our office to learn more about the E-2 visa and how we can assist you.