

U.S. Visa Options for Foreign Businesses and Entrepreneurs

January 8, 2024

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Originally posted 03.22.20, content updated 01.8.20

This article will explore the L intracompany transfer visa and the E treaty investor and trader visa. Foreign businesses regardless of nationality can send executives, managers, and other workers to work for existing or new offices in the U.S. under the L visa category. The E visa category is available only to businesses and nationals of certain countries that have treaties with the U.S.

What you Need to Know About the L-1 Intra-Company Transfer Visa

The L-1 is a nonimmigrant, intracompany transferee visa classification. The L1 visa permits key professional employees to transfer from an overseas office to an existing office of a parent, branch, affiliate, or subsidiary of the same company in the United States or, alternatively, to set up a new office. The L-1A allows for a U.S. employer to transfer an executive or manager. The L-1B is for an employee with specialized knowledge. Title 8, Code of Regulations (8 CFR) defines an intracompany transferee as someone who has been employed abroad continuously for one year (by the qualifying entity) and within the three years preceding their L-1 application and admission into the U.S. Individuals who take brief trips for business or pleasure (on B-1 or B-2 visas) will not be viewed as interrupting their one year of continuous employment.

Requirements for Eligibility

1. The employee must have worked for at least one year out of the preceding three years prior to the application and be seeking to enter the U.S. to undertake work in the same or similar capacity.
2. That there is a qualifying relationship between the foreign company and the U.S. company, meaning that there needs to be common ownership and control.
3. If you are coming to the U.S. to setup a new office, evidence will also be required to show the establishment of new premises, for example, a lease for office space, sales contracts and copies of applicable business permits etc.

For larger employers, prior approval may already have been obtained under what's known as a Blanket L petition. This permits multiple key personnel to apply for L1 status without waiting for individual USCIS petition-approval.

However, to obtain a blanket petition, there are certain regulatory requirements which must be met, in particular that the company:

- Has transferred ten L1 managers, executives, or specialized knowledge employees to the United States in the previous twelve months, or

- Has U.S. subsidiaries and affiliates with a combined annual sales of at least \$25 million, or
- Has a U.S. workforce of at least 1,000 employees.

L-1 Visa Terms

1. **Family Members:** The transferring employee may be accompanied or followed by his or her spouse and unmarried children who are under 21 years of age. Such family members may seek admission in L-2 nonimmigrant classification and, if approved, generally will be granted the same period of stay as the employee.
2. **Period of Stay:** Qualified employees entering the United States to establish a new office will be allowed a maximum initial stay of one year. All other qualified employees will be allowed a maximum initial stay of three years. For all L-1A employees, requests for extension of stay may be granted in increments of up to an additional two years, until the employee has reached the maximum limit of seven years.
3. **Restrictions:** You must work for your employer and solely your employer during your time in the U.S.

Examples

- Law firms overseas wishing to set up offices in the U.S. can use the L visa category to set up new offices in the U.S. These do not need to be staffed by U.S. lawyers as long as they are not providing legal services and are engaged in marketing activities.
- Manufacturers of wine who sell wine to the U.S. can set up marketing offices in the U.S.
- Tech firms who develop IT products and service U.S. customers.

What you Need to Know About the E Treaty-Trader Visa

E-1 Treaty-Trader Visa

The E-1 Treaty Trader visa is a nonimmigrant classification that allows for a foreign national of a treaty-trader country (a country that maintains a treaty of commerce with the U.S.) to be admitted into the U.S. for the purpose of engaging in international trade. This visa is applicable to individuals or employees of a qualifying organization or company who will be engaged in international trade. Trade to be considered for this category includes both physical movements of goods or transportation and non-physical services (including banking, insurance, tourism, journalism, or technology).

E-1 Requirements for Eligibility

Individual

1. They must be a national of a qualifying treaty country.
2. They must show that they intend to engage in "substantial trade." The United States Citizenship and Immigration Services (USCIS) states that this generally refers to, "the continuous flow of sizable international trade items, involving numerous transactions over time."
3. They must carry out "principle trade," meaning at least half of all trades are between the U.S. and the designated treaty country.
4. They must prove intent to return to their home country at the end of the visa.

Employee

1. They must be the same nationality of the principal employer and the principal employer must have the nationality of a qualifying treaty country.
2. They must meet the definition of an "employee."

3. They have a supervisory or managerial role that requires specialized knowledge or skills.
4. The employer must be either in the U.S. on a current E-1 visa or if applying outside of the U.S., they must prove that they can meet the E-1 qualifications.

E-1 Visa Terms

1. **Family Members:**Spouses and unmarried children (under the age of 21) can be granted E-1 nonimmigrant visas as dependents of the treaty trader or employee. They do not need to have the same nationality as the qualifying treaty country.
2. **Period of stay:**Those with E-1 status are allowed to stay for a period of two years. Extensions of two years are allowed, with no limit to the number of extensions as long as the treaty trader or employee can continue to show that they qualify, including proof of intent to return to their home country. An E-1 visa holder may travel outside of the U.S. and will likely be granted a two-year extension upon their re-admission into the U.S. However, this also means that family members who are dependents of the treaty trader or employee will also need to travel abroad and reenter the U.S. for an automatic two-year extension.
3. **Restrictions:**The E-1 visa holder may only work in the area in which they have been approved for when their classification was granted. However, it may be possible for them to work for their qualifying employer's parent company as long as there is an established relationship among the organizations, the employment requires executive, supervisory, or essential skills, and the terms of the employment have not otherwise changed.

E-2 Treaty Investor Visa

One alternative to the E-1 Treaty Trader visa is the E-2 Treaty Investor visa. For those with significant funds to invest and from a treaty trader country, this may be an option. There are two ways to apply for an E-2 Treaty Investor Visa. 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](#), 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](#).

If you wish to petition for an E-2 visa and are outside of the U.S., you will need to apply through a consulate. 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.

E-2 Requirements for Eligibility

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](#) website to view the complete list.
2. You must have invested or be in the process of investing funds. There are three requirements for this 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 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 the visa approval, the business should be ready. This may include a signed lease, a business bank account, an established website,

and having purchased 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.

E-2 Visa Terms

1. **Family Members:** 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).
2. **Period of Stay:** If you received E-2 status through change of status, it will generally last two years. If processed at the consulate, the visa can last five years.
3. **Restrictions:** A treaty investor or employee may only work in the activity for which he or she was approved at the time the classification was granted.

Examples

Following the previous approval of an E-2 applicant by Mr. Syed, a local Korean restaurant business wanted to add a new investor. The initial E-2 applicant was a student at a local business school who had worked for her family’s restaurant business in Korea. She wanted to establish her own restaurant here in the United States. She also wanted to bring an essential employee to work in the restaurant. Three years later, her business was successful, and she wanted to add a second investor. Given his success in the initial application, she returned to Mr. Syed, where he was able to obtain an E-2 visa for the new investor. With their business expanding, Washingtonians will be able to sample a range of Korean delights.