

IV. E-2 VISA/ STATUS – INVESTORS AND ESSENTIAL WORKERS

The influx of investment from foreign countries is one of the most important contributors to the success of any nation's economy. The E-2 investor visa allows foreign investors to come to the United States based on investment in a U.S. business. Certain employees of such a person or of a qualifying organization may be eligible for this classification. As part of the U.S. immigration policy, this enables the foreign investors and essential workers from countries that have treaties with the United States to visit under their own distinct visa/ status.

Nationals of qualifying Treaty countries who have made a significant investment in the United States may qualify for E-2 Treaty Investor status. Like the E-1 visa, there is no set minimum level of investment which may qualify for E-2 status, but the lower the investment the less likely one is to qualify. Again, the level of investment must be sufficient to justify the treaty national (or his/her employees) presence in the United States. The investment must be in an operating business – simply buying property or stocks and bonds does not qualify. Also, a substantial part of the investment must have been made before applying for E-2 status.

This kind of visa is suitable for: (a) entrepreneurs from treaty countries investing substantially in a U.S. enterprise; (b) nationals of treaty countries entering the U.S. to develop and direct investments from the treaty country; (c) nationals of treaty countries entering the U.S. to develop and direct the operations of an enterprise in which they have invested, or they are actively in the process of investing a substantial amount of capital; (d) immediate family members of E-2 visa holders; (e) companies in treaty countries to send key personnel to manage the U.S. affiliate or branch; (f) companies in treaty countries to send personnel to setup a U.S. company.

Although this sounds all good who can apply for such a visa? Investors and essential workers who are citizens of a country that has a treaty with the United States allowing E-2 Visa/Status are eligible to apply for an E-2 Visa/Status. To qualify, a citizen of one of the treaty countries must own the majority interest and/ or control of the invested business. Moreover, the investment must be active and substantial and the investment must create jobs. To qualify as an investor, you must be the one to manage the business. To qualify as an essential worker, you must be a highly qualified employee and specially trained and considered important to the invested business.

The applicant is required to come to the United States to develop and manage the operations of an enterprise in which the applicant has invested or is actively in the process of investing a substantial amount of capital. In addition to the investment in a business enterprise, the investor must be coming to the United States to develop and direct the operations of the enterprise in which he or she has made the investment. The applicant must have more than fifty (50%) percent ownership of the investment, unless the applicant is coming as an employee of the enterprise.

So, to summarize, what might be required of the average investor? (a) be a national of a country with which the United States maintains a treaty of commerce and navigation; (b) have invested, or be actively in the process of investing, a substantial amount of capital in a bona fide enterprise in the United States; (c) be seeking to enter the United States solely to develop and direct the investment enterprise. This is established by showing at least 50% ownership of the enterprise or possession of operational control through a managerial position or other corporate device.

If the Treaty Investor has employees, the qualifications of the employee should: (a) be the same nationality of the principal alien employer (who must have the nationality of the treaty country); (b) meet the definition of “employee” under relevant law; (c) either be engaging in duties of an executive or supervisory character, or if employed in a lesser capacity, have special qualifications. Special qualifications are skills which make the employee’s services essential to the efficient operation of the business. There are several qualities or circumstances which could, depending on the facts, meet this requirement. These include, but are not limited to the degree of proven expertise in the employee’s area of operations, whether others possess the employee’s specific skills, the salary that the special qualifications can command, whether the skills and qualifications are readily available in the United States.

Most E visas are done through consular processing. The amount of documents required varies to each case. The qualified treaty investors and employees are granted a maximum initial stay of two years. Extension of stay may also be granted in increments of up to two years each. In addition, there is no maximum limit to the number of extensions an E-2 nonimmigrant may be allowed. However, all E-2 nonimmigrants must maintain an intention to leave the United States when their status expires or is terminated.

Spouses and unmarried children below 21 years old may accompany or follow the treaty investors and employees. Their family members may seek E-2 non-immigrant classification as dependents and when approved, they will be granted the same period of stay as the employee. Their spouses and children are authorized to work at any legal jobs and may also attend schools.

To find out more about the procedural steps involved and an estimate of fees, call or email us today for your free in-depth consultation!