

## E-2 TREATY INVESTOR STATUS

US immigration laws allow for nonimmigrant visa status for a national of a country with which the US has a treaty of commerce and navigation, where the foreign national is coming to the United States to develop and direct the operations of an enterprise in which the foreign national has invested, or is in the process of investing a substantial amount of capital. E-2 status is also available where the foreign national is coming to work for a US company which is majority owned by people from the foreign national's country (e.g. a Mexican national coming to work for a Mexican company).

The primary requirements for E-2 status are:

- The investor, either a real or corporate person, must be a national of a treaty country.
- The investment must be substantial. It must be sufficient to ensure the successful operation of the enterprise. The percentage of investment for a low-cost business enterprise must be higher than the percentage of investment in a high-cost enterprise.
- The investment must be a real operating enterprise. Speculative or idle investment does not qualify. Uncommitted funds in a bank account or similar security are not considered an investment.
- The investment may not be marginal. It must generate significantly more income than just to provide a living to the investor and family, or it must have a significant economic impact in the United States.
- The investor must have control of the funds, and the investment must be at risk in the commercial sense. Loans secured with the assets of the investment enterprise are not allowed.
- The investor must be coming to the U.S. to develop and direct the enterprise. If the applicant is not the principal investor, he or she must be employed in a supervisory, executive, or highly specialized skill capacity. Ordinary skilled and unskilled workers do not qualify.

Documentary requirements for new or small business owners:

Evidence needs to show the following:

- the incorporation of the business in the US;
- the ownership of the company by treaty nationals;
- the capitalization of the business;
- a business plan;
- information on business activities such as marketing documentation, sales contracts, customer lists, etc;
- lease or property ownership documentation;
- financial statements and tax returns for the US business;
- if the company has business abroad, information on the business and finances of the foreign operation.

Depending on whether you are buying an existing business or starting a new business, this evidence will be:

- ✓ Recent bank statement of the US company showing the investment of substantial funds by the treaty investor;
- ✓ Local business and Occupational Licenses of the U.S. company;
- ✓ Income or sales tax returns of the U.S. company;
- ✓ Documentary evidence as to active business operations by the U.S. company; this may consist of company brochures, contracts, deeds, invoices etc;
- ✓ Copies of the W-2 form for each employee of the business, if any;
- ✓ 5-year Business Plan;
- ✓ Business Valuation;
- ✓ Incorporation documents for US company, if a corporation.

- A complete money trail of the funds invested, including:
  - Documentation of the original source of the funds (sale of property, inheritance, loans, earnings, sale of business, etc.)
  - Movement of these funds to a U.S. account;
  - Use of these funds for qualifying business expenses. Please include invoices, cancelled checks, and bank statements showing matching debits (highlighted).
  
- If you are buying an existing business, please provide all of the following that apply in your case:
  - A signed, dated, valid purchase agreement
  - Evidence that the funds to be invested are “irrevocably committed.” This could be satisfied if the purchase of the business is conditional on the visa being issued, and if the funds are held in escrow until the visa is issued. In this case, please provide a binding escrow agreement that explicitly says where the money goes if the visa is issued, what happens when it does not, and is signed and dated by all parties. Please cross-reference exactly any relevant purchase agreement.
  - Signed, dated, valid lease for business premises, including evidence of payments.
  - Evidence of any other funds spent to acquire and set up the business;
  - US tax returns for business for the past three years. Taxes must include all statements and schedules. These must be copies of the signed and dated forms actually submitted to the IRS;
  - All W-2 and/or 1099s for the last two tax years;
  - Profit and loss statements for the current and previous calendar years;
  - Monthly bank statements for current calendar year.
  
- If you are establishing a start-up, please provide all of the following that apply:
  - Signed, dated, valid lease for business premises, including evidence of payments;
  - Evidence of equipment and/or inventory purchases;
  - Evidence of any other funds spent to acquire and set up the business;
  - A business plan that analyzes the local market and competition and gives a 5-year projection of profit and loss. Projections must be backed up by external sources;
  - A breakdown of start-up costs necessary for the business to become operational.
  
- If you are purchasing a franchise, please provide:
  - A signed and dated franchise agreement;
  - Evidence of payment of the franchise fee.
  - Relevant local, state and/or federal licenses

## DURATION OF E-2 STATUS

E-2 visas are usually approved for 5 years at a time, though it could be shorter especially for a start-up enterprise. Applicants are normally admitted for 2 years on each entry and extensions are available. E-2 dependent spouses can apply for work authorization, however dependent children cannot work

See these links for more information:

<http://www.uscis.gov/eir/visa-guide/e-2-treaty-investor/understanding-e-2-requirements>

<http://london.usembassy.gov/niv/enew3.html> (London consulate requirements, showing the extensive documents needed in a typical E-2 case)