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IMMIGRATION INSIGHTS

There is no minimum dollar amount necessary to obtain an E-2 visa. The investment amount is determined by the type of business.

There is no minimum number of employees required. The business cannot be “marginal” and should provide some employment to U.S. workers in addition to the investor and family members.

There is no outside limit on how long an E-2 visa may last. It is renewable as long as the business remains in viable operation.

Family members can be included in an E-2 visa. Spouses can apply for work authorization and children may attend school.

E-2 TREATY INVESTOR VISA OVERVIEW

INTRODUCTION

The E-2 Treaty Investor Visa is a non-immigrant category that is well-suited to small and medium size businesses. It is an alternative to the EB-5 immigrant investor category, and is more flexible in some important ways. The holder of an E-2 visa, his/her family, and employees are allowed to enter and leave the U.S. as often as needed, as long as the business continues to be viable. E-2 visa holders may engage in self-employment related to their investment, may remain in the U.S. for an indefinite period, and are not required to maintain ties to their home country.

REQUIREMENTS

- 1) The investor must be a citizen of a country with a treaty agreement with the United States. There are currently about 80 countries approved for the Treaty Investor program. Here in Hawaii we see many E-2 investors from Japan, Canada, Taiwan, Australia, The Philippines and Thailand.
- 2) The investor must have possession and control of the funds invested. The source of the funds does not need to be from outside the U.S., but it the funds must be clearly the property of the investor at the time of the investment.
- 3) The investment must be “at risk.” Simply depositing money in a bank account does not qualify as investment. There must be the establishment or purchase of an enterprise, a business venture intended to become profitable over time or close down or be sold if it fails.
- 4) The investment must be clearly committed. This is shown by documenting purchases of equipment or supplies, lease agreements, marketing expenses, and so on. Contracts with customers or vendors are also helpful to show commitment. For example, an executed one-year lease for a showroom or office will show that the amount of that one-year lease is committed as an investment.
- 5) The business must be a *bona fide* commercial undertaking. It must be clear that the enterprise is not created solely for immigration purposes, and has a viable and legitimate business purpose. This is shown by documenting that business transactions are being undertaken, office is leased, entity is formed, a business plan exists, contracts are made, etc.
- 6) The investment must be “substantial.” There is no special figure that qualifies an E-2 investment, the investment must be determined in the context of the business being created. The amount will vary depending on the type of business. For example, if your business investment is opening a car dealership, the investment of \$100,000 will probably not be sufficient.
- 7) Investment must not be marginal. This means that the investor must have a larger goal than to simply earn a living for the investor and his immediate family. A solid business plan with reasonable growth projections will support this requirement.

The E-2 visa is typically applied for at the U.S. embassy or consulate in the investor's home country.

If the investor is already in the U.S. it may be possible to apply from inside the U.S.

The documentation for an investment visa will be reviewed carefully, and should be both complete and professionally presented.

A similar visa, the E-1 Treaty Trader Visa, is available for companies who engage in the import/export trade between the U.S. and their treaty country.

8) Finally, the investor must have ability to develop and direct the business. Evidence of the investor's prior experience, education and skills relevant to managing the intended business, or the capacity to hire and compensate someone with those skills is needed.

APPLYING THROUGH THE U.S. EMBASSY OR CONSULATE

Unless the E-2 visa applicant is already in the U.S., E-2 visa applications are typically filed with and processed through the Department of State. To obtain an E-2 visa, the investor must submit an application for a nonimmigrant visa at an overseas U.S. embassy or consulate.

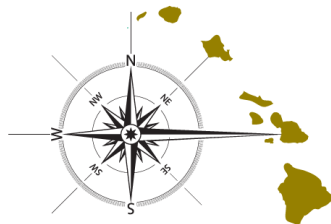
Once the application is submitted, applicants are typically required to pay the visa application fee through a designated bank or online payment system depending on the country. After the fees are paid, the applicant then schedules a visa interview with the embassy or consulate.

At the visa interview, the applicant must bring all required documents, including the visa application confirmation page, proof of payment of the application fee, his or her passport, photos, and supporting documents establishing eligibility for the visa. Your immigration attorney plays a critical role in helping assemble, prepare and organize these documents, often in the form of a "briefing book" which the investor will bring to the interview.

STARTING A BUSINESS IN THE U.S. IS A COLLABORATIVE EFFORT

A new business venture will typically require a team effort. Along with a good immigration attorney, the investor should be sure that he/she has a relationship with a local bank familiar with serving business clients, an experienced accountant, and perhaps a business plan specialist. With a reliable network of business professionals, an investor increases the chances for success both in the business and in successfully obtaining the E-2 visa.

At MigrationCounsel we help small and medium size business investors at all stages of the visa process, and would be happy to discuss the options and requirements with you.



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