



An E-2 Visa is an Attractive Option for Foreign Investors

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Foreign investors who may not satisfy the requirements for an EB-5 Immigrant Visa (for example, a minimum investment of \$500K or \$1M and the creation of 10 jobs within 2 years), should consider applying for an E-2 Treaty Investor Visa (E-2).

The biggest drawback to the E-2 is that it does not result in a Green Card, since it is a Nonimmigrant (temporary intent) Visa. However, unlike most Nonimmigrant Visas, the E-2 has no maximum duration. It does, however, need to be renewed every 2 to 5 years, but can be renewed indefinitely so long as the underlying business continues to qualify.

To be eligible for an E-2, an individual must be an alien who is entitled to enter the U.S. under the provisions of a treaty between the U.S. and the foreign state of which she is a national, *solely to develop and direct the operations of an enterprise in which she has invested, or of an enterprise in which she is actively in the process of investing, a substantial amount of capital.*

Based upon this definition, the U.S. Department of State and other implementing agencies have developed a number of E-2 requirements. The primary requirements include: (1) *nationality* – the investor must be a national of a listed treaty country, and the relevant enterprise must be at least 50% owned by nationals of the treaty country; (2) *temporary intent* – although the E-2 has no set limitation on extensions, the applicant must still declare an intent to return to her home country some day; (3) the investor must *possess and control* the capital invested; (4) the investment must be *at risk* and *irrevocably committed*; (5) the investment must be in a *bona fide enterprise* actively engaged in commerce; (6) *substantiality* – the investment must be substantial, and sufficient to ensure the successful operation of the enterprise; and (7) *marginality* – the enterprise may not be "marginal"—it must have the capacity to generate positive significant economic impact and must not merely provide a minimal income for living to the investor and the investor's family. Most scrutiny focuses on the requirements of *substantiality & non-marginality*.

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The E-2 is an attractive, yet often overlooked and underutilized, visa option. Indeed, the E-2 has many advantages over many of its brethren. For example, unlike most employment-based visas (*e.g.*, EB, H, or L Visas), the E-2 does not require a job offer nor a sponsoring employer. The E-2 can also be obtained with smaller investments and without the job creation requirements of the EB-5. In addition, the E-2 can be processed quickly at most Consulates, it permits self-employment, it is not as strict regarding temporary intent as most other temporary visas, and it has no maximum limit on the duration or number of extensions. Accordingly, for foreign entrepreneurs who wish to invest in the creation of a new business or the purchase of an existing business in the U.S., the E-2 may be just the vehicle for realizing their dreams.
