

## E-2 NONIMMIGRANT INVESTOR VISA

### E-2: TEMPORARY NONIMMIGRANT TREATY INVESTOR VISA

#### OVERVIEW

The E-2 “Treaty Investor” visa is open to certain foreign nationals who are coming to the U.S. to develop and direct the operation of a business. Unlike most other visas, the E-2 is not open to the entire world, but only available to those nationals of certain countries in which the U.S. maintains treaties of commerce and navigation. The E-2 visa provides relatively fast entry into the U.S. by allowing applicants the opportunity to apply directly with a consulate abroad; no petition to USCIS is needed. While there is no statutory or regulatory limitation on the number of times an E-2 visa may be renewed, it does not in and of itself allow for permanent residency (a “Green Card.”) It may, however, be used in conjunction with a Direct [EB-5](#) process or perhaps even an [EB-1-C](#) provided that those qualifying criteria are independently met.

#### REQUIREMENTS

1. **Nationality:** The investor (either a real or corporate person) must be a national of a treaty country and the entity must hold that same nationality. Under the law, a U.S. entity may qualify as an E-2 enterprise if it is owned by 50% or more by treaty nationals.

A list of treaty countries can be found on the [Department of State’s web site](#). Unfortunately, no present E-2 treaties exist between the U.S. and Brazil, Russia, India, or China. However, if an applicant has dual nationalities, s/he may utilize the E-2 qualifying passport for the purposes of securing the visa. The U.S. maintains treaties with some countries that allow the ability to obtain citizenship relatively quickly through their respective immigrant investor programs, which may present an option for nationals of countries where no treaty is available.

2. **Substantial, At-Risk Investment:** An investment must be substantial enough to ensure the successful operation of the business. Unlike the EB-5 immigrant visa, there is no per se minimum threshold amount, rather the investment generally needs to be substantial in a proportional sense to the startup costs or purchase price of the E-2 enterprise. Accordingly, an investor seeking to open a café would have a lower minimum investment threshold than an investor seeking to open a manufacturing plant.
3. **Real, Active, and Operating Entity:** The E-2 investment must be made in an entity that is already in active business operations, or will be able to commence operations immediately following issuance of the visa. Certificates of incorporation, contracts, letters of intent, a business lease, and similar documentation is generally required for startups.
4. **Marginality:** An investment must generate an income and employment for more than just the investor. Simply providing a basic living for the investor and his/her family, as self-employment,



will not qualify. Likewise, noneconomic activity such as the mere purchase of real estate will not qualify. Unlike the Direct EB-5 visa, job creation is not quantified nor must job creation be direct hires by the E-2 entity. Startups generally require a comprehensive business plan.

### PROCESS

The E-2 visa does not require an investor to file a petition with USCIS. Instead, the investor may file an application directly with a foreign consulate abroad. Each consulate has varying requirements and processes for application submission, however, the visa is generally issued in a matter of weeks or months following submission. In person consular interviews are usually required.

The consulate will issue an E-2 visa with a duration that varies based on the country of nationality's reciprocity for U.S. citizens. Most nationals are able to secure visas valid for a period of five years, which is the maximum allowable.

It is important to distinguish the difference between visa validity and authorized stay. Each E-2 *entry*, regardless of validity time remaining on the visa, allows for admission and *authorized stay* of up to two years. With a valid visa, E-2 visa holders may depart the U.S. and reenter to secure a new 2-year admission. In other words, even if the visa has not expired, an E-2 visa holder would need to depart the U.S. and return prior to expiry of stay. Alternatively, s/he may file for an extension through USCIS. Once the visa expires and the E-2 holder departs the U.S., a new E-2 submission is required at a consulate abroad.

Spouses and dependent children of E-2 visa holders obtain their own E-2 visas. Spouses may apply for work authorization, allowing them the opportunity to work in the U.S. for any entity. Children do not qualify for work authorization; however, they may attend public or private schooling without student visas until the age of 21.

### HIRING OF FOREIGN NATIONALS

Importantly, the E-2 visa can also be used to hire non-investor nationals to be employed by the E-2 entity. Specifically, individuals possessing a passport of the E-2 entity may be hired as Managers, Executives, Supervisory, or Essential Skills employees. Unlike other nonimmigrant employment visas such as the H-1B, no filings with the U.S. Department of Labor are required.

### EXTENSIONS AND PERMANENT RESIDENCY

Although intended to be temporary, there is no numerical limit on the number of E-2 visas that one may secure. Renewal applications may be made at a consulate abroad, or if no international travel to be planned, an extension petition filed with USCIS.



The E-2 visa does not in and of itself provide a path to a Green Card. However, E-2 investments might be able to qualify or be modified to be able to secure a Direct EB-5 immigrant visa. An alternative path to permanent residency may exist if the E-2 visa holder possesses the qualifying experience abroad and there exists a foreign qualifying entity relevant to securing an EB-1-C immigrant visa.

E-2 treaty investor visas are non-immigrant visas reserved for foreign entrepreneurs of countries that have a Treaty of Trade and Commerce with the U.S. Making an E-2 visa investment allows you, the financier, to enter the U.S. on account of the business that benefits from your capital. However, while there are many advantages to having an E-2 visa, they each have a specific investment requirement. Be sure to take these factors into account as you consider making an E-2 visa investment.

### TOP 6 E-2 VISA ADVANTAGES

1. You can work legally in the U.S. for a company that is the subject of your investment. One of the main E-2 visa advantages is that you can conduct business legally within the United States and also be employed by that business. Whether the company is pre-existing or you're just starting up, it is important that you play a vital role in the business. As proof, you need to show that you will be developing and directing the E-2 visa investment. You can do this by demonstrating ownership of at least 50% of the enterprise or have significant operational control through a managerial position. You can demonstrate this by providing a list of all owners and their percentage of ownership and it should be signed by all owners to show that you possess a controlling interest in the business.
2. There is no minimum investment amount that is required. The U.S. government does not specify a minimum or maximum amount for an E-2 visa investment. However, your investment must be a substantial amount and you must not be able to withdraw your funds. The definition of a substantial amount is not quantified by U.S. government regulations. However, the rule of thumb is that capital investment should be proportionate to the nature of the business. While official requirements indicate an investment of \$100,000, we have seen a wide range of scenarios, including getting approvals for investments of only about \$50,000. On the end of the spectrum, an investment of \$100,000 does not guarantee an approval if the business necessitates a higher investment. This is because the U.S. government is looking to approve businesses and grant E-2 visas to investors that are going to make a positive and significant impact on the U.S. economy. Businesses that require a smaller investment are deemed marginal and are not considered to have a great economic impact. If you plan on providing an even more significant E-2 visa investment of \$500,000 or \$1,000,000, you



now have the opportunity to become a permanent resident in the U.S by applying for an EB-5 green card. The reason for this is because the U.S. is looking to decrease the unemployment rate. By investing such a large amount, the government projects that your investment will create more job opportunities thus benefiting the U.S. economy.

3. Your spouse can work under an E-2 dependent visa. Spouses of E-2 investors may work in the U.S. by applying for a temporary work permit or employment authorization document (EAD). This allows the spouse to work for any company in the U.S. or start his or her own business. One can file for an EAD by filling out a Form I-765 with fee. If approved, there is no specific restriction as to where the E-2 spouse may work. Generally, spouses are granted the same period of stay as the E-2 visa holder. They are also able to file an extension of stay in an E-2 dependent classification by filling out a Form I-539.
4. Your children under 21 can attend a school of your choice with an E-2 dependent visa. Children under 21 may not qualify for a work visa but they are able to pursue a higher education that will be accredited. They will then be able to apply for other non-immigrant visas to work after seeking a degree. Usually, children would have to file for an F-1 visa which only allows the child to attend the school in which the visa was approved. However, there are many more options with an E-2 dependent visa. After the child has reached 21, they can no longer stay in the U.S. under an E-2 dependent visa. They will then have to apply for their own visa which can permit them to stay in the U.S. to continue school and/or begin to work.
5. You can travel freely in and out of the U.S. As long as your E-2 treaty trader visa is valid, foreign investors and their dependents have the choice of living outside of the United States for an undetermined amount of time and can come and go as they please.
6. You can stay indefinitely.

E-2 visa holders maintain their E-2 status for two-year increments and can request an extension of stay an unlimited amount of times. Essentially, you can reside and conduct business in the U.S. for as long as your extensions are approved. You can do this without being a green card holder or a U.S. citizen. Because children and spouses are often granted the same period of stay as E-2 visa holders, they too will need to apply for an extension. This must be done prior to the expiration of their E-2 dependent visa to remain in the U.S.

If you are outside the country, then you will need to go through consular processing. This means that you will be required to travel to a predetermined U.S. consulate or embassy in order to participate in a one-on-one consular interview with an immigration officer.

During this interview, you will be asked questions about your background, your enterprise, and your plans for living in the U.S. The purpose will be to determine if your case is legitimate.

### Adjusting from E-2 to EB-5 Status

If you would like to stay in the U.S. permanently to work on your enterprise, you can apply for the EB-5 investor green card. To do this, you need to invest at least \$1 million in a U.S. business or \$500,000 in a business that is in a rural or high-unemployment area. You should be able to prove that this investment will benefit the U.S. economy.

Your qualifications for the EB-5 will depend on the nature of your E-2 visa investment. You may need to invest a substantial amount more in order to meet the minimum investment amount.

The process involves filing an I-526 with the USCIS. The date that the Service obtains your petition is your "priority" date, which must match or pass the "final action date" given in your category on the monthly visa bulletin provided by the Department of State. Once that happens, you can file an I-485 form to adjust your status. If your date is already current, as most are, then you can file the I-526 and the I-485 concurrently.

Both the I-526 and the I-485 can take up to six months each to process and premium processing is not available for these forms.

### HOW WE CAN HELP?

We know that the decision to start a business in the U.S. is one that brings many questions to the forefront and we are here to help. Our goal is to assist you so that you can realize the dream of your lifetime and growing a business in the United States. We welcome the opportunity to guide you through the E-2 visa process and we are pleased to offer you the following services:

- We will provide you with advice and consultation regarding preparation of documents required by an immigration attorney (Envision works closely with several reputed immigration law firms) for E-2 Visa petition and guidance throughout the various phases of the Visa process. You are responsible to provide us the information for preparation of supporting documents.
- We are available to answer any and all of your E-2 questions, and we are happy to schedule as many meetings with you as needed to make you comfortable with the Visa process.



- We will provide you with a comprehensive questionnaire that will serve as your road map to all of the documents we will need to process your Visa.
- We will set-up a legal business entity and help you find a suitable office or warehouse (if required).
- We will prepare Business Plan (30 to 40 pages) for your E2 Visa petition.
- We will coordinate with attorney to prepare and file your E-2 Visa petition for you and this includes the compilation of binders and supporting documentation. We will also complete your DS-160 application that the consulate will require and other Visa forms for you as needed, including all required legal forms for your family. We will have an interview preparation meeting with you to prepare you for the E-2 interview at the Consulate and provide you with examples of questions you can expect to be asked.