



Treaty Investor (E-2)

Treaty Trader (E-1) and Treaty Investor (E-2) visas are authorized based on treaties of commerce between the United States and your country of nationality. Individuals applying for E visas must have the nationality of the organization for which they are working. The requirements and documentation needed are outlined below.

Existence of Requisite Treaty

At this time we have confirmed that a qualifying treaty of commerce between the United States and your country of nationality exists, allowing us to apply for an E-2 visa.

Employee Qualifications

In all treaty investor cases, it must be shown that nationals of a treaty country own at least 50% of an enterprise. It must also be shown that a national of the treaty country, through ownership or by other means, develops and directs the activities of the enterprise. In instances in which a sole proprietor or an individual who is a majority owner wishes to enter the United States as an "investor," or send an employee to the United States as his and/or her personal employee, or as an employee of the U.S. enterprise, the owner must demonstrate that he or she personally develops and directs the enterprise.

Where an employee is chosen to come to the United States in E status, that employee must have the same nationality of the qualifying entity, and must have executive and supervisory responsibilities or be an essential employee.

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Executive or Supervisory Employees must demonstrate the applicant's title, place within the firm's organizational structure, the duties, the degree to which the applicant will have ultimate

control and responsibility for the firm's overall operations or a major component thereof, and the number of skill levels of the employees the applicant will supervise, the level of pay, and whether the applicant possess qualifying executive or supervisory experience. We will gather this information through questionnaires.

Essential Employees: The regulations provide E visa classification for employees who have special qualifications that make the service to be rendered essential to the efficient operation of the enterprise. The employee must possess specialized skills, and such skills must be needed by the enterprise.

In assessing the specialized skills, the consular offices will consider the degree of proven expertise, the uniqueness of the skills, the function of the job and the salary the skills command. In assessing the duration of essentiality, the consular officer will look toward the period of training needed to perform the contemplated duties, and in some cases, the length of experience and training with the firm. Additionally, the consular officer may look toward the availability of U.S. workers in assessing the specialized nature of the applicant's skills.

Foreign Corporate Requirements

- The Individual and Business must Possesses the Nationality of the Treaty Country

The treaty trader or investor must, whether an individual or business, possess the nationality of the treaty country. The nationality of the individual is determined by the authorities of the country of which the alien claims nationality. The nationality of a business is determined by the nationality of the individual owners of that business. In corporate structures one looks toward the nationality of the owners of the stock. If a business in turn owns another business, then nationality of ownership must be traced to the parent company.

- Investor must have invested or be actively in the process of investing

Whether or not the applicant has or actually is in the process of investing is determined by the consular officer based on the following criteria:

The investor must demonstrate possession and control of the capital assets, including funds invested:

1. This requires proving the origins of the funds (i.e. savings, gift, inheritance, etc.), and control and possession of the funds (generally through bank account statement).
2. The funds invested must be subject to partial or total loss if business fortunes reverse. This means any loans secured by the assets of the enterprise in

question (as opposed to those secured by personal assets) cannot be counted toward investment.

3. The funds must also be irrevocably committed – where you are in the process of investing, the start of actual business operations must be close. Mere intent to invest or possession of uncommitted funds in a bank account, or even prospective investment arrangements entailing no present commitment will not qualify.

- The Investment must be Substantial

While there is no set dollar amount to constitute substantial, the capital invested for E-2 visa purposes requires that the amount be substantial in proportion to the total cost of either purchasing an established enterprise, or creating the type of enterprise under consideration (a business plan will provide some guidance in this regard). For a newly created business it is the actual cost needed to establish such a business to the point of being operational. The lower the cost of the business, the higher a percentage of investment is required. Therefore, investment of 100% or a higher percentage would normally qualify for a small business of \$100,000 or less.

- The Enterprise must be More than Marginal

The investment cannot be for the sole purpose of earning the investor a living. An applicant is not entitled to E-2 classification if the investment, even if substantial, will return only enough income to provide a living for the applicant and family. Therefore, income anticipated to exceed that is necessary to support self and family would meet this test.

In the alternative, where income is small or non-existent at the time of filing, the consular officer will look at economic impact of the business. The business must have the capacity, present or future, to make a significant economic contribution. This projected future capacity should generally be realized within five years from the date of filing. We will therefore need to submit a reliable business plan to verify capacity to realize a profit within a maximum five year period.

DOCUMENTATION NEEDED

In order for us to further assess the viability of the E-2 visa, please provide the following documentation at this time. Depending on the content of the documentation provided, we may have to request additional/alternative documentation and/or revisit the viability of this visa category:

FOREIGN ENTITY EXISTENCE DOCUMENTATION:

Annual Reports (including security filings with foreign stock exchange);
Articles of Incorporation;
Income Tax Returns or Financial Statements for the last 3 years;
Trade/Business Operation Certificates;
Government issued documents indicating operation of business
Documentation documenting ownership – documentation of capital distribution, and ownership structures
Most recent financial statements
Profit and Loss Statements
Corporate tax returns (for the past 2-3 years where available (if this is a new office please see documentation request below

US COMPANY DOCUMENTATION:

Annual Reports (SEC 10-K);
Stock Certificates and Stock Journal Entries or other records of ownership;
Article of Incorporation,
Partnership Agreements
Any other relevant documentation showing existence and at least 50% German ownership
Most recent financial statements
Profit and Loss Statements
Corporate tax returns for the past 2-3 years where available (for new offices, please see

provide lease documentation, business license, bank statements, etc.)

EVIDENCE OF INVESTMENT:

Documentation of any and all investments made in the U.S. entity, including:

- Value of purchased and leased of equipment,
- moneys spent on attorneys, consultants and other professionals in establishing the business,
- dollar value of rights to intangible or intellectual property ,
- a five year business plan showing intended growth and cost figures for additional assets needed to run the business,
- office leases,
- clients lists for whom you will be providing services and contracts for services with those client;

Wire transfers and other evidence establishing the amounts spent toward and irrevocably committed toward the U.S. business

EMPLOYEE POSITON ORGANIZATIONAL CHARTS (we will capture most of this information through questionnaires and will let you know where additional documentation is required. We will need an corporate organization chart either way):

Description of job duties to include specialized skills needed for the performance of duties in the United States. Please indicate anticipated duration of job duties, as well as why these are urgent and essential to the operation of the company.

Diploma, resume, job training certificates demonstrating or in support of specialized skills (where applicable)

A charts referencing the employee/beneficiary's position within the foreign organization including direct reports and beneficiary's superiors up through senior

management/executive levels

A chart referencing the employee/beneficiary's position within the US entities including direct reports and beneficiary's superiors up through senior management/executive levels