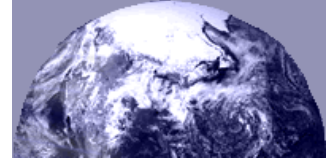


# Thompson Immigration Law Associates

Providing U.S. & Global Immigration Solutions  
to Businesses Around the World



## E-2 Nonimmigrant Investor Visas

One of the most flexible business visas available to the United States is the E-2 nonimmigrant investor visa. This visa can be used by anyone from 76 different countries who wish to invest in the United States by opening a business. Some of the benefits of this visa include:

- The E-2 visa can be used by individuals or multinational corporations.
- For corporations, the E-2 visa is more flexible with regard to bringing in employees than the L-1B intra-company transfer visa.
- Contrary to common belief, the investment can be minimal so long as the investment is in an active, operating company (*i.e.*, you cannot use an E-2 visa for passive investments, such as real estate investments).
- Newly-graduated college students can use the E-2 visa to open a company and remain in the United States. This is essential if the number of H-1B work visas runs out as they have for the last several years.
- You can continue to renew your visa and remain in the United States for as long as your investment remains economically viable. *As such, there is no limit on how long you can remain in the United States on an E-2 visa.*
- The actual investor can operate the business (*i.e.*, you do not have to hire U.S. workers to run the business).

### 1.1 GENERAL REQUIREMENTS

In order to qualify for an E-2 investor visa:

- The investor must be a national of a treaty country.
- The investment must be “substantial” (*i.e.*, it must be sufficient to ensure the successful start up of the enterprise within five years). As such, the amount of the investment need not be large in many circumstances (*see the “Misconceptions” discussion below*).
- The investment must be a “real operating enterprise”. Speculative or idle investment, such as real estate investments, does not qualify.
- The investment may not be “marginal”. This means that the company must generate more income than is required to provide a living for the investor, the investor must have an alternative source of income other than the company, or the company must economically benefit the United States by creating new jobs for U.S. workers.
- The investment must be made using the investor’s personal funds or loans secured with the investor’s personal assets. Loans secured with the assets of the investment company are not allowed.
- The investor must be coming to the U.S. to direct or actually operate the company. If the applicant is not the principal investor, he or she must be employed in an “executive”, “managerial” or “essential skills” employee. Ordinary skilled and unskilled workers do not qualify for E-2 status.

## 1.2 MISCONCEPTIONS ABOUT THE E-2 VISA

There are a number of misconceptions about the E-2 visa category. Many people (and even attorneys) believe that a minimum investment of \$50,000.00 USD is required to qualify for an E-2 visa. This is not true. An example in the U.S. government's regulations discusses a \$50,000.00 investment. However, this is just an example. The actual standard is that sufficient funds must be invested to ensure the likelihood that the business will be successfully established within five years. This can be a much smaller investment than \$50,000.00. For example, a graphic designer need not invest nearly as much money to successfully establish a company than someone who is purchasing a retail business.

The E-2 nonimmigrant visa it is also oftentimes confused with the EB-5 "million dollar" investor green card process. These are not the same visas and do not require the same level of investment.

## 1.3 CONTROLLING INTEREST

In all E-2 cases, it must be shown that a treaty country national "directs and develops" (*i.e.*, controls) the E-2 company. This can be shown either through ownership or by managerial control of the company. For example, if a treaty national owns more than 50% of an E-2 company, then that treaty national, by definition, controls the company. However, if a treaty national owns 50% of an E-2 company with a U.S. citizen or permanent resident, then neither party has a controlling interest in the company. In this case, it must be shown that the treaty national has managerial control over the company.

If a treaty investor (individual or business) has control of an E-2 company through managerial control of the company, the "controlling interest" requirement is met. However, the controlling owner will have to satisfy the U.S. government that the investor is in the position of developing and directing the business. This is more difficult to accomplish in a 50:50 ownership relationship. For this reason, Thompson Immigration generally recommends that the foreign owner of an E-2 company own at least 51% of the company.

## 1.4 THE E-2 VISA PROCESS

Unlike most nonimmigrant visas, a foreign national seeking to enter the U.S. on an E-2 treaty investor visa is not required to obtain prior approval from the U.S. Citizenship and Immigration Services ("USCIS"). They can apply directly to a U.S. Embassy in their home country. However, if an E-2 candidate is in the United States, he or she will typically apply with the USCIS and then file for an E-2 visa stamp at the U.S. Embassy in their home country. It is important to note that an applicant's home country is the only country where an E-2 investor may apply for an E-2 visa.

For new companies, the initial E-2 visa is usually valid for two years. For financially established companies, the E-2 visa is valid for five years. This means that once a company is financially viable the investor need only renew his or her E-2 visa every five years; with each entry into the United States being valid for two years. Moreover, there is no limit to the number of times an E-2 visa can be renewed, so long as the company still qualifies as an E-2 company. As such, a foreign investor can remain in the United States their entire career without any upward limits.

## 1.5 “ESSENTIAL SKILLS” EMPLOYEES

An E-2 visa is also available for treaty country employees who have special qualifications that make their work at the E-2 company “essential” to the efficient operation of the U.S. enterprise. The determination of whether an employee is an “essential skills” employee in this context requires the exercise of judgment. It cannot be decided by the mechanical application of a bright-line test. By its very nature, essentiality must be assessed on the particular facts in each case. In assessing the specialized skills of an employee and their essentiality, the government will consider the following factors:

- The degree of proven expertise of the employee in the area of specialization;
- The uniqueness of the specific skills;
- The length of experience or training with the company;
- The function of the job to which the employee is destined;
- The salary such special expertise can command; and
- The availability of U.S. workers.

## 1.6 E-2 FAMILY MEMBERS

The spouse and unmarried minor children of any E-2 visa holder may be admitted as an E-2 dependent nonimmigrant. Such family members must make a separate filing with the USCIS and/or U.S. Embassy or consulate to obtain E-2 status. *A very significant benefit of the E-2 visa process is that the spouse of an E-2 visa holder is authorized to work in the United States.* Any E-2 family member may attend school.

## 1.7 E-2 TREATY COUNTRIES

Albania	Congo	Kazakhstan	Senegal
Argentina	(Kinshasa)	Kyrgyzstan	Singapore
Armenia	Costa Rica	Latvia	Slovak Republic
Australia	Croatia	Liberia	Slovenia
Austria	Czech Republic	Lithuania	South Korea
Azerbaijan	Ecuador	Luxembourg	Spain
Bahrain	Egypt	Macedonia	Sri Lanka
Bangladesh	Estonia	Mexico	Suriname
Belgium	Ethiopia	Moldova	Sweden
Bolivia	Finland	Mongolia	Switzerland
Bosnia & Herzegovina	France	Morocco	Taiwan
Bulgaria	Georgia	Netherlands	Thailand
Cameroon	Germany	Norway	Togo
Canada	Grenada	Oman	Trinidad & Tobago
Chile	Iran	Pakistan	Tunisia
Columbia	Ireland	Panama	Turkey
Congo (Brazzaville)	Italy	Paraguay	Ukraine
	Jamaica	Philippines	United Kingdom
	Japan	Poland	Yugoslavia
	Jordan	Romania	