Investing in the U.S.: What You Need for a Visa

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There are people all over the world who are interested in investing in the United States. Fortunately, there is a visa classification, the E-2 Treaty Investor, that covers many of them.

As the name Treaty Investor implies, the basis for this visa classification is a treaty. There are more than 80 countries that have entered into relevant treaties by which citizens of those countries can access the United States on E-2 Treaty Investor visas to work in the United States. These visas are valid for up to five full years, depending on the specifics of the treaty, and are renewable indefinitely. Holders of E-2 Treaty Investor visas can live and work full-time in the United States for the duration of their status.

Two countries that do not have relevant treaties but have many people interested in living, working, and investing in the United States, are China and India. Since this is a citizenship-based visa, there are circumstances under which citizens of China or India may gain citizenship in other treaty countries, thereby taking advantage of the opportunity that the treaty of the new citizenship may afford. There are limits to this strategy, based on the apparent sale and purchase of treaty country citizenships for purposes like this.

The E-2 Treaty Investor visa can be issued based on the formation of a new business, the continuation of an existing business or the purchase of an existing business. It can be most challenging to demonstrate that a new business meets all of the requirements, but with creativity, it can be accomplished.

In order to qualify for an E-2, there must be an entity formed in the United States into which the investment has been made. The nationality of the entity must be the same as the nationality of the visa applicant. The nationality of the entity is determined by the nationality of the beneficial owners of the U.S. entity. At least 50 per cent of the beneficial owners must have the same citizenship as the applicant and must not also have U.S. citizenship or Lawful Permanent Residence.

The amount of the investment is not specified by the treaties — which can make understanding how much investment is considered the minimal qualifying investment tricky. Generally, the investment must be sufficient to operate the business. The amount of the treaty investment must be substantial relative to the total value of the business entity. The source of the investment must also be disclosed and documented thoroughly so the U.S. government feels confident that the money was not laundered. Of the total value of the investment, a substantial proportion must be placed at risk, which means spent. This way, a visa holder cannot withdraw the entire investment as soon as the visa has been issued.

Further, there must be a demonstration of activity by the business. The business must show that it has entered into commerce or has a contractual obligation to do so. Some officers will approve an application if there is a showing of a likelihood that the business will become active upon visa issuance, but this is always subject to officer discretion in deciding the case.

Another requirement is that the business must have an expectation of having an impact on the U.S. economy, generally through the employment of at least one U.S. worker by the time the initial applicant's visa comes up for renewal. This can be demonstrated through a business plan submitted with the initial application if the business has not yet brought on any U.S. employees.

Finally, E-2 visa applicants must be coming to work in the United States in positions to direct the investment or positions that are executive, managerial, or specialist/essential. Any general inadmissibilities must also be waived for E-2 visas to be issued. That means that if an applicant appears for an E-2 visa interview and is found inadmissible, the grounds of inadmissibility must be overcome through a waiver application before the visa can be issued, even where the applicant is otherwise entirely eligible for E-2 status.

One of the best things about investing and obtaining status to live and work in the United States in E-2 status is that spouses can also work in the United States if they obtain an E-2S visa as a dependent of the primary applicant. There is no separate application required to qualify for this work authorization; the work authorization is automatic upon entering the United States as the spouse of an E-2 visa holder who enters an E-2S dependent status.

While E-2 status is a nonimmigrant status, those who wish to make a more permanent move to the United States can also apply for an EB-5 Immigrant Investor Green Card. The threshold for investment is significantly higher for this process, such that most applicants are high-net-worth individuals. It also takes much longer to obtain an immigrant visa through investment — several years longer, actually — but the option exists should investors wish to pursue a permanent option to move to the United States.

Immigration professionals can assist with the visa application process, as well as the assessment and filing of application documents for both E-2 (nonimmigrant) and EB-5 (immigrant) visas. Lippes Mathias LLP has vast experience in filing E-2 visa applications for hundreds of successful applicants, as well as experience filing successful EB-5 immigrant petitions. For further guidance on this process, contact Eileen M. Martin (emartin@lippes.com) or Elizabeth M. Klarin (eklarin@lippes.com).

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