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## **E-2 VISA**

### **Overview**

The U.S. government has signed a series of bilateral treaties with certain countries to promote trade and investment. A foreign national who seeks an E-2 visa must enter the United States in order to carry on substantial trade or to develop and direct the operations of an enterprise, or as a key employee in providing efficient operation of the enterprise. Once approved, the E visa is usually valid for up to five years and may be renewed indefinitely. The E visa holder is granted up to two years on the I-94 card upon entry into the U.S. Dependents of E visa holders may apply for Employment Authorization.

### **Qualifying Criteria**

In order to qualify for E-2 visa status, a foreign national must demonstrate the following:

1. Nationality of investment enterprise: at least 50% of the ownership by the foreign national.
2. Investments: has invested or is actively in the process of investing.
3. Commercial enterprise: must be entrepreneurial in nature, not passive investment.
4. Substantiality of investment:
  - a. The amount of qualifying funds invested weighed against the total cost of purchasing or creating the enterprise;
  - b. The amount normally considered sufficient to ensure the investor's financial commitment to the successful operation of the enterprise; and
  - c. A magnitude of investment to support the likelihood that investor will successfully develop and direct the enterprise.
5. Investment cannot be marginal.
6. Foreign national must develop and direct the enterprise and have controlling interests in business.
7. Intent to depart.

### **Filing Fees**

If the foreign national is in the U.S., an application for a change of status may be filed. Premium processing (in order to receive an initial response within 15 business days) is optional for an additional fee. It is possible to file the change of status while the E visa applicant is in the U.S.; however, if the E visa applicant enters the U.S. on the Visa Waiver Program, then the applicant is ineligible for change of status in the U.S. and must apply directly in the U.S. Consulate or enter the U.S. in a different non-immigrant visa status. If E-1 visa applications are not filed with the USCIS Service Center, there are no government filing fees. However, E-1 visa applicants are required to pay visa application and issuance fees at the U.S. Embassy or Consulate.

### **Time Frame**

As a general matter, E-2 visa applications are traditionally filed directly at the U.S. Embassy or Consulate in the treaty country. Each post processes E-2 visa applications differently. Most posts adjudicate E-2 visa applications within 2-4 months, if all required supporting documentation is complete at the time of submission of such application. Once the preliminary adjudication is complete, the Consulate or Embassy will then inform the applicant(s) to appear for an interview.