U.S. Citizenship and Immigration Services

E-2 Treaty Investors

Versión en español

The E-2 nonimmigrant classification allows a national of a treaty country (a country with which the United States maintains a treaty of commerce and navigation) to be admitted to the United States when investing a substantial amount of capital in a U.S. business. Certain employees of such a person or of a qualifying organization may also be eligible for this classification. (For dependent family members, see "Family of E-2 Treaty Investors and Employees" below.)

See U.S. Department of State's Treaty Countries for a current list of countries with which the United States maintains a treaty of commerce and navigation.

Who May File for Change of Status to E-2 Classification

If the treaty investor is currently in the United States in a lawful nonimmigrant status, he or she may file Form I-129 to request a change of status to E-2 classification. If the desired employee is currently in the United States in a lawful nonimmigrant status, the qualifying employer may file Form I-129 on the employee's behalf.

How to Obtain E-2 Classification if Outside the United States

A request for E-2 classification may not be made on Form I-129 if the person being filed for is physically outside the United States. Interested parties should refer to the U.S. Department of State website for further information about applying for an E-2 nonimmigrant visa abroad. Upon issuance of a visa, the person may then apply to a DHS immigration officer at a U.S. port of entry for admission as an E-2 nonimmigrant.

General Qualifications of a Treaty Investor

To qualify for E-2 classification, the treaty investor must:

- Be a national of a country with which the United States maintains a treaty of commerce and navigation
- Have invested, or be actively in the process of investing, a substantial amount of capital in a bona fide enterprise in the United States
- Be seeking to enter the United States solely to develop and direct the investment enterprise. This is established by showing at least 50% ownership of the enterprise or possession of operational control through a managerial position or other corporate device.

An *investment* is the treaty investor's placing of capital, including funds and/or other assets, at risk in the commercial sense with the objective of generating a profit. The capital must be subject to partial or total loss if the investment fails. The treaty investor must show that the funds have not been obtained, directly or indirectly, from criminal activity. See 8 CFR 214.2(e)(12) for more information.

A *substantial amount of capital* is:

- Substantial in relationship to the total cost of either purchasing an established enterprise or establishing a new one
- Sufficient to ensure the treaty investor's financial commitment to the successful operation of the enterprise

- Of a magnitude to support the likelihood that the treaty investor will successfully develop and direct the enterprise. The lower the cost of the enterprise, the higher, proportionately, the investment must be to be considered substantial.

A *bona fide enterprise* refers to a real, active and operating commercial or entrepreneurial undertaking which produces services or goods for profit. It must meet applicable legal requirements for doing business within its jurisdiction.

Marginal Enterprises

The investment enterprise may not be marginal. A marginal enterprise is one that does not have the present or future capacity to generate more than enough income to provide a minimal living for the treaty investor and his or her family. Depending on the facts, a new enterprise might not be considered marginal even if it lacks the current capacity to generate such income. In such cases, however, the enterprise should have the capacity to generate such income within five years from the date that the treaty investor's E-2 classification begins. See 8 CFR 214.2(e)(15).

General Qualifications of the Employee of a Treaty Investor

To qualify for E-2 classification, the employee of a treaty investor must:

- Be the same nationality of the principal alien employer (who must have the nationality of the treaty country)
- Meet the definition of "employee" under relevant law
- Either be engaging in duties of an executive or supervisory character, or if employed in a lesser capacity, have special qualifications.

If the principal alien employer is not an individual, it must be an enterprise or organization at least 50% owned by persons in the United States who have the nationality of the treaty country. These owners must be maintaining nonimmigrant treaty investor status. If the owners are not in the United States, they must be, if they were to seek admission to this country, classifiable as nonimmigrant treaty investors. See 8 CFR 214.2(e)(3)(ii).

Duties which are of an *executive or supervisory character* are those which primarily provide the employee ultimate control and responsibility for the organization's overall operation, or a major component of it. See 8 CFR 214.2(e)(17) for a more complete definition.

Special qualifications are skills which make the employee's services essential to the efficient operation of the business. There are several qualities or circumstances which could, depending on the facts, meet this requirement. These include, but are not limited to:

- The degree of proven expertise in the employee's area of operations
- Whether others possess the employee's specific skills
- The salary that the special qualifications can command
- Whether the skills and qualifications are readily available in the United States.

Knowledge of a foreign language and culture does not, by itself, meet this requirement. Note that in some cases a skill that is essential at one point in time may become commonplace, and therefore no longer qualifying, at a later date. See 8 CFR 214.2(e)(18) for a more complete definition.

Period of Stay

Qualified treaty investors and employees will be allowed a maximum initial stay of two years. Requests for extension of stay may be granted in increments of up to two years each. There is no maximum limit to the number of extensions an E-2 nonimmigrant may be granted. All E-2 nonimmigrants, however, must maintain an intention to depart the United States when their status expires or is terminated.

An E-2 nonimmigrant who travels abroad may generally be granted an automatic two-year period of readmission when returning to the United States. It is generally not necessary to file a new Form I-129 with USCIS in this situation.

Terms and Conditions of E-2 Status

A treaty investor or employee may only work in the activity for which he or she was approved at the time the classification was granted. An E-2 employee, however, may also work for the treaty organization's parent company or one of its subsidiaries as long as the:

- Relationship between the organizations is established
- Subsidiary employment requires executive, supervisory, or essential skills
- Terms and conditions of employment have not otherwise changed.

See 8 CFR 214.2(e)(8)(ii) for details.

USCIS must approve any substantive change in the terms or conditions of E-2 status. A "substantive change" is defined as a fundamental change in the employer's basic characteristics, such as, but not limited to, a merger, acquisition, or major event which affects the treaty investor or employee's previously approved relationship with the organization. The treaty investor or enterprise must notify USCIS by filing a new Form I-129 with fee, and may simultaneously request an extension of stay for the treaty investor or affected employee. The Form I-129 must include evidence to show that the treaty investor or affected employee continues to qualify for E-2 classification.

It is not required to file a new Form I-129 to notify USCIS about non-substantive changes. A treaty investor or organization may seek advice from USCIS, however, to determine whether a change is considered substantive. To request advice, the treaty investor or organization must file Form I-129 with fee and a complete description of the change.

See 8 CFR 214.2(e)(8) for more information on terms and conditions of E-2 treaty investor status.

A strike or other labor dispute involving a work stoppage at the intended place of employment may affect a Canadian or Mexican treaty investor or employee's ability to obtain E-2 status. See 8 CFR 214.2(e)(22) for details.

Family of E-2 Treaty Investors and Employees

Treaty investors and employees may be accompanied or followed by spouses and unmarried children who are under 21 years of age. Their nationalities need not be the same as the treaty investor or employee. These family members may seek E-2 nonimmigrant classification as dependents and, if approved, generally will be granted the same period of stay as the employee. If the family members are already in the United States and are seeking change of status to or extension of stay in an E-2 dependent classification, they may apply by filing a single Form I-539 with fee. Spouses of E-2 workers may apply for work authorization by filing Form I-765 with fee. If approved, there is no specific restriction as to where the E-2 spouse may work.

As discussed above, the E-2 treaty investor or employee may travel abroad and will generally be granted an automatic two-year period of readmission when returning to the United States. Unless the family members are accompanying the E-2 treaty investor or employee at the time the latter seeks readmission to the United States, the new readmission period will not apply to the family members. To remain lawfully in the United States, family members must carefully note the period of stay they have been granted in E-2 status, and apply for an extension of stay before their own validity expires.

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