

E-2 VISA APPLICATION FOR START-UP BUSINESSES

Process Outline for Applications to be Filed with U.S. Embassies Abroad

E-2 visas are utilized by companies that are at least 50% owned by individuals who are citizens of a country that maintains an “E-2 Treaty” with the United States, to allow the employment of its owners and other employees of the same nationality in the United States. The E-2 visa is used by a wide range of companies, from small start-ups to large foreign corporations. One key benefit of the E-2 visa is that it may be renewed indefinitely, so long as the company continues to be at least 50% owned and controlled by individuals of the same treaty country nationality.

GENERAL PROCESS FLOW

Client makes business arrangements and gathers corporate documents and records as requested by the Attorney.

Client provides Attorney with requested items. Attorney prepares the application for submission to the Embassy.

Embassy reviews the submission and provides feedback to the Attorney. If nothing further is required, a visa appointment is scheduled.

Client appears for visa interview at the U.S. Embassy.

E-2 visa is issued, and the Client may now enter the U.S. to begin E-2 employment.

Important Note: There may be slight variances depending on the place of application.

OWNERSHIP REQUIREMENTS

- The U.S. business must be at least 50% owned by foreign nationals (citizens of E-2 Treaty Country). Ownership by U.S. citizens and U.S. permanent residents does not count toward this calculation.
- The foreign nationals must also have at least 50% control over the U.S. business.
- Multiple partners (including citizens/companies based in the U.S. and other countries) may own and control the company, if the above conditions are met.

INVESTMENT REQUIREMENTS

There is no set minimum for the amount that needs to be invested. Please contact us for the overall amount to be invested, and how much of that money needs to be spent on purchases and payments before the E-2 application may be submitted.

APPLICATION PROCESS

The E-2 visa application process requires the submission of a comprehensive set of documents to the U.S. Embassy abroad showing that the U.S. business represents a real and substantial investment by its foreign owners and that actual business operations will begin imminently (or have begun already).

Many business arrangements will need to be made before an E-2 visa application may be prepared. This includes, but is not limited to:

- Establishment of a business bank account in the United States;
- Preparation of incorporation/company founding and ownership documents (can be handled by corporate attorney);
- Requesting Federal Employer ID Number (can be handled by corporate attorney);
- Requesting various business permits and licenses as required (can be handled by corporate attorney);
- Securing an office space;
- Writing a business plan;
- Preparation of financial statements (should be handled by an accountant or a bookkeeper); and
- Making arrangements with vendors and service providers.

Please let us know if you require referrals to corporate attorneys, accountants, or business plan writers.

Once all of the required documentation has been gathered, the attorney will require two weeks to prepare a detailed memo describing the business, its owners, operations, business prospects, and that adequate and substantial money that has been invested and spent to ensure the successful start-up of the business.

The Embassy will generally contact the attorney if any additional documentation or clarification is required. Since such a request from the Embassy may potentially delay the process, we recommend submitting as

much documentation as possible with the initial submission. Should the documentation provided be clearly insufficient, the attorney will advise the client of additional items that would be needed to proceed.

Most Embassies are able to complete reviewing E-2 requests in one to two months. Upon review of the documents, the Embassy will interview the visa applicant, and if the application is approved, the visa will be issued and the passport returned to the visa applicant in about a week (this depends on the specific Embassy). Once this has occurred, the applicant may enter the United States to begin employment.

CONTINGENCIES IN THE EVENT THAT A VISA MAY NOT BE GRANTED

The regulations allow for certain payments and commitments to be put on hold or “in escrow” pending the issuance of the visa. For example, a purchase or sale of a business which qualifies for E-2 status in every respect may be conditioned upon the issuance of the visa. Despite the condition, this would constitute a solid commitment if the assets to be used for the purchase are held in escrow for release or transfer only on the condition being met.

BUSINESS-RELATED DOCUMENTS TO BE SUBMITTED TO THE EMBASSY

The documentation submitted to the Embassy must include extensive financial and business records to show that the U.S. business represents a real and substantial investment by its foreign owners and that actual business operations will begin as soon as visas have been granted, if not already (if the company has already hired U.S. employees). It is not sufficient to be simply in the stage of signing contracts (which may be broken) or scouting for suitable locations and property. Mere intent to invest, or possession of uncommitted funds in a bank account, or even prospective investment arrangements entailing no present commitment, will not suffice.

A typical submission would include evidence of the following (please see our E-2 Checklist for an itemized list of documents):

- The company has been established (incorporated, depending on the ownership structure);
- Federal Employer ID Number and business licenses (where required) have been obtained;
- Premises have been secured;
- Business accounts have been set up;
- Necessary furniture, equipment, and business services (telephone lines, Internet service, etc.) have been purchased;
- Prospective clients identified; and
- All operational, financial and business considerations have been carefully thought out and planned, as shown by a detailed 5-year business plan.

AFTER THE E-2 VISA HAS BEEN ISSUED

E-2 visa holders must be aware of the terms of their E-2 visa, and the I-94 admission record that will be created upon U.S. entry:

- The visa is the document that allows an individual to apply for entry into the United States, and is typically valid for 2 to 5 years. The length of the validity is decided at the Embassy's discretion, and start-up businesses are sometimes issued less than the maximum period. Additionally, the visa may be renewed indefinitely by filing an application with the U.S. Embassy.
- The I-94 is the electronic record that is created for an individual upon arrival in the United States. It indicates how long he or she may remain in the United States. Individuals in E-2 status are generally granted 2 years of stay from the date of arrival. If necessary, extension requests may be filed with the USCIS by mail.

Please do not hesitate to contact our office if you have any further questions about the E-2 process.