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ATTORNEYS AT LAW

The E visa is a very powerful nonimmigrant visa classification. Both the E-1 and E-2 classifications have several advantages over other nonimmigrant visas. The greatest advantage of the E visa is that it can be renewed indefinitely as long as the qualifying organization maintains its E visa status. Additionally, dependents of E visa holders may apply for US work authorization. Such work authorization is generally not available to dependents in other visa categories. The drawback to the E visa category is that it is only available to U.S. business organizations that are at least 50% owned and controlled by a foreign corporation (or individual) that is a national of a country that has an E visa treaty with the United States. In addition, the individuals that seek entry in E visa status must also be nationals of the treaty country. The E visa is available to persons who will be employed by the U.S. business in an executive, managerial or specialty skills capacity.

E VISA TREATY COUNTRIES

Countries with E-1 and E-2 Treaties:

Argentina	Germany	Oman
Australia	Honduras	Pakistan
Austria	Iran	Paraguay
Belgium	Ireland	Philippines
Bosnia	Italy	Slovenia
Canada	Japan	Spain
Republic of China (Taiwan)	Korea	Suriname
Latvia	Colombia	Liberia
Sweden	Costa Rica	Luxembourg
Switzerland	Croatia	Macedonia
Thailand	Ethiopia	Estonia
Trinidad & Tobago	Mexico	Togo
Finland	Netherlands	Turkey
France	Norway	Yugoslavia
United Kingdom		

Countries with E-1 Treaties Only:

Bolivia	Estonia	Israel
Brunei	Greece	Latvia
Denmark		

Countries with E-2 Treaties Only:

Bangladesh	Kazakhstan	Romania
Bulgaria	Kyrgyzstan	Senegal
Cameroon	Moldova	Slovakia
Congo	Morocco	Sri Lanka
Czech Republic	Panama	Tunisia
Egypt	Poland	Zaire
Grenada	Albania	Armenia
Czech Republic	Georgia	Jamaica
Mongolia	Ukraine	

GENERAL E VISA REQUIREMENTS

The following requirements apply to both the E-1 and E-2 visa classifications.

1. Nationality

The nationality of the company or individual engaging in trade or investment in the United States must have the same nationality as the treaty country.

The nationality of a company is determined as follows:

- by the nationality of the individuals who own at least 50% of the outstanding shares of stock;

or

- in the case of publicly held companies for which the nationality of the stock holders cannot be determined, the company's nationality is presumed to be that of the country where the stock is principally listed and traded on the stock exchange.

The nationality of an individual is their country of citizenship. An individual applicant must have the same nationality as the qualifying business organization.

> *Practice Tip 1*: **Nonimmigrant Intent Required for E Visa Holders**
> An E visa entitles a foreign national to enter the United States for a limited duration pursuant to the terms of admission as defined by the visa application. E visa applicants are required to establish to the consular officer that they intend to depart the U.S. when their E visa status ends. Unlike other nonimmigrant visa applicants, E visa applicants are not required to maintain a foreign residence outside the U.S. that they have no intention of abandoning.

2. Qualifying Employees

Only specific types of employees qualify for E visa status:

Employees with Essential Skills

These types of employees include individuals who possess skills that are essential to the U.S. operations, who have proven expertise in the company's area of specialization, who have unique experience with the Company's products or services, etc. Consular officers will consider the individual's education, experience with the company outside the United States, the training required to attain to the special skills or knowledge, etc.

Executive or Managerial Employees

These types of employees are very similar to the L-1A visa classification. These are individuals who manage people within the organization or who provide overall executive guidance to the organization. Consular officers will consider the employee's title, the location of the proposed position within the U.S. company's organizational hierarchy, the degree to which the employee will have ultimate control and responsibility for the company's overall operations or a major component thereof, the number and level of any subordinates, salary, experience, and whether the position principally requires management skills or key supervisory responsibility for a large portion of the company's operations.

E-1 TREATY TRADER VISA REQUIREMENTS

1. The Company is engaged in "Trade"

Trade can involve the exchange, purchase or sale of goods or services. Activities encompassed in this definition include data processing, accounting, advertising, design and engineering, banking, insurance, communications, management consulting, tourism, and technology transfer activities.

2. The Trade is "Substantial"

It is not enough that a company is engaged in trade, it must also be shown that the trade is substantial. There is no set guideline for determining how much trade is enough to be considered substantial, but several guidelines exist. The key factors to consider are:

- the volume of trade;
- the number of trade transactions;
- the monetary value of the transactions; and
- the continued nature of the trade.

The trade must be continuous and significant. The monetary value of the trade, no matter how great, is not in and of itself sufficient where the trade is not ongoing. Conversely, numerous transactions establishing ongoing trade may be sufficient even if the monetary value of the trade is not of great significance.

3. The Trade is "Principally" with the United States

More than 50% of the *international* trade conducted by the U.S. company must be with the treaty country. The trading activities of foreign affiliate companies need not be with the United States or the treaty country and remainder of the U.S. company's trading activities can be with other countries. In addition, domestic trading activities are not considered in determining how much trading activity is considered to be more than 50%. For example, Dutch Co. U.S.A., a corporation owned by Dutch nationals, could have gross revenues of $10 million per year and only have international trading activities of $2 million per year. As long as more than $1 million of these activities are with The Netherlands, then the "principally" requirement would be met.

> *Practice Tip 2*: **The Treaty Trader Status Must Be Maintained**
> It is important to note that the company must continuously engage in trade that is sufficient to meet the Treaty Trader requirements. If the company's trading activities dip below the more than 50% level, then the E-1 employees in the United States risk falling out of status. For this reason, where a company qualifies for both E-1 and E-2 status, E-2 status is generally preferable. *See* Practice Tip 4, below.

E-2 TREATY INVESTOR VISA REQUIREMENTS

1. The Investment must be "Active"

In order to qualify for E-2 Treaty Investor status, the investment in the United States must be "active" – the business enterprise underlying the investment must be a real, operating commercial enterprise in the United States providing some service or good. Passive investments, such as purely monetary investments in bank accounts, do not qualify. The investment must be at risk and part of a commercial business enterprise. For example, merely purchasing residential real estate, such as a vacation home, and then leasing this home through a third-party management company, would probably not qualify as an E-2 investment. Whereas purchasing a beach-front condominium complex and actively participating in the business activities of this complex probably would qualify as an E-2 investment.

2. The Investment is "Substantial"

As with the substantial trade discussion above, there is no minimum amount that must be invested to be considered substantial for E-2 purposes. In general, however, in order for an investment to be considered substantial it must meet one of the following two tests:

The Proportionality Test

Under this criteria, the investment is compared to the total value of the enterprise. An investment of more than 50% will generally be considered substantial. In some cases, the monetary amount of the investment will be large enough by itself to be considered substantial. For example, a $50,000 investment in an automotive design firm was found to be substantial for E-2 purposes where the value of the monetary value of the firm itself was not large.

The Viability Test

The amount invested is an amount normally considered necessary to establish a viable enterprise of the type in question. This test is usually applied to new businesses and may require a showing of what would be a reasonable amount of capital necessary to establish the type of business in question.

3. The Investment is not for the sole purpose of earning a living -- "Marginality"

The investment must not be considered marginal. That is, the sole purpose of the investment cannot be to earn a living for the investor. This requires that the applicant establish that the commercial enterprise will create jobs for U.S. workers.

> *Practice Tip 3*: **E-2 Status for Principal Investors**
> In order for one of the principal investors to enter the United States in E-2 visa status, they must be responsible for developing and / or directing the investment in the United States. A principal investor who is not responsible for developing or directing the U.S. organization, however, could still qualify for E-2 status if they are to be employed by the U.S. organization in one of the capacities discussed above.

> *Practice Tip 4*: **Maintaining Treaty Investor Status**
> Maintaining Treaty Investor status is generally a simple matter as long as the initial qualifying investment is not removed from the U.S. enterprise. For this reason, where a company qualifies for both E-1 and E-2 status, E-2 status is generally preferable.