

THE PROFESSIONAL ADVICE:

IMMIGRATION

Those who are interested in investing in a business in the U.S. may want to consider the E-2 “treaty investor” visa, a type of visa for temporary workers. The E-2 visa allows someone from a treaty country (a country that the U.S. maintains a treaty of commerce and navigation with, such as Italy) to work in the U.S. who either invests a substantial amount of capital in a U.S. business, or works for an individual or company that invests a substantial amount of capital in a U.S. business. The requirements for obtaining the E-2 visa vary depending whether the principal applicant is the investor or the employee. The requirements of the E-2 visa are outlined below.

The investor can be a real person or a corporation, and the investor must possess nationality from a country that the U.S. maintains a treaty of commerce and navigation with (treaty country). The investment must be substantial and must be sufficient to ensure the successful operation of the enterprise. The investment must also be in a real operating commercial enterprise; speculative or idle investment does not qualify. The investment must have the capacity to generate more income than just to provide a living to the investor and the investor’s family. The investor can demonstrate that the investment is not marginal by submitting a detailed business plan, U.S. or foreign tax returns, financial statements, and payroll summaries (e.g.: W-2s). If the investor is the principal applicant for the E-2 visa, the investor must come to the U.S. solely to develop and direct the investment in the business. If the investor is not the principal applicant and instead an employee is the principal applicant, the employee must be employed in a supervisory, executive, or highly specialized skills capacity. The employee of the investor must possess the same nationality as the investor, and both the investor and employee must possess nationality from a treaty country.

The E-2 visa has several terms and conditions. The investor or employee may only work in the activity for which he/she was approved at the time the E-2 visa was granted. However, an E-2 employee may work for the company's parent company or a subsidiary if the relationship between the organizations is established, the terms and conditions of employment have not changed, and if working for a subsidiary, the employment must require executive, supervisory, or essential skills. The investor/employee can apply for his/her spouse and children to accompany him/her, provided that the children are unmarried and under 21 years old. The E-2 visa is valid for up to 5, and may be extended indefinitely as long as the investment enterprise is still operating. There is no limit on the number of extensions.

Because of the numerous requirements of the E-2 application, we highly recommend that anyone interested in an E-2 visa contact an immigration attorney.

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