

# IMMIGRATION LAW OFFICES OF RON KATIRAEI

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## E-1 Investor Visa (Treaty Trader)

The E-1 nonimmigrant classification allows a national of a treaty country (a country with which the United States maintains a treaty of commerce and navigation, or which the United States maintains a qualifying international agreement, or which has been deemed a qualifying country by legislation) to be admitted to the United States solely to engage in international trade on his or her own behalf. If the treaty trader is currently in the United States in a lawful nonimmigrant status, they may file Form I-129 to request a change of status to E-1 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.

### Outside U.S Classifications

A request for E-1 classification may not be made on Form I-129 if you are 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-1 nonimmigrant visa abroad. Upon issuance of a visa, the person may seek admission at a United States port of entry as an E-1 nonimmigrant.

### Treaty Trader Qualifications

To qualify for E-1 classification, the treaty trader must:

- Be a national of a country with which the United States maintains a treaty of commerce and navigation or with which the United States maintains a qualifying international agreement, or which has been deemed a qualifying country by legislation;
- Carry on substantial trade; and
- Carry on principal trade between the United States and the treaty country which qualified the treaty trader for E-1 classification.

Trade is the existing international exchange of items of trade for consideration between the United States and the treaty country. Items of trade include but are not limited to:

- Goods, Services, International banking, Insurance, Transportation, Tourism, Technology and its transfer, Some news-gathering activities.

Substantial trade generally refers to an amount of trade sufficient to ensure a continuous flow of international trade items between the United States and the treaty country. The continuous flow contemplates numerous transactions over time. There is no minimum requirement regarding the monetary value or volume of each transaction. While monetary value of transactions is a relevant factor in considering substantiality, greater weight is given to more numerous exchanges of greater value. For smaller businesses, the income derived from the value of numerous transactions which is sufficient to support the treaty trader and their family is a favorable factor.

Principal trade between the United States and the treaty country exists when over 50% of the volume of international trade of the treaty trader is between the United States and the treaty country of the treaty trader's nationality.

### **Employee of Treaty Trader Qualifications**

To qualify for E-1 classification, the employee of a treaty trader 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 that make the employee's services essential to the efficient operation of the treaty enterprise.

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 either: (a) be maintaining nonimmigrant treaty trader status or (b) 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 traders.

Duties which are of an executive or supervisory character are those that primarily provide the employee ultimate control and responsibility for the treaty enterprise's overall operation, or a major component of it.

Special qualifications are skills and/or aptitudes which make the employee's services essential to the efficient operation of the treaty enterprise. There are several qualities or circumstances that 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

### **Period of Stay**

Qualified treaty traders and employees will be allowed a maximum initial stay of two years. Requests for extension of stay in, or changes of status to, E-1 classification may be granted in increments of up to two years each. There is no limit to the number of extensions an E-1 nonimmigrant may be granted. All E-1 nonimmigrants, however, must maintain an intention to depart the United States when their status expires or is terminated.

An E-1 nonimmigrant who travels abroad may generally be granted, if determined admissible by a U.S. Customs and Border Patrol Officer, an automatic two-year period of readmission when returning to the United States.

## **Family of E-1 Treaty Traders and Employees**

Treaty traders 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 trader or employee. These family members may seek E-1 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 seeking change of status to or extension of stay in an E-1 dependent classification, they may apply by filing a single Form I-539 with fee. Spouses of E-1 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-1 spouse may work. With very limited exceptions, dependents of E-1 principals may not apply for work authorization in the United States.

As discussed above, the E-1 treaty trader or employee may travel abroad and will generally be granted an automatic two-year period of admission when returning to the United States. Unless the family members are accompanying the E-1 treaty trader or employee at the time the latter seeks admission 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-1 status, and apply for an extension of stay before their own validity expires.