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E-2 Investor Visa (Treaty Investor)

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, or with 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 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. If the treaty investor 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-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 to request a change of status to E-2 classification on the employee's behalf.

Outside U.S Classifications

A request for E-2 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-2 nonimmigrant visa abroad. Upon issuance of a visa, the person may seek admission at a United States port of entry as an E-2 nonimmigrant.

Treaty Investor Qualifications

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; and
- 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.

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.

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.

General Qualifications of a Treaty Trader Employee

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; and
- 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 either: (a) be maintaining nonimmigrant treaty investor 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 investors.

Duties that are of an executive or supervisory character are those which primarily provide the employee ultimate control and responsibility for the 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 investors and employees will be allowed a maximum initial stay of two years. Requests for extension of stay in, or changes of status to, E-2 classification may be granted in increments of up to two years each. There is no 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, 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-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.