E-2 TREATY INVESTOR

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INTRODUCTION

The E-2 nonimmigrant category is a useful, but sometimes overlooked, alternative to the EB-5 immigrant investor category. In many ways, the E-2 classification resembles lawful permanent residence (LPR) status. For example, E-2 nonimmigrants may engage in self-employment (in furtherance of the qualifying investment), may remain in the United States for an indefinite period, and are not required to maintain ties to their home country. In light of these facts, the E-2 classification may be a realistic alternative to the EB-5 category.

ELIGIBILITY REQUIREMENTS

Existence of Treaty

The basis of the E-2 classification lies in treaties that were intended to enhance and facilitate economic and commercial interaction between the United States and the treaty country. Therefore, a treaty of Freedom, Commerce, and Navigation (FCN) must exist between the United States and the country of the applicant's nationality.

Nationality

In order to qualify for E-2 investor status, you must possess the nationality of the treaty country. In most cases, determining nationality is simple. However, establishing the requisite nationality can be difficult in certain situations.

According to Department of State regulations, the authorities of the foreign state of which you are a national determine the nationality of a treaty investor. In unclear cases, I will need to examine the nationality laws of the treaty country and the language of the relevant treaty in order to determine whether you qualify for E-2 status. For example, in treaty countries where the doctrine of jus sanguinis exclusively applies, an individual born within the country's jurisdiction may not be a national of that country.

The nationality of a business is determined by the nationality of the individual owners of that business. The country of incorporation is irrelevant to the nationality requirement for E-2 purposes. A business that is at least 50 percent owned by nationals of the treaty country will be eligible for E status. Where two individuals equally own a company, both of which possess different nationality, the company will possess both nationalities.

Applicants who hold dual nationality (other than U.S. citizenship) may qualify for E status but they must hold themselves out as nationals of the treaty country in question. Such applicants must be documented and be admitted into the United States as nationals of the treaty country from which the treaty benefits accrue. However, nationals of a treaty country who also hold U.S. citizenship are not considered nationals of the treaty country for the purposes of E-2 eligibility.

The source of investment capital is clearly not relevant to the issue of nationality. For example, a corporation that is 50 percent owned by a treaty national will have the nationality of the treaty country, even if 100 percent of the investment capital comes from non-treaty investors. Although this scenario might create other eligibility problems, such as the treaty investor's inability to satisfy the substantial investment requirement, the nationality requirement would clearly be satisfied.

The nationality requirement is easy to satisfy when the treaty business is at least fifty percent owned by treaty nationals. However, nationality problems will arise when the treaty business is less than fifty percent owned by treaty nationals. In such cases, I may need to restructure the treaty business in order to satisfy the nationality requirement.

Under common law, a trust is not a separate legal entity from the trustee; the trustee is the legal owner of trust assets. If this principle were applied, a non-treaty national beneficiary could become eligible for E-2 status simply by placing the investment funds into a trust and hiring a treaty national trustee to administer it. However, DOS has confirmed that it will look to the beneficiaries, rather than to the trustee, when determining the nationality of the treaty business.

Meaning of "Investment"

The term "investment" means the treaty investor's placing of capital, including funds and other assets, at risk in the commercial sense with the objective of generating a profit. These requirements are discussed in greater detail below.

Investor Must Have Possession and Control of the Funds Invested

The treaty investor must be in possession of, and have control, over the capital invested or being invested. If the investor has received funds by legitimate means (i.e., savings, gift, inheritance, contest, etc.), and has control and possession over the funds, the proper employment of the funds may constitute a proper investment. The source of the funds need not be outside the United States. However, inheriting the treaty business itself will not constitute an investment.

As funds either gifted or loaned (without security being placed on the business assets) can be attributed to the recipient for E-2 purposes, it may be possible to make another individual the principal investor where the original owner of the funds is not eligible for E-2 status. For example, a U.S. permanent resident who is ineligible for E-2 status may not bring in an E-2 employee. However, by gifting or lending the funds to an alien holding treaty nationality, that alien can qualify for E-2 status as the principal investor. Similarly, where two investors seek E-2 status for the same business, but neither individually is investing sufficient funds to meet the proportionality or substantiality requirements, one investor can gift or loan his or her funds to the other and then seek status as an E-2 employee.

It is also possible to pool investment capital through the use of a holding corporation. Where there are several investors, none of whom is investing sufficient funds to qualify as the principal investor, it still may be possible to establish a holding corporation that will qualify. If this holding corporation possesses treaty nationality, it could act as the principal investor for the purposes of E-2 eligibility. The holding corporation could invest in the treaty enterprise, establishing 100-percent proportionality of its investment and its ability to develop and direct the treaty enterprise. Some or all of the shareholders of the holding corporation can then seek E-2 status as employees thereof.

The Investment Must Be at Risk

The investment capital must be subject to partial or total loss if investment fortunes reverse. Such investment capital must be the investor's unsecured personal business capital or capital secured by personal assets.

Indebtedness secured by the assets of the treaty business is not considered a qualifying investment. This is true even where personal assets, in addition to the assets of the business, secure the indebtedness. However, it may still be possible to argue that the portion of the loan that exceeds the value of the secured business assets can be counted as an investment, since it will not be secured by the assets of the business. However, unsecured loans or loans secured solely by the alien's own personal assets are considered qualifying investments.
In other words, a small investor could obtain the investment capital from personal sources (i.e., savings, proceeds from the sale of personal property, gifts from friends and relatives), from a mortgage securing his or her personal residence, or from an unsecured personal loan (i.e., a personal line of credit or a credit card). The only investment capital that may not be counted is a loan secured on the assets of the business (i.e., capital obtained from a mortgage securing a commercial building that will be used in the treaty business).

The Investment Must Be Irrevocably Committed

Capital that is "in the process of being invested" must be irrevocably committed to the enterprise. The use of an escrow account allows the capital to be "irrevocably committed" and still allow the investor a means to recover the funds if the visa is not granted. We strongly encourage the use of escrow accounts.

For the alien to be "in the process of investing", the alien must be close to the start of actual business operations, not simply in the stage of signing contracts or looking 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 be sufficient. However, a reasonable amount of cash held in a business bank account or similar fund to be used for routine business operations, may be counted as investment funds.

Where the applicant is purchasing an established business, it is easy to show that the entire qualifying investment has been irrevocably committed, even where the purchase has not been completed. A binding agreement of purchase and sale coupled with the use of an escrow agreement (which mandates the payment of the investment funds to the vendor upon issuance of the visa) will satisfy the requirement. Similarly, an irrevocable direction by the applicant to his or her own lawyer, directing the lawyer to apply the funds to the purchase of the business (subject to visa issuance) may also provide the necessary irrevocable commitment.

Where the applicant is starting a new business, it is much more difficult to show an irrevocable commitment of the entire qualifying investment. In such cases, the applicant will be expected to spend a sufficient percentage of the investment capital before irrevocability will be established. However, the applicant is not required to spend the entire qualifying investment before a visa will be issued.

As stated above, the Department of State specifically states that a reasonable amount of cash, held in a business bank account or similar fund, to be used for routine business operations, may be counted as irrevocably committed investment funds. The amount of capital actually committed must only be enough to demonstrate that the applicant intends to follow through with the entire investment once the visa is approved.

Other Financial Transactions as Investments

Payments in the form of leases or rents for property or equipment may be calculated toward the investment in an amount limited to the funds devoted to that item in any one month, since the remaining payments presumably will be paid out of earnings from the treaty business. However, more than one month of payments may be counted if they are made in advance. For example, if the treaty investor prepays her equipment lease for one year, the entire year's worth of payments may be counted as part of the qualifying investment.
The amount spent for the purchase of equipment and for inventory already in the possession of the treaty investor may be counted as part of the qualifying investment. The value of goods or equipment transferred to the United States may be considered part of the qualifying investment if it can be demonstrated that the goods or machinery will be put to use in an ongoing commercial enterprise. The treaty investor must establish that the purchased goods or equipment are for business, not personal purposes. While a company car might not meet this burden if it will also be used for personal purposes, inventory or industrial equipment clearly will.

The issue of book value versus market value of transferred assets should also be considered. Either the historical cost (i.e., original purchase price, less depreciation) or market value of an existing asset would appear to be acceptable for the purposes of calculating the qualifying investment. The Department of State makes reference to both the "amount spent" and the "value of goods or equipment."

Rights to intangible or intellectual property may also be considered capital assets to the extent to which their value can reasonably be determined. Where no market value is available for a copyright or patent, the value of current publishing or manufacturing contracts generated by the asset may be used. If none exist, the opinions of experts in the particular field in question may be submitted for consideration and acceptance.

The Enterprise Must Be a Bona Fide Commercial or Entrepreneurial Undertaking

The enterprise must be a real and active commercial or entrepreneurial undertaking, producing some service or commodity for profit and must meet applicable legal requirements for doing business in the particular jurisdiction in the United States. It cannot be a paper organization or an idle speculative investment held for potential appreciation in value, such as underdeveloped land or stocks held by an investor without the intent to direct the enterprise. As the investment must be a commercial enterprise, E-2 status is not available to nonprofit organizations.

Investing in a residential property clearly would not qualify since it would be considered a passive investment, even if some limited management activities are required to rent the property to a tenant. Investing in more than one investment property would not change the passive nature of the investment, unless the investment portfolio was so large that it required the establishment of an active property management business to administer it. In such cases, the property management business might qualify as a treaty enterprise.

The Investment Must Be Substantial

One of the most common reasons for investors in small businesses being denied E-2 visas is that their investment is not considered substantial.

According to immigration law, the term “substantial” means “such an amount of trade or capital as is established by the Secretary of State, after consultation with appropriate agencies of Government.” DOS’s position continues to be that there is no set minimum dollar amount that will be considered “substantial” for purposes of E-2 eligibility. The Department of State takes the position that, as long as all the other requirements for E-2 status are met, the cost of the business, per se, is not independently relevant or determinative of qualification for E-2 status. While a manufacturing business might easily cost millions of dollars, the cost of purchasing or establishing a consulting firm may be relatively low.

In practice, some consular posts still apply an informal minimum investment threshold in addition to the proportionality test, although there appears to be no legal basis for such a position. In the past, many consulates would accept investments approaching $50,000, since the law made specific reference to an investment of $50,000. The former Foreign Affairs Manual included the following specific examples: (a) in the case of a $50,000 investment, an investment approaching 90–100 percent would easily meet the test; (b) a business costing $100,000 might require an investment of 75–100 percent to meet the test; (c) a business costing $500,000 would demand generally upwards of a 60 percent investment, with a $375,000 investment clearly meeting the test; (d) in the case of a million dollar business, a lesser percentage might be needed, but 50–60 percent investment would qualify; (e) a business requiring $10 million to purchase or establish would require a much lower percentage—a $3 million investment might suffice in view of the sheer magnitude of the dollar amount invested; and (f) an investment of $10 million in a $100 million business would qualify based on the sheer magnitude of the investment itself. However, it no longer contains specific examples of substantial investments. They were apparently deleted because too many consular officers were using them as bright-line tests instead of considering substantiality on a case-by-case basis. The manual simply states that investments of 100 percent or a higher percentage would normally automatically qualify for a small business of $100,000 or less.

According to the current FAM, the purpose of the substantiality requirement is to ensure, to a reasonable extent, that the business invested in is not speculative, but is, or soon will be, a successful enterprise as the result of the exercise of sound business and financial judgment. It further states that the rules regarding the amount of funds committed to the commercial enterprise and the character of the funds, primarily personal or loans based on personal collateral, are intended to weed out risky undertakings and to ensure that the investor is unquestionably committed to the success of the business.

The FAM still states that the requirement of substantiality is met by satisfying the “proportionality test.” It defines the proportionality test as a comparison between two figures:

- ☐ The amount of qualifying funds invested; and
- ☐ The cost of an established business or, if a newly created business, the cost of establishing such a business.

The cost of an established business is, generally, its purchase price, which is normally considered to be the fair market value. The cost of a newly-created business is the actual cost needed to establish such a business to the point of being operational. In addition, an element of judgment to be factored into the requirement of substantial investment concerns an assessment of the extent of the investor’s commitment to the successful operation of the project in view of the amount invested.

Although some consular posts may still be willing to approve an E-2 based on an investment of $50,000, the elimination of the specific examples contained in the FAM has made it more difficult to qualify based on investments at this level. Given the current environment, a more realistic minimum investment is probably $100,000 or more. Of course, it is still theoretically possible for investments of less than $100,000 to qualify in appropriate cases.

Investment Must Not Be Marginal

The marginality of a business is also one of the most common reasons why investors in smaller businesses are denied E-2 visas.

In order to qualify for E-2 status, the applicant must not have invested in a marginal enterprise solely for the purpose of earning a living for him– or herself-- and his or her family. A marginal business is an enterprise that does not have a present or future capacity to generate more than enough income to provide a minimal living for the treaty investor and his or her family. However, an enterprise that does not have the capacity to generate such income, but does have a present or future capacity to make a significant economic contribution, is not considered a marginal enterprise.

In other words, if the investment will indirectly expand job opportunities locally or otherwise have a positive significant impact on the local economy, the applicant may still qualify, even though the income from the business may only be enough to sustain the investor and his or her family.

The projected future capacity (either to generate more than marginal income or to make a significant contribution) should generally be realizable within five years from the date you commence normal business activity of the enterprise. Therefore, a treaty enterprise does not necessarily have to realize this projected future capacity within the first year. Of course, the sooner it occurs, the stronger the case will be.

It was previously possible to establish that the treaty enterprise was not a marginal enterprise by showing independent sources of income to support the applicant and her dependents. If the applicant possessed other sources of income for support, the treaty enterprise would not exist solely to earn a living for the applicant and his or her family; it therefore could not be a marginal business. However, this is no longer possible. The applicant must now establish that the income from the treaty business alone is sufficient. We will need to provide as much evidence as we can to address the question of marginality. It is recommended that you submit a reliable business plan to verify the capacity to realize a sufficient profit within a maximum of five years. It also may be a good idea to obtain one or more expert opinions from business consultants or other experts who are familiar with the type of business in the area where the treaty enterprise will commence business activity. An opinion letter should describe the expert's background and then confirm that the expert: (a) has reviewed the business plan (including the projected financial statements contained therein); and (b) has concluded that the business plan is realistic. In addition, if the applicant is purchasing an existing business, he or she should consider submitting financial statements and tax returns for previous years, if they establish that the treaty enterprise will generate sufficient profit.

TREATY INVESTOR REQUIREMENTS

Ability to Develop and Direct the Business

A treaty investor must be seeking entry solely to develop and direct the treaty business. The ability to develop and direct can be established by owning at least 50 percent of the treaty business (if the owner retains full rights of control over that portion of the business and has not assigned them to another), by possessing operational control through a managerial position or other corporate device, or by other means.

In instances in which a sole proprietor or an individual who is a majority owner wishes to enter the United States as an "investor," or to send an employee to the United States as his or her personal employee, or as an employee of the U.S. enterprise, the owner must demonstrate that he or she personally develops and directs the enterprise. Likewise, if a foreign corporation owns at least 50 percent of a U.S. enterprise and wishes its employee to enter the U.S. as an employee of the parent corporation, or as an employee of the U.S. business, the foreign corporation must demonstrate that it develops and directs the U.S. enterprise.

Factors considered include ownership, control of stock by proxy, management position and authority, etc. Where the treaty investor does not own at least 50 percent of the treaty business, the attorney may wish to consider the use of proxy agreements and/or management agreements to evidence his or her ability to develop and direct the business. An equal share of the investment in a joint venture or an equal partnership of two parties generally does give controlling interest, if the joint venture and partner each retain full management rights and responsibilities. This note actually incorrectly defines the concept of "negative control." It states that "[w]ith each of the two parties possessing equal responsibilities, they each have the capacity of making decisions that are binding on the other party." This instead describes the nature of a partnership, where both parties have equal ownership and control over the entire partnership. Negative control actually contemplates each party having a veto power over decision-making, as in the case of a joint venture where two shareholders both own 50 percent of the voting shares of the corporation. Neither may make a decision without the consent of the other, which results in negative control. However, this error does not affect DOS's position that both equal partnerships and joint ventures involving two parties is sufficient to give each party the ability to develop and direct the enterprise. However, an equal partnership with more than two partners would not give any of the parties control based on ownership, as the element of control would be too remote.

In instances in which treaty country ownership may be too diffuse to permit one individual or company to demonstrate the ability to direct and develop the U.S. enterprise, the owners having treaty country nationality must:

- ☐ Show that together they own 50 percent of the U.S. enterprise; and
- ☐ Demonstrate that, at least collectively, they have the ability to develop and direct the U.S. enterprise.

In these cases, an individual owner will not be eligible to receive an E-2 visa as the "investor," nor may an employee be considered to be an employee of an owner for E-2 purposes. However, an owner and any other employee may still qualify for E-2 status as an employee of the U.S. enterprise, which will be the treaty investor.

In the case of franchised businesses, many franchise agreements contain restrictions on how the franchisee can operate the business. If the restrictions are too onerous, a consular officer may conclude that the franchisee has assigned its operational control to the franchiser by contract. However, a franchise business may still qualify for E-2 status if the franchisee retains sufficient control over the management of the business, including the ability: (i) to hire and fire employees; (ii) to set wage scales; and (iii) to set the hours of business. In most cases, the ability to develop and direct the treaty enterprise will not become an issue as a result of the franchise agreement. However, if it does, I will need to review the agreement to be prepared to explain how the franchisee continues to retain operational control.

Intention to Depart from the United States

In order to qualify for E-2 classification, you must intend to depart from the United States upon the termination of your status. However, an applicant does not have to establish an intention to remain in the United States for a specific temporary period of time or the existence of a residence in a foreign country that the applicant does not intend to abandon. The applicant's expression of an unequivocal intent to return when the E-2 status ends is normally sufficient, in the absence of specific evidence to the contrary. This intent normally can be expressed by way of a written statement submitted with the E-2 visa application.

A limited form of dual intent is recognized for E-2 nonimmigrants. DOS's position is that an applicant who is the beneficiary of an immigrant petition may still be eligible for E-2 status by showing that he or she will not remain in the United States to adjust status to lawful permanent resident or otherwise remain in the United States regardless of the legality of his or her status. USCIS's position is that an application for initial admission, change of status, or extension of stay in E-2 classification may not be denied solely on the basis of an approved request for permanent labor certification or a filed or approved immigrant visa preference petition. In addition, an applicant who has already filed an application for adjustment of status may still file for an extension of E-2 status after that date. This clearly shows that an E-2 nonimmigrant may be the beneficiary of a labor certification, immigrant petition, or have an adjustment of status application pending, and still remain eligible for E status.

Notwithstanding the above, the remainder of immigration law still applies to E-2 nonimmigrants. A prior overstay or violation of status while in the United States will often strongly infer that the applicant does not intend to depart from the United States upon termination of his or her status and it will be very difficult to overcome such an inference. The only way to overcome the presumption of immigrant intent in such situations is to establish (if possible) that the violation or overstay was brief and inadvertent.

INCIDENTAL ACTIVITIES WHILE IN E-2 STATUS

Treaty investors are entitled to engage in incidental activities as long as their primary purpose for coming to the United States is to develop and direct the treaty enterprise. However, these incidental activities are limited to those activities in which a visitor could engage. In addition, as dependents of treaty traders and investors are permitted to attend school, it is probable that the treaty trader or investor will also be permitted to do so.

However, a treaty investor or treaty employee may only engage in employment that is consistent with the terms and conditions of his or her status and the activity forming the basis for the E-2 treaty status.

The one exception is employment with a subsidiary of the treaty enterprise. Performing work for subsidiaries of a common parent enterprise or organization will not be deemed to constitute a substantive change in the terms and conditions of the underlying E treaty employment if, at the time the E-2 treaty status was determined, the applicant presented evidence establishing:

- ☐ The enterprise or organization, and any subsidiaries thereof, where the work will be performed; the requisite parent-subsidiary relationship; and that the subsidiary independently qualifies as a treaty organization or enterprise;
- ☐ In the case of an employee of a treaty trader or treaty investor, the work to be performed requires executive, supervisory, or essential skills; and
- ☐ The work is consistent with the terms and conditions of the activity forming the basis of the classification.

DEPENDENTS OF E-2 NONIMMIGRANTS

The spouse and dependent children (unmarried and under age 21) of an E-2 nonimmigrant are entitled to the same classification as the principal alien. The nationality of a spouse and child is not material to their eligibility.

Such treaty dependents are permitted to engage in incidental activities, such as engaging in tourism or attending school. However, this does not mean that treaty dependents are entitled to engage in employment without authorization. Any unauthorized employment by a nonimmigrant constitutes a failure to maintain status, which may give rise to removal proceedings.

Fortunately, as a result of legislation enacted in 2002, dependent spouses of E-2 nonimmigrants who have been admitted in E-2 status may now apply for an open-market employment authorization (EAD). This employment authorization permits dependent spouses holding E-2 status to work for any employer, once they have received an employment authorization document. However, the legislation does not extend employment eligibility to dependent children of the principal alien.

PERIOD OF VISA VALIDITY AND PERIOD OF ADMISSION

The maximum validity period for an E visa will depend upon reciprocity with the country of the alien's nationality. The maximum visa validity period for the treaty country is 60 months.

The period of validity of a nonimmigrant visa is the period during which the alien may use it in making an application for admission. This has no relationship to the period of time the immigration authorities at a port of entry may authorize the alien to remain in the United States.

To determine the maximum period of admission to the United States, one must refer to USCIS regulations. According to these regulations, an E-2 nonimmigrant (including dependents) may be admitted for an initial period of not more than two years at a time. This is the period that will be shown on the alien's Form I-94. However, as long as the alien continues to hold a valid E-2 visa, he or she may depart from the United States before the expiration of this two-year period and then reenter the United States using the visa. At the time of admission, the alien may request a new Form I-94 from the port of entry for an additional two years.

As the validity period of the visa has no relationship to the period of admission, the alien may seek a two-year period of admission even if the visa is due to expire within a shorter period of time. Even if the alien enters the United States one day before the visa is due to expire, the immigration officer at the port of entry should issue a Form I-94 for a period of two years. However, if the alien subsequently leaves the United States prior to the expiration of his or her Form I-94, he or she will not be readmitted for the remainder of his or her status without a valid visa (since a visa is required for admission to the United States). This can still be useful in light of the long delays in adjudicating E visa applications at consulates abroad. An alien whose visa is about to expire may depart from the United States and then reenter (using the still valid visa), obtain a new Form I-94 for a period of two years, and then continue working in the United States while his or her visa application is pending abroad.

WHERE TO APPLY

Aliens who are currently in the United States under some other status may seek E-2 status from USCIS by applying for a change of status. However, in most cases it is preferable for the alien to apply for an E visa through a consulate abroad.

In contrast to most other nonimmigrant employment classifications, U.S. consulates issue E-2 visas abroad without prior petition approval from USCIS. Also, because E-2 visa eligibility is derived from treaties negotiated by the United States, the general consensus is that DOS has primary jurisdiction over E-2 adjudications.

Visa applicants who previously acquired E-2 status through a change of status in the United States will find that many consular posts do not simply issue E-2 visas based on a prior USCIS adjudication. Instead, they will require the alien to submit a new application to the consular post along with completed forms, fees, and supporting documentation. For this reason, it is usually more efficient to simply apply through a consular post.

Of course, there are exceptions to the general rule. Where the consular post having jurisdiction over the applicant's country of citizenship or residence is particularly tough, it may be preferable to apply initially through the USCIS and apply for a visa abroad after the treaty business has established a track record of success and the applicant's investment therein has grown. In addition, where the applicant must immediately begin his or her management of the treaty business, it may be quicker to seek a change of status (using premium processing) and apply for the E-2 visa later.

Aliens who acquire E-2 status by means of a change of status will be unable to travel abroad until they have obtained an E-2 visa at a consular post abroad. However, they should be permitted to travel to a contiguous territory and then reenter the United States, despite the fact that they do not possess a valid E-2 visa.

E-2 VISA RENEWALS

E-2 visa renewals and extensions of stay need to be handled with the same care as initial E-2 applications. Several years will have elapsed since the initial visa application or change of status was adjudicated. During this time, any number of events may have occurred, which will affect the nonimmigrant's E-2 eligibility.

For example, a subsequent change of ownership may have altered the nationality of the treaty business. In addition, the economic downturn may have reduced the net income of the business to the point where it is considered a marginal enterprise. The treaty business also may have acquired real property that is subject to a mortgage, which would alter the proportionality of the investment.

An E-2 nonimmigrant seeking a visa renewal or extension of stay will be expected to establish his or her eligibility for E-2 status ab initio. All E-2 eligibility requirements should therefore be re-assessed based on the alien's current fact situation.

CONCLUSION

The E-2 category allows you to pursue entrepreneurial activities in the United States. In addition, aliens who wish to avoid tax obligations imposed on lawful permanent residents may prefer the E-2 over the EB-5.

Treaty Countries

Albania, Argentina, Armenia, Australia, Austria, Azerbaijan, Bahrain, Bangladesh,Belgium, Bolivia, Bosnia and Herzegovina, Bulgaria, Cameroon, Canada,Chile, China (Taiwan), Colombia, Congo (Brazzaville), Congo (Kinshasa), Costa Rica, Croatia, Czech Republic, Denmark, Ecuador, Egypt, Estonia, Ethiopia, Finland, France, Georgia, Germany, Grenada, Honduras, Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kazakhstan, Korea (South), Kosovo, Kyrgyzstan, Latvia, Liberia, Lithuania, Luxembourg, Macedonia,Mexico, Moldova, Mongolia, Montenegro, Morocco, Netherlands, New Zealand, Norway, Oman, Pakistan, Panama, Paraguay, Philippines, Poland, Romania, Senegal, Serbia, Singapore, Slovak Republic, Slovenia, Spain, Sri Lanka, Suriname, Sweden, Switzerland, Thailand, Togo, Trinidad & Tobago, Tunisia, Turkey, Ukraine, United Kingdom, Yugoslavia

Country	Classification	Entered into Force
Albania	E-2	January 4, 1998
Argentina	E-1	December 20, 1854
Argentina	E-2	December 20, 1854
Armenia	E-2	March 29, 1996
Australia	E-1	December 16, 1991
Australia	E-2	December 27, 1991
Australia 12	E-3	September 2, 2005
Austria	E-1	May 27, 1931
Austria	E-2	May 27, 1931
Azerbaijan	E-2	August 2, 2001
Bahrain	E-2	May 30, 2001
Bangladesh	E-2	July 25, 1989
Belgium	E-1	October 3, 1963
Belgium	E-2	October 3, 1963

Bolivia	E-1	November 09, 1862
Bolivia 13	E-2	June 6, 2001
Bosnia and Herzegovina 11	E-1	November 15, 1982
Bosnia and Herzegovina 11	E-2	November 15, 1982
Brunei	E-1	July 11, 1853
Bulgaria	E-2	June 2, 1954
Cameroon	E-2	April 6, 1989
Canada	E-1	January 1, 1994
Canada	E-2	January 1, 1994
Chile	E-1	January 1, 2004
Chile	E-2	January 1, 2004
China (Taiwan) 1	E-1	November 30, 1948
China (Taiwan) 1	E-2	November 30, 1948
Colombia	E-1	June 10, 1948
Colombia	E-2	June 10, 1948
Congo (Brazzaville)	E-2	August 13, 1994
Congo (Kinshasa)	E-2	July 28, 1989
Costa Rica	E-1	May 26, 1852
Costa Rica	E-2	May 26, 1852
Croatia 11	E-1	November 15, 1982
Croatia 11	E-2	November 15, 1982
Czech Republic 2	E-2	January 1, 1993
Denmark 3	E-1	July 30, 1961
Denmark	E-2	December 10, 2008
Ecuador 14	E-2	May 11, 1997
Egypt	E-2	June 27, 1992
Estonia	E-1	May 22, 1926
Estonia	E-2	February 16, 1997
Ethiopia	E-1	October 8, 1953
Ethiopia	E-2	October 8, 1953
Finland	E-1	August 10, 1934

Finland	E-2	December 1, 1992
France 4	E-1	December 21, 1960
France 4	E-2	December 21, 1960
Georgia	E-2	August 17, 1997
Germany	E-1	July 14, 1956
Germany	E-2	July 14, 1956
Greece	E-1	October 13, 1954
Grenada	E-2	March 3, 1989
Honduras	E-1	July 19, 1928
Honduras	E-2	July 19, 1928
Ireland	E-1	September 14, 1950
Ireland	E-2	November 18, 1992
Israel 15	E-1	April 3, 1954
Israel 15	E-2	May 1, 2019
Italy	E-1	July 26, 1949
Italy	E-2	July 26, 1949
Jamaica	E-2	March 7, 1997
Japan 5	E-1	October 30, 1953
Japan 5	E-2	October 30, 1953
Jordan	E-1	December 17, 2001
Jordan	E-2	December 17, 2001
Kazakhstan	E-2	January 12, 1994
Korea (South)	E-1	November 7, 1957
Korea (South)	E-2	November 7, 1957
Kosovo 11	E-1	November 15, 1882
Kosovo 11	E-2	November 15, 1882
Kyrgyzstan	E-2	January 12, 1994
Latvia	E-1	July 25, 1928
Latvia	E-2	December 26, 1996
Liberia	E-1	November 21, 1939
Liberia	E-2	November 21, 1939

Lithuania	E-2	November 22, 2001
Luxembourg	E-1	March 28, 1963
Luxembourg	E-2	March 28, 1963
Macedonia 11	E-1	November 15, 1982
Macedonia 11	E-2	November 15, 1982
Mexico	E-1	January 1, 1994
Mexico	E-2	January 1, 1994
Moldova	E-2	November 25, 1994
Mongolia	E-2	January 1, 1997
Montenegro 11	E-1	November 15, 1882
Montenegro 11	E-2	November 15, 1882
Morocco	E-2	May 29, 1991
Netherlands 6	E-1	December 5, 1957
Netherlands 6	E-2	December 5, 1957
New Zealand 16	E1	June 10, 2019
New Zealand 16	E2	June 10, 2019
Norway 7	E-1	January 18, 1928
Norway 7	E-2	January 18, 1928
Oman	E-1	June 11, 1960
Oman	E-2	June 11, 1960
Pakistan	E-1	February 12, 1961
Pakistan	E-2	February 12, 1961
Panama	E-2	May 30, 1991
Paraguay	E-1	March 07, 1860
Paraguay	E-2	March 07, 1860
Philippines	E-1	September 6, 1955
Philippines	E-2	September 6, 1955
Poland	E-1	August 6, 1994
Poland	E-2	August 6, 1994
Romania	E-2	January 15, 1994

Senegal	E-2	October 25, 1990
Serbia 11	E-1	November 15,1882
Serbia 11	E-2	November 15,1882
Singapore	E-1	January 1, 2004
Singapore	E-2	January 1, 2004
Slovak Republic 2	E-2	January 1, 1993
Slovenia 11	E-1	November 15, 1982
Slovenia 11	E-2	November 15, 1982
Spain 8	E-1	April 14, 1903
Spain 8	E-2	April 14, 1903
Sri Lanka	E-2	May 1, 1993
Suriname 9	E-1	February 10, 1963
Suriname 9	E-2	February 10, 1963
Sweden	E-1	February 20, 1992
Sweden	E-2	February 20, 1992
Switzerland	E-1	November 08, 1855
Switzerland	E-2	November 08, 1855
Thailand	E-1	June 8, 1968
Thailand	E-2	June 8, 1968
Togo	E-1	February 5, 1967
Togo	E-2	February 5, 1967
Trinidad & Tobago	E-2	December 26, 1996
Tunisia	E-2	February 7, 1993
Turkey	E-1	February 15, 1933
Turkey	E-2	May 18, 1990
Ukraine	E-2	November 16, 1996
United Kingdom 10	E-1	July 03, 1815
United Kingdom 10	E-2	July 03, 1815
Yugoslavia 11	E-1	November 15, 1882
Yugoslavia 11	E-2	November 15, 1882

Country Specific Footnotes

1. **China (Taiwan)** - Pursuant to Section 6 of the Taiwan Relations Act, (TRA) Public Law 96-8, 93 Stat, 14, and Executive Order 12143, 44 F.R. 37191, this agreement which was concluded with the Taiwan authorities prior to January 01, 1979, is administered on a nongovernmental basis by the American Institute in Taiwan, a nonprofit District of Columbia corporation, and constitutes neither recognition of the Taiwan authorities nor the continuation of any official relationship with Taiwan.

2. **Czech Repubilc and Slovak Republic** - The Treaty with the Czech and Slovak Federal Republic entered into force on December 19, 1992; entered into force for the Czech Republic and Slovak Republic as separate states on January 01, 1993.

3. **Denmark** - The Treaty which entered into force on July 30, 1961, does not apply to Greenland.

4. **France** - The Treaty which entered into force on December 21, 1960, applies to the departments of Martinique, Guadeloupe, French Guiana and Reunion.

5. **Japan** - The Treaty which entered into force on October 30, 1953, was made applicable to the Bonin Islands on June 26, 1968, and to the Ryukyu Islands on May 15, 1972.

6. **Netherlands** - The Treaty which entered into force on December 05, 1957, is applicable to Aruba and Netherlands Antilles.

7. **Norway** - The Treaty which entered into force on September 13, 1932, does not apply to Svalbard (Spitzbergen and certain lesser islands).

8. **Spain** - The Treaty which entered into force on April 14, 1903, is applicable to all territories.

9. **Suriname** - The Treaty with the Netherlands which entered into force December 05, 1957, was made applicable to Suriname on February 10, 1963.

10. **United Kingdom** - The Convention which entered into force on July 03, 1815, applies only to British territory in Europe (the British Isles (except the Republic of Ireland), the Channel Islands and Gibraltar) and to "inhabitants" of such territory. This term, as used in the Convention, means "one who resides actually and permanently in a given place, and has his domicile there." Also, in order to qualify for treaty trader or treaty investor status under this treaty, the alien must be a national of the United Kingdom. Individuals having the nationality of members of the Commonwealth other than the United Kingdom do not qualify for treaty trader or treaty investor status under this treaty.

11. **Yugoslavia** - The U.S. view is that the Socialist Federal Republic of Yugoslavia (SFRY) has dissolved and that the successors that formerly made up the SFRY - Bosnia and Herzegovina, Croatia, the Republic of Macedonia, Slovenia, Montenegro, Serbia, and Kosovo a continue to be bound by the treaty in force with the SFRY and the time of dissolution.

12. The E-3 visa is for nationals of the Commonwealth of Australia who wish to enter the United States to perform services in a "specialty occupation." The term "specialty occupation" means an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States. The definition is the same as the Immigration and Nationality Act definition of an H-1B specialty occupation.

13. **Bolivia** - Bolivian nationals with qualifying investments in place in the United States by June 10, 2012 continue to be entitled to E-2 classification until June 10, 2022. The only nationals of Bolivia (other than those qualifying for derivative status based on a familial relationship to an E-2 principal alien) who may qualify for E-2 visas at this time are those applicants who are coming to the United States to engage in E-2 activity in furtherance of covered investments established or acquired prior to June 10, 2012.

14. Ecuadorian nationals with qualifying investments in place in the United States by May 18, 2018 continue to be entitled to E-2 classification until May 18, 2028. The only nationals of Ecuador (other than those qualifying for derivative status based on a familial relationship to an E-2 principal alien) who may qualify for E-2 visas at this time are those applicants who are coming to the United States to engage in E-2 activity in furtherance of covered investments established or acquired prior to May 18, 2018.

15. Israel: Pursuant to a treaty of friendship, commerce, and navigation between the United States and Israel that entered into force on April 3, 1954 entitled nationals of Israel to E-1 status for treaty trader purposes. Nationals of Israel are not entitled to E-2 classification for treaty investor purposes under that treaty. Public Law 112-130 (June 8, 2012), accords nationals of Israel E-2 status for treaty investor purposes if the Government of Israel provides similar nonimmigrant status to nationals of the United States. The Department has confirmed that Israel offers reciprocal treaty investor treatment to U.S. nationals and E-2 visa may be issued to nationals of Israel beginning on May 1, 2019.

16. New Zealand: Public Law 115-226, enacted on August 1, 2018, accorded nationals of New Zealand to E-1 and E-2 status for treaty trader/treaty investor purposes if the Government of New Zealand provides similar nonimmigrant status to nationals of the United States. The Department has confirmed that New Zealand offers similar nonimmigrant status to U.S. nationals and E visas may be issued to nationals of New Zealand beginning on June 10, 2019.

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