

**IMMIGRATION LAW OFFICES OF**  
**Lisa Krueger Khan, PA**  
**7932 W. Sand Lake Road · Suite 303 · Orlando, FL 32819**  
**Phone 407.351.9075 · Fax 407.351.9076**  
**Email: [lisa@lisavisa.com](mailto:lisa@lisavisa.com)**

**E-2 TREATY INVESTOR**

An individual may be classified as a nonimmigrant treaty investor (E-2) under the provision of section 101(a)(15)(E)(ii) of the Act if he/she:

1. has invested or is actively in the process of investing a substantial amount of capital in a bona fide enterprise in the United States, as distinct from a relatively small amount of capital in a marginal enterprise solely for the purpose of earning a living;
2. is seeking entry solely to develop and direct the enterprise; and
3. intends to depart the United States upon the expiration or termination of E-2 status.

**Investment**

An investment is the treaty investor's placing of capital, including funds and other assets (which have not been obtained, directly or indirectly, through criminal activity), at risk in the commercial sense with the objective of generating a profit. The treaty investor must be in possession of and have control over the capital invested or being invested. The 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. Capital in the process of being invested or that has been invested must be irrevocably committed to the enterprise. To show irrevocable commitment, the investor may use any legal mechanism available, such as the placement of invested funds in escrow pending admission in, or approval of, E classification, that would not only irrevocably commit funds to the enterprise, but might also extend personal liability protection to the treaty investor in the event the application for E classification is denied.

**Bona Fide Enterprise**

The enterprise must be bona fide, i.e., a real, active, and operating commercial or entrepreneurial undertaking which produces services or goods for profit. The enterprise must meet applicable legal requirements for doing business in the particular jurisdiction in the United States.

**Substantial Amount of Capital**

A substantial amount of capital constitutes an amount which is:

- Substantial in relationship to the total cost of either purchasing an established enterprise or creating the type of enterprise under consideration;
- Sufficient to ensure the treaty investor's financial commitment to the successful operation of the enterprise; and
- Of a magnitude to support the likelihood that the treaty investor will successfully develop and direct the enterprise. Generally, the lower the cost of the enterprise, the higher, proportionately, the investment must be to be considered a substantial amount of capital. (As a general rule, for investments of \$500,000 or less, the investor should invest at least 75%).

### **Marginality**

The investment enterprise may not be marginal— one that does not have the present or future capacity to generate more than enough income to provide a minimal living for the treaty investor and his or her family. An enterprise that does not have the capacity to generate such income, but that has a present or future capacity to make a significant economic contribution is not a marginal enterprise. The projected future income-generating capacity should generally be realizable within 5 years from the date the alien commences the normal business activity of the enterprise.

### **Develop and Direct the Enterprise**

The treaty investor must demonstrate that he or she does or will develop and direct the investment enterprise. The applicant must establish that he or she controls the enterprise by:

- demonstrating ownership of at least 50% of the enterprise; and/or
- possessing operational control through a managerial position or other corporate device.

### **APPLYING FOR AN E-2 VISA**

Application for an E-2 visa is made directly at the US Consulate in the investor's home country. Processing times vary from Consulate to Consulate. For example, Sydney takes about 2 weeks to adjudicate; London takes about 4 months. E-2 visas are usually issued for a two-year or five-year validity. It is important to note that a visa is an actual document that can only be issued by a US Consulate. It is placed into an individual's passport and essentially serves as a travel document that allows an individual to come to the United States and present himself/herself before the Immigration authorities at a US port of entry (usually, an airport) for admission. If admitted to the US by the Immigration official, the E-2 visa holder will be granted a period of admission for 2 years. This period of admission is noted on a Form I-94 (entry/departure record), which is a small, white card stapled into the passport. This card controls the individual's lawful stay in the US. If the individual travels outside the US before the expiration of the I-94 and the visa, then he/she will be readmitted to the US for a "fresh" 2 year period upon re-entry. If an individual does not leave the US before the expiration of the 2-year period on the I-94 card, then he/she must file for a 2-year status extension with the appropriate Immigration Service Center in the US.

### **CHANGE OF STATUS TO E-2**

If an individual is admitted to the US pursuant to a lawful nonimmigrant status (such as a B-1

business visitor, B-2 tourist visitor, F-1 student, etc.), he/she may file to change his/her status to E-2. The E-2 petition and change of status request is filed at the appropriate Immigration Service Center. If the investor is willing to pay a \$1000 premium processing fee, the Service Center will provide a decision in two (2) weeks. It is important to note the following:

- A change of status to E-2 MAY NOT be filed for an investor who has come to the US under the Visa Waiver Program. Many UK nationals enter the US under the Visa Waiver Program. (The Visa Waiver program permits nationals from designated countries to apply for admission to the United States for 90 days or less as visitors without the need to obtain a B-1 or B-2 visa. 28 countries are part of the Visa Waiver Program: Andorra, Australia, Austria, Belgium, Brunei, Denmark, Finland, France Germany, Iceland, Ireland, Italy, Japan, Liechtenstein, Luxembourg, Monaco, the Netherlands, New Zealand, Norway, Portugal, San Marino, Singapore, Slovenia, Spain, Sweden, Switzerland, the UK, and Uruguay). Those who enter the US on the Visa Waiver Program may NOT extend or change their status in the United States).
- When an Immigration Service Center grants an approval changing one's status to E-2, this is NOT the same as being issued an E-2 visa. Remember, only a US Consulate may issue an E-2 visa. The Service Center can change one's nonimmigrant status in the US to E-2 for up to 2 years. If the E-2 investor subsequently desires to leave the US, he/she MUST apply anew for an E-2 visa at the Consulate in his/her home country. (Keep in mind, for London this takes about 4 months)!

### **FAMILY MEMBERS**

The spouse and minor children (under 21) accompanying or following to join an E-2 investor shall be admitted for the period during which the principal alien is in valid treaty trader or investor status. The temporary departure from the United States of the principal investor shall not affect the derivative status of the dependent spouse and minor unmarried children, provided the familial relationship continues to exist and the principal remains eligible for admission as an E nonimmigrant to perform the activity. The spouse of an E-2 may obtain a work authorization card; children may not.

