

# E-2 Treaty Investor Visa

## Introduction To Investor Visas

The EB-5 is a well known program, by which investors place \$1 million in a qualifying US investment, and eventually obtains a Green Card. The visa is designed for individuals with \$1 million in disposable income, wanting permanent residency in the US. Indeed, with 'merely' \$500,000 in liquid capital, an EB-5 regional center may be an option, although fraud has brought that particular program [into question](#), after investor losses in [Miami](#) and [Vermont](#). In addition, investment risk is [very real](#), as are [long processing times](#).

## The E-2 / Treaty Investor Visa

For many people, the E-2 visa is overlooked, but a good option for those wanting to start or invest in a business located in the US. The money must be invested, but the investor retains control of the business, so can determine its success. The investment can be as little as \$50,000, although more typically are \$150-\$175k, depending on the industry. For example, service businesses require less capital than manufacturing or production.

### Why the E-2 Visa?

1. Approvals last up to five years, with unlimited renewals
2. No lottery, numerical cap, or quota on approvals.
3. Spouse, and unmarried children under 21 also gain E-2 status
4. Spouse can gain work authorization to work anywhere
5. Children of E-2 visa holders can attend US public schools
6. Relatively speedy application, which can be made from inside the United States, or from the home country of the investor
7. Lots of flexibility, most active businesses can qualify
8. Investor maintains control over the qualifying business, keeping control over business success, and reducing chances of fraud

# Requirements for the E-2

## E-2 Beneficiary and Family

The E-2 beneficiary is the person who will take operational control of a US business, but approval also allows that person to also bring their spouse and dependent children to the US, provides unlimited work authorization for the spouse (not just within the E-2 business) and allows the children to attend public school in the US. An E-2 approval last up to five years, and can be renewed indefinitely, as long as the business remains viable.

## What are the Criteria for an E-2 Visa

To qualify for E-2 classification, the candidate must:

1. Be a national of a country with which the United States maintains a current treaty of commerce and navigation. These countries are listed [here](#).
2. Be actively investing, or having invested, a “substantial” amount of capital\* in a bona fide enterprise in the United States.
3. Be seeking to come to the US solely to develop and direct the E-2 enterprise. This is established by showing either at least 50% ownership of the enterprise or operational control through a managerial position or other corporate structure.
4. For E-2 purposes, an investment is defined as the investor placing capital, at risk in the commercial sense with the objective of them generating profits. Risk means that the money would be lost if the business fails.

\*A substantial amount of capital is:

Substantial in relationship to the total cost of either establishing a new business, or to purchase an established business. It must be sufficient to:

- i. Ensure the commitment of the investor to the business.
- ii. Support the likelihood that the business will be successful.

# E-2 Essential Employee

## Essential Employees of E-2 Visa Holders

An E-2 visa holder can also sponsor “essential employees”, holding the same nationality, to work in the management and specialist positions within the E-2 business.

There are two capacities which qualify as an E-2 essential employee:

### 1. Positions with Executive and Supervisory Character

Positions with executive and supervisory duties entail ultimate control for either the overall operation of the business, or a major part of it. “An executive” position is one that provides the E-2 employee with the necessary authority to determine the policy and overall direction of the enterprise. A “Supervisory” role is one where the employee has supervisory responsibility for a significant portion of the enterprise's operations.

### 2. Special Qualification/Essential Employee Capacity

An employee in a lesser capacity may also be eligible, determined by his / her expertise, experience, training and the uniqueness of his / her skill set and qualifications.

An ordinary skilled worker may also qualify to work with the business for training / start-up purposes. In this case, they would usually have prior experience with the employer.

Essential employees may bring their spouse and dependent children with them. The spouse will have unlimited work authorization, and children may attend public schools.

## Note on Eligibility of Essential Employees

If the principal alien employer is an individual, they must be eligible for E-2 status, but do not need to be in E-2 status. However, if the employer not an individual, it must be a business or organization at least 50% owned by persons in the US who have the same treaty country nationality , and these owners must be maintaining E-2 status.



# Obtaining the E-2 Visa

## **Option One: Incorporate, license, collect and collate information**

Obtaining the E-2 visa is a document intensive process, the collection and collation of which must be done before filing. This can take time, especially with a new business. In addition to the legal documents, and all the necessary visa evidence, the company must be “active”, with a fully functioning website, appropriate licenses, a paid for work space (retail / office / commercial) and have the appropriate management structure in place to allow the beneficiary to develop and direct the business. In addition, a business plan is required, usually prepared by a CPA (each country has slightly different requirements).

## **Option Two: The USA Workplace Solutions Comprehensive Package**

To address the challenge of trying to source each necessary requirement independently and remotely, all while trying to ensure each complies with the E-2 criteria, we offer a comprehensive package, handling each element necessary to obtain E-2 approval. If you are not sure where to start, we can also present you with prescreened E-2 qualifying business opportunities, through our relationships with reputable business brokers.

### **Factors to Consider**

1. E-2 visas are only available to nationals of [certain countries](#).
2. Passive businesses such as real estate or stock ownership will not qualify, although brokerage / financial advising may qualify if it is structured correctly.
3. There is a path from an E-2 visa to an EB-5 green card, should the business grow to a qualifying size. However, this does require careful and planning and diligence with an attorney before filing, due to the concept of dual intent.

# The E-2 Package Process

After agreeing a plan with you, our legal team will incorporate an entity, write articles of incorporation and operating agreements, conforming to the best corporate structure for the E-2. We will manage the development, design, writing and publishing of a website, secure a CPA-prepared business plan, negotiate and secure flexible and appropriate work space, and obtain the necessary state, county and city (as appropriate) licenses for your business to be considered “active”.

If you are buying a business, we can handle all the negotiation and purchase contracts, contingent on an E-2 approval, therefore limiting your risk.

## WE TAKE CARE OF IT ALL

- ✓ Incorporation of the best entity structure for your business
- ✓ Write custom articles of incorporation and operating agreement
- ✓ Gaining federal EIN from the I.R.S.
- ✓ CPA prepared business plan
- ✓ Website design, including graphic design, copy and publishing
- ✓ Contractual work for real estate lease / purchase
- ✓ Negotiating and closing the purchase of business
- ✓ Obtaining all necessary business licenses
- ✓ Preparing and filing E-2 visa petition
- ✓ Providing any additional evidence requested by USCIS / DHS

We then assemble all the necessary documents, and our AILA (American Immigration Lawyers Association) attorney prepares and files the E-2 visa petition. A well-structured and prepared petition, with each component part designed around E-2 requirements, provides the best possible path to success, and our support continues throughout any requests for evidence, and interview preparation (when required).

# Package Pricing

## Pricing an Individual Package

Because each business differs and has many variables, some detail is required for us to provide an accurate package price. However, as an example only, the following is based on a new business, comparing estimated prices with a Comprehensive Package Price.

Also listed, but unpriced, is the time it takes to shop around, collect the quotes from reputable companies and professionals, ensure all their work complies with the E-2 visa requirements, and is completed within your preferred timescale.

<u>Required E-2 Element</u>	<u>Estimated Price</u>
Incorporation, and custom articles of incorporation	\$2,500.00
Custom operating agreement	\$2,000.00
Obtaining EIN from the IRS	\$ 250.00
Negotiating and contracting lease for business space	\$2,000.00
CPA prepared business plan	\$7,500.00
Obtaining all necessary business licenses	\$2,500.00
Website development and graphic design	\$5,000.00
Website copy writing and publishing	\$5,000.00
Preparing and filing Visa petition for beneficiary and family	\$6,500.00
Completing any additional evidence requests from USCIS	\$2,500.00
Shopping around for all of the above	?
Conducting due diligence on each service provider	?
Reviewing all work for E-2 compliance	?
<b>Total: \$35,750.00</b>	

**USA Workplace Solutions E-2 Package: \$24,000.00**

**Note:** The USA Workplace E-2 Package does not include the money used to purchase a business. However, the cost may be included to show capital invested.

To start your path to you and your family living, working, and owning a business in the United States, [contact us](#) to discuss your situation.