

TREATY TRADER AND TREATY INVESTOR (E-1/E-2)

Treaties between the United States and many countries allow foreign nationals to come to the United States to conduct trade or to manage substantial investments (no fixed dollar amount). Those qualifying for the E-1 (Trader) or E-2 (Investor) visas can pursue long-term business objectives using these practical visas. The list of qualifying countries changes as the United States Congress ratifies new trade treaties.

GENERAL QUALIFICATIONS OF A TREATY TRADER

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 & navigation;
- Carry on substantial trade;
- 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
- Transportation
- Tourism
- Technology and its transfer
- Insurance
- Some news-gathering activities.

See 8 CFR 214.2(e)(9) for additional examples and discussion.

Substantial trade generally refers to the continuous flow of sizable international trade items, involving numerous transactions over time. There is no minimum requirement regarding the monetary value or volume of each transaction. While monetary value of transactions is an important factor in considering substantiality, greater weight is given to more numerous exchanges of greater value. See 8 CFR 214.2(e)(10) for further details.

Principal trade between the United States and the treaty country exists when over 50% of the total volume of international trade is between the U.S. and the trader's treaty country. See 8 CFR 214.2(e)(11).

GENERAL QUALIFICATIONS OF A TREATY INVESTOR

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 & navigation;



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TREATY TRADER AND TREATY INVESTOR (E-1/E-2) CONT.

- Have invested, or be actively in the process of investing, a substantial amount of capital in a bona fide enterprise in the United States;
- 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.

An 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. See 8 CFR 214.2(e)(12) for more information.

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.

Investors from qualifying countries may apply for an E2 visa in order to 'Direct and Develop' their investment. They may also apply for E2 visas for key managerial and specialist employees.

In contrast to the L1 visa, there is no requirement that such employees have worked for the Investor for at least one year in the last three, nor is it necessary for the Investor to continue operations outside the USA while the Investor or his/her employees are in the USA.

E visas are typically valid for one to five years with unlimited renewals (pending requirements have been satisfied).



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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.

Although the qualifications are fairly straightforward, nearly every word is heavily weighted and carries with it its own special significance under the law.

Most specifically:

- A. Substantiality: In a nutshell, the consular officer is looking for a reasonable likelihood that the business invested in is not speculative, but is likely to be a successful enterprise. Accordingly, there are many factors at play here, including: the business background and record of successful business decisions, the financial and other resources of the investor, the "character" of the invested funds (whether it is cash and/or assets vs. borrowed funds based on personal guarantee or recourse debt tied to personal assets (such as a second mortgage on a personal home), etc.
- B. When setting up a "new office" rather than investing in an existing business, there are some key issues to think about. There must be a showing that the funds have been irrevocably committed to the business. For example, if your business requires you to lease property - the commitment to a lease would be an example of showing that you are "in the process of investing." Make sense? We would need to structure the lease agreement to reflect that upon non-issuance of the visa, the lease agreement could be terminated, or something to that effect.
- C. A business that does not have the capacity to generate more than enough income to provide a minimal living for the treaty investor and his or her family does not pass the marginality test. To overcome this hurdle, we would need a strong, detailed 5-year business plan.



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COUNTRY	CLASSIFICATION	EFFECTIVE DATE
Albania	E-2	January 4, 1998
Argentina	E-1	October 20, 1994
Argentina	E-2	October 20, 1994
Armenia	E-2	March 29, 1996
Australia	E-1	December 16, 1991
Australia	E-2	December 27, 1991
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	E-2	June 6, 2001
Bosnia and Herzegovina	E-1	November 15, 1882
Bosnia and Herzegovina	E-2	November 15, 1882
Brunei	E-1	July 11, 1853
Bulgaria	E-2	June 2, 1994
Cameroon	E-2	April 6, 1989
Canada	E-1	January 1, 1993
Canada	E-2	January 1, 1993
Chile	E-1	January 1, 2004
Chile	E-2	January 1, 2004
China (Taiwan)	E-1	November 30, 1948
China (Taiwan)	E-2	November 30, 1948
Colombia	E-1	June 10, 1848
Colombia	E-2	June 10, 1848
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	E-1	November 15, 1882
Croatia	E-2	November 15, 1882



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COUNTRY	CLASSIFICATION	EFFECTIVE DATE
Czech Republic	E-2	January 1, 1993
Denmark	E-1	July 30, 1961
Denmark	E-2	December 10, 2008
Ecuador	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	E-1	December 21, 1960
France	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
Iran	E-1	June 16, 1957
Iran	E-2	June 16, 1957
Ireland	E-1	September 14, 1950
Ireland	E-2	November 18, 1992
Israel	E-1	April 3, 1954
Italy	E-1	July 26, 1949
Italy	E-2	July 26, 1949
Jamaica	E-2	March 7, 1997
Japan	E-1	October 30, 1953
Japan	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



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COUNTRY	CLASSIFICATION	EFFECTIVE DATE
Korea (South)	E-2	November 7, 1957
Kosovo	E-1	November 15, 1882
Kosovo	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, the Former Yugoslav Republic of (FRY)	E-1	November 15, 1882
Macedonia, the Former Yugoslav Republic of (FRY)	E-2	November 15, 1882
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	E-1	November 15, 1882
Montenegro	E-2	November 15, 1882
Morocco	E-2	May 29, 1991
Netherlands	E-1	December 5, 1957
Netherlands	E-2	December 5, 1957
Norway	E-1	January 18, 1928
Norway	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



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Philippines	E-2	September 6, 1955
Poland	E-1	August 6, 1994
Poland	E-2	August 6, 1994
Romania	E-2	January 15, 1994
Serbia	E-1	November 15, 1882
Serbia	E-2	November 15, 1882
Senegal	E-2	October 25, 1990
Singapore	E-1	January 1, 2004
Singapore	E-2	January 1, 2004
Slovak Republic	E-2	January 1, 1993
Slovenia	E-1	November 15, 1882
Slovenia	E-2	November 15, 1882
Spain	E-1	April 14, 1903
Spain	E-2	April 14, 1903
Sri Lanka	E-2	May 1, 1993
Suriname	E-1	February 10, 1963
Suriname	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	E-1	July 03, 1815
United Kingdom	E-2	July 03, 1815
Yugoslavia	E-1	November 15, 1882
Yugoslavia	E-2	November 15, 1882



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