

# SCOTT LEGAL SERVICES, P.C.

The Law Firm For Entrepreneurs, Business Owners & Investors

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## Coming to America?

### Some Immigration Options for Investors & Entrepreneurs

Foreign nationals who wish to start their businesses in America often find themselves trying to navigate the complicated regulatory scheme that includes immigration law, SEC rules associated with raising capital, and understanding other U.S. laws. One thing that is clear in this maze though is that in order to start and run a business while in the U.S., you must obtain work authorization and this means you must obtain a Visa.

For Investors, Business Owners & Entrepreneurs who want to start a business here there are a few Immigration options and the decision of which Visa to apply for really depends on how much money you have, whether you want a permanent or temporary Visa and which Visas you qualify for. This article reviews the Visas that are available for investors and describes the type of investor that each Visa may appeal to.

#### **E-2 Treaty Investor Visa**

One of the most popular Investor Visas is the E-2 Visa. This Visa option is for business owners that wish to start a company in the United States and who want to actively manage and direct the operations of the business in the U.S.. In order to qualify for an E-2 Visa, you must either start or buy a business that you plan to run, and you must invest a certain amount of money in the business. The actual investment amount depends on the type of business you start. For example, if you start a consulting or other service related business, the amount of investment can be as low as \$50,000. If you start a manufacturing plant, the required investment amount would be much higher.

For this Visa, you must also invest in or start an enterprise that will ultimately create jobs. While the statute does not mandate an exact number of jobs and you do not have to hire staff on day one, the business cannot be set up just to support you and your family. Finally, you must be a

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foreign national from one of the Treaty countries. A full list of the countries is included [here](#) and there are countries from all regions of the world on the list. (eg. United Kingdom, Pakistan, Egypt, Iran, France, Canada, Spain, etc.). You should note though that the two most populous countries, India and China, are not on the list.

One final thing to note about this Visa is that although a person could live indefinitely in the U.S. with an E-2 Visa, it is a non-immigrant Visa which means that it does not lead to a green card. Your spouse and children can accompany you though on the same Visa and a spouse can get work authorization to work wherever he/she likes.

### **EB-5 Immigrant Investor Visa (The “Million Dollar” Visa)**

While an E-2 Visa is a Visa that we often recommend to our clients, many have not heard about it and only consider it after it is explained to them. Also, almost everyone confuses it with an EB-5 Visa. An EB-5 Visa is a great visa option if you have a large amount of capital and is often referred to as the million dollar Green Card as you can literally buy your way in to the U.S.. The key advantage of this Visa is that you and your immediate family get green cards, but the downside is that the Visa requires a substantial investment (either \$500,000 or \$1,000,000), and due to the complexity the visa is expensive (legal fees and or other fees if you invest in a regional center). Finally, the documentation requirements for this visa are extensive.

There are 5 main criteria to get an EB-5 Visa and they are as follows:

1. You must invest or be actively in the process of investing either \$1,000,000 in a city settings, or US \$500,000 in rural settings;
2. You must show that the funds come from a legitimate source
3. The entire amount of the investment must be active or at risk (this means that you cannot just be thinking about buying a business and you have to put capital up that could be lost)
4. You must make the investment in a “new” or “existing business enterprise” (this allows you to create your own business or buy one); and
5. You must demonstrate that the investment directly or indirectly results in the creation or preservation of ten full time jobs

### **Other Visas for Investors & Entrepreneurs**

Two visas that are not as popular among start-up investors are the H-1B Visa and the L-1 visa.

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Most do not think of the H-1B as a viable alternative to start a business but if structured properly, it could be a solution. Normally, when thinking of an H-1B Visa most think of an employer (petitioner) sponsoring a technology or other specialty occupation worker (beneficiary) where the job requires a bachelor's degree. In the case of a Business Owner, Investor or Entrepreneur though, the petitioner and the beneficiary are often the same person and this can present problems. This is a very tricky area but a business owner can use this Visa to sponsor him/herself. You should note though that the immigration officials have strict laws that govern whether or not a person who has an ownership interest in a company can sponsor themselves for an H-1B Visa so you should seek the help of a qualified attorney.

Another start-up Visa is the L-1 Visa. This Visa allows a company to transfer an executive or manager from one of its affiliated foreign offices to one of its offices in the United States. It also allows a company that has a foreign operation to set up a new office or branch in the U.S.. This Visa is often used by multinational companies and is not as popular with entrepreneurs and start-ups. That being said, it is often the only option if an E-2 or EB-5 Visa is not possible. (Eg. for business owners from China or India that are not eligible for an E-2 Visa or other foreign nationals that do not have \$1,000,000 to invest).

To qualify for L-1 Visa, the new business that is going to be set up must have a former qualifying relationship with a foreign company and any staff that are sent to work in the U.S. from the foreign entity must have worked continuously with in the foreign entity for at least one year.

If you are considering an Investor or Entrepreneurial Visa, contact Scott Legal Services, P.C.. For more information on these and other immigration Visas click [here](#). You can also call us at 212-223-2964 or email us at [iscott@legalservicesincorporated.com](mailto:iscott@legalservicesincorporated.com).

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