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Does A Spouse of an E-2 Investor Visa Holder Require Employment Authorization

An E-2 Investor Visa is a visa option available to foreign nationals who want to start and manage a business in the United States. The visa requires a capital investment to either start or purchase a business and the amount of the investment depends on the type of business. Also, the business should ultimately create jobs and benefit the economy of the U.S.. Any legitimate business qualifies and Scott Legal Services P.C. has successfully processed E-2 Investor Visas for various types of business including: photography, auto repair, catering, law firm, consulting firm, mobile application start up, manufacturer, food franchise, restaurant, and more. To find out more about the E-2 visa requirements click [here](#). To find out more about the minimum investment amount required for E-2 visas click [here](#).

When an E-2 Visa is issued to the investor, his/her spouse and children can accompany the investor to the United States and they are also given E-2 visas. While children cannot work in the U.S., a spouse is permitted to work at any job. One key question that has often been raised has to do with whether or not the spouse is required to apply to United States Citizenship and Immigration Service (USCIS) for separate employment authorization in order to work. The separate employment authorization document is referred to as "EAD".

Until recently, the clear answer was that the spouse of an E-2 visa holder had to get employment authorization. However, the Board of Immigration Appeals (BIA) recently ruled on a case and found that E-2 visa spouses can in fact work without having to apply for an employment authorization card. The BIA determined that while an approved EAD is explicitly required for spouses of *E-1* visa holders (because the Statute explicitly says this), the Statute does not address spouses on an E-2 Visa. The case had to do with an E-2 Spouse that worked without EAD in the U.S.. She did this without incident but when she applied for a green card, it was denied because the government concluded that she worked without employment authorization. After an extensive appeal process, the BIA reversed the denial and she was granted her green card. This of course raises the question of whether or not an EAD card is required.

While the BIA recently concluded that an EAD card is not required for the spousal E-2 Visa, USCIS is of a different opinion and their regulations have not been amended to reflect this ruling. As a result, working without EAD may result in problems with USCIS

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when applying for a future visa (For example a Green Card). As such, even in light of this ruling, Scott Legal Services, P.C. still **strongly** suggest that E-2 spousal applicants obtain an EAD card from USCIS **prior** to starting work. You should keep in mind that you cannot apply for this card before you enter the United States on E-2 status.

When applying for EAD, you should gather the following documents:

1. Copy of ID passport page
2. Latest I-94 where you entered on the Status you are applying under
3. Marriage certificate
4. Copy of your E-2 visa
5. Copy of your spouse's E-2 visa
6. 2 printed passport style photos taken within the last 30 days and that meet the DS-160 requirements
7. Any previous employment authorization card issued (front and back)
8. Any previous I-797 approval notices for employment authorization
9. Old I-20s if applicable
10. Student Visa if applicable
11. Check made out to U.S. Department of Homeland Security for \$380
12. Signed I-765 form (original signature)
13. Signed G-28 form (original signature)

For more practical or legal advice contact **Scott Legal Services, P.C.**. We offer services in a number of business areas including, Immigration, New Business set up, Contract review and development and entrepreneurial support. Call 212-223-2964 or email iscott@legalservicesincorporated.com for a consultation.

Ian E. Scott is a Harvard Law School Graduate, lawyer and author of [Law School Lowdown](#): Secrets of Success from the Application Process to Landing Your First Job. Mr. Scott worked as a corporate litigator in the law firm Cleary Gottlieb and currently runs his own law firm [Scott Legal Services, P.C.](#) specializing in Immigration Law & New Business set-up.