

E-2 VISA

INVESTOR REQUIREMENTS & RENEWAL CONSIDERATIONS

SCOTT LEGAL, P.C.

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E-2 VISA

Rules & Regulations

Treaty Investor (E-2) Visa

Is a non-immigrant visa that allows nationals of certain countries to come to the U.S. to develop and direct the operations of an enterprise in which he / she has invested.

- Must be a treaty between the U.S. and the foreign country.

For how long is my E-2 visa valid?

- 3 months up until 5 years



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Rules & Regulations

Options for Obtaining an E-2 Visa

- #1** Starting a business in the U.S.
- #2** Purchasing an existing business in the U.S.

E-2 VISA Requirements

You Must

- Be a national of a treaty country
- Make an investment:
 - *Funds must be “at risk” (money was actually spent, not sitting on a bank account)*
 - *Source of funds – any legitimate source (personal savings, gift, sale of a house, loan)*
 - *Must be substantial (next slide)*
 - *Typical E-2 expenditures (inventory, equipment, website, office supplies, office / warehouse rent, marketing, business entity set up)*
 - *Investment when starting v. purchasing a business (Escrow)*

E-2 VISA Requirements

The Business

- Cannot be marginal
 - *Hiring U.S. Employees*
- Must be real & operating:
 - *Already taking revenue or ready to start operating after E2 visa is granted*
 - *Signed commercial lease, business entity established, company website created, contracts with customers, licenses acquired*

You

- Will solely develop & direct the E-2 enterprise;
- Must own at least 50% of the E-2 company;
- Have the intent to return to the home country upon the expiration of the E-2 visa.

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How much investment is enough?

No minimum set \$ amount

- Must invest “substantial” amount of money
- Depends on:
 - *The type of business*
 - *Where you apply & examiner*
 - *Overall strength of your case*
- Proportionality test (*start-up*): how much money you invested versus what are the usual costs to establish that type of business.
 - *Evidence that you invested 100% if under \$300,000 - CPA letter, business articles*
- Buying a business: purchase price v. fair market value of the business
- Franchises are a good option for E-2 visas
- Common Good and Bad E-2 visa Expenditures

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Do I have to hire U.S. employees?

Yes, this is the “marginality requirement”

- E-2 business must have present/future capacity to generate enough income to provide more than a minimal living for you and your family
- Must demonstrate you will hire employees in the next 5 years
 - *Ideally at least 3-4 full-time employees*
- W-2 employees v. 1099 workers

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Do I have to hire U.S. employees?

How do I prove this?

- New business: Business Plan
- Existing business: W-2s, paystubs, tax returns

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Business Plan Considerations

Do I need a Business Plan?

- Starting a new business
- Purchasing an existing business

Do I need to hire a professional?

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Business Plan Considerations

What should the Business Plan contain?

- Executive Summary
 - *Who you are? What you do? Who do you sell to?*
- Market Analysis & Research
- Marketing Plan
- Personnel Plan
 - *5 Years of Personnel Projection (job description, salary amount, when you will hire each employee)*
- Comprehensive Financial Plan
 - *5 years of financial projections (revenue projections, Revenue assumptions, Cash flow projections, Balance Sheet)*

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Developments & Adjudication Trends

- Investment purchases in the U.S.
- Administrative processing
- More USCIS filings
- Timing at Consulates

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Issues & Complex Areas

- Source & trail of funds (*Particularly for USCIS filings*)
- Loans secured by company assets
- Gifts
- Small investment amount
- E-2 Visas for Two Investors
- Substantive Changes to Business After Filing
- Family Business Purchases

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Common reasons for E-2 denials.

- Low Investment Amount
- Nature of the business (e.g., Real Estate)
- Filing Location / Venue
- Concern over whether the business will create jobs for U.S. workers (*can be exacerbated by certain factors such as the type of business or if the applicant has run a similar business in their home country without employees*)
- Issues with adjudicating officer
- Did not meet the requirements at the time of filing - poor file that did not include what was needed

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What does it take to renew an E-2 Visa?

- Hire U.S. workers – **This is key!**
 - 3 Full-time equivalents in 5 years
- Provide updated financial data
 - Tax Returns for 2 years
 - Did the company meet its revenue targets?
 - Is the company profitable?
 - Payroll information (W-2 and 1099)
 - Did the marketing & sales plan work effectively to increase business volume?
- If the company is not doing well, plans to hire employees
- Does the company still meet the E-2 requirements?
 - Ownership changes
 - Changes to the type of business

ANY QUESTIONS?

SCHEDULE A CONSULTATION

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About Scott Legal, P.C.

Our law firm located in New York was established by Ian E. Scott, an accomplished attorney and Harvard Law School graduate. Our primary focus lies in Immigration and Business Law, and we are dedicated to delivering exceptional legal services in various immigration and business law matters. With a commitment to meeting all your immigration and business needs, we have garnered an impressive reputation among our clients. Our track record boasts over [300 five-star reviews](#), a testament to the satisfaction of those we have served.

Services

Immigration & Visa Services: Scott Legal, P.C. was founded on an E-2 Investor Visa, and our founder has also held TN, H-1B, F-1, and B-2 visas. Our immigration practice covers all areas of Immigration Law including the various Investor Visas (E-2, L-1, EB-5), Employment Visas (TN, H-1B, E-3, O-1), Employment Green Cards (EB-1, EB-2, EB-3), Family-Based Green Cards, as well as waivers and humanitarian immigration.

Business & Corporate Services: Scott Legal, P.C. provides counsel to business owners and founders of new enterprises at various stages of development and we offer a full range of legal services. We also have a Certified Public Accountant (C.P.A.), a Chartered Accountant (C.A.), a CFA® charter holder, a Certified Financial Planner (C.F.P.), and an M.B.A. on staff and are ready to help.