

## **E-2 Investor Visas**

*This is the first article of a two-part series discussing the E-2 visa, and how it serves as an excellent non-immigrant visa option to many foreign nationals.*

One of the more misunderstood non-immigrant visas is the E-2 visa. The E-2 visa is a temporary visa which allows foreign nationals to invest and/or work in a U.S. business venture. In fact, it has become a popular and effective visa option for those individuals who cannot secure other visas, such as the scarce H-1B visa.

Unfortunately, many people incorrectly assume that they must invest an enormous amount of money to secure the visa. This incorrect assumption often intimidates persons who are actually eligible for the E-2 visa. Many people will ask me if they need to invest a minimum of \$1M to apply for the visa – they do not. In fact, we have successfully secured E-2 visas for foreign nationals, who form U.S. businesses with an investment well below \$50,000.00.

The two most common uses of the E-2 visa are for either (i) investors; or (ii) employees, executives, supervisors, and essential employees of the business where the money is invested. As an investor, the foreign national applicant will generally be required to (a) purchase an existing business, (b) invest into an existing business, or (c) invest in, and form, a new business.

The applicant must be a foreign national of a country that has a qualifying treaty with the United States. The investor must own at least 50% of the business, and he must invest a certain amount of capital into the business.

To qualify for an E-2 investor visa, the applicant must develop and direct operations of an enterprise in which he or she has invested or is actively in the process of investing a “substantial” amount of capital. The investment must be significantly proportional to the total investment, and an amount normally considered necessary to establish a new business.

The E-2 visa must be extended every five years. But there is no limit in extensions, and an applicant may remain in E-2 visa status for an indefinite period of time, as long as the investment enterprise is ongoing. Also, significantly, unlike an H-1B visa, there is no cap on the number of employees permitted each year.

An ancillary benefit of the E-2 visa is that the primary E-2 visa holder’s spouse may secure employment authorization as well. Children may also secure E visas to accompany their parent in the U.S.

If the E-2 visa applicant is an employee, rather than an investor, that employee must be of the same nationality of the (i) investor; or (ii) entity that has majority ownership of the business enterprise. A “supervisory” position is defined as one that grants the employee ultimate control and responsibility for a large proportion of the

enterprise's operations, or a major component of the enterprise. It does not involve the supervision of low-level employees. The supervisory element of the employee's position must be a principal and primary function, and not an incidental or collateral function.

The “essential nature” of an alien's “special skills” is determined by assessing the degree of proven expertise of the alien in the area of specialization, the uniqueness of the specific skills, the length of experience and training with the firm, the period of training needed to perform the contemplated duties, and the salary the special expertise commands.

Next week, we will discuss some specific examples of E-2 visa investors and employees, to better illustrate the criteria and benefits of this visa.

*Attorney Rio M. Guerrero is the founding and managing partner of The Guerrero Law Firm. He is also an Adjunct Professor at The CUNY School of Professional Studies at The Graduate Center in Manhattan, where he teaches complex U.S. immigration law to other attorneys, paralegals and community leaders. He has also served as an immigration legal expert witness in the New Jersey State court system. During his many years of legal practice, Atty. Guerrero has successfully represented thousands of clients in a wide range of immigration and nationality matters.*

*You may contact Atty. Guerrero directly at (212) 481-2744 or e-mail him at [rio@guerrerolawfirm.com](mailto:rio@guerrerolawfirm.com). The above information is not, nor intended to be, legal advice. Nothing within this publication creates an attorney-client relationship with the reader. Applicability of the legal principles discussed above differs upon individual facts and circumstances.*