E-1 and E-2 Treaty Traders and Investors

GENERAL

The Treaty Trader (E-1) and Treaty Investor (E-2) visa classifications are designated for temporary workers engaged in international trade [1] or investment between the United States and their countries of nationality, provided that all of the following conditions are met:

- The employer or owner of the business is a national of a country that has a commercial treaty (Treaty of Friendship, Commerce, Navigation, Bilateral Investment Treaty, or Free Trade Agreement) with the United States. (Please contact us for the most up-to-date list of eligible countries). [2]
- The E employee has the same nationality as the principal foreign employer or, if the employer is a United States enterprise or organization, it is at least 50 percent owned by persons in the United States having the nationality of the treaty country. [3]

The duties of the E employee are principally and primarily executive, supervisory, or otherwise essential to efficient operation of the United States enterprise.

The adjudication of most E visa classifications are conducted by consular officers at U.S. embassies abroad of eligible countries. USCIS has consolidated E petition adjudication's for change of status, extension of stay, change of employer, etc., at its California Service Center.

E-1, TREATY TRADER [4] , [5] carries on substantial international trade [6] in his/her personal capacity or as an employee of a foreign person/organization engaged in trade principally between the United States and the home country. [7]

E-2, TREATY INVESTOR, [8] must have invested, or be actively involved in the process of investing [9] , a substantial [10] amount capital in a bona fide enterprise [11] that he/she will develop and direct [12] in the United States.

Dependents

The spouse and child(ren) of an E-1 or E-2 foreign national will be admitted under the same classification as the principal. Dependents are not required to have the same nationality as the treaty country. An E-2 dependent spouse is eligible to apply for work authorization in the United States.

Annual limit

There is no annual quota on admissions under the E-1 or E-2 classification.

Duration

E-1 or E-2 principals and dependents may be admitted for a maximum initial period of two years. Dependent status is not affected by temporary departures of the principal from the United States. *NOTE* : Principals and dependents are not generally admitted for periods extending more than six months past the expiration dates of their passports. A treaty trader or investor maintains status only while engaged in the approved E activities or employment.

Extension of Stay

Extensions may be granted for up to two years if the treaty alien has maintained status and was physically present in the United States when the extension was filed. There is no specified number of extensions of stay that can be granted to an E alien. *EXCEPTION* : Treaty nationals associated with startup of new treaty entities are presumed to be able to accomplish this within two years and are ordinarily not eligible for extension.

Dual Intent

Treaty traders and investors must maintain the intent to depart the United States upon expiration of their E status, but need not specify the duration. An application for initial E admission, change of status or extension of stay in E classification may not be denied solely on the basis of an approved request for labor certification or a filed or approved immigrant visa preference petition.

Change of Status

A foreign national present in the United States in another valid nonimmigrant status may change status to become a treaty trader or investor, if eligible. E employment may not commence until USCIS approves the application on Form I-129 (with E supplement). Dependents' changes of status will depend upon approval of principal's change of status.

Changes in E Employment

E nonimmigrants may change from one U.S. affiliate to another, provided that the affiliates were made known during the original adjudication or are subsequently approved. *NOTE* : Mergers or acquisitions of an E employing entity, or sale of a division of the entity to which the treaty trader or investor is assigned, may alter the employing entity's ownership so that it is no longer primarily owned by nationals of a treaty country and/or of the same nationality as an E employee. Where a substantive change affecting the structure or ownership of the E employer has taken place, the E employee must submit Form I-129 (with E supplement) to USCIS and be granted an extension of stay under the changed conditions, or obtain a new consular visa reflecting the new terms and conditions of employment, in order to work for the new entity. Changes that would not affect the foreign national's continued eligibility for E classification are non-substantive and need not be submitted to USCIS for approval. Even in such cases, especially where the employer has changed its name, E foreign nationals may facilitate readmission to the United States by carrying an explanatory letter from the treaty-qualifying employer, filing an I-129 with request for a new I-797 Approval Notice, or applying to the State Department or consular post for a new visa reflecting the change.

Employer-Specific Work Authorization

An E-1 or E-2 visa holder is authorized to work only for the treaty enterprise and any parent company, subsidiaries, and/or other entities related to the treaty enterprise employer that were identified in the process of adjudicating E treaty status. All qualifying E positions must be managerial, supervisory or require essential skills. For employment eligibility verification purposes, an E classification employee presents his or her unexpired passport with the electronic copy of his or her Form I-94 Arrival/Departure Record indicating valid, unexpired E-1 or E-2 status.

NAFTA Restrictions

Citizens of Mexico or Canada may be denied treaty status if:

- The Labor Department identifies a strike in progress at the U.S. location where the individual would be employed or
- The individual's temporary admission would adversely affect settlement of a labor dispute or the employment of any person involved in the dispute.

NOTE: Canadian or Mexican treaty employees already employed in E-1 or E-2 status are not affected.

Contact our office to speak with a member of our Immigration Law Group.

[1] International trade refers to existing international exchange (successfully negotiated contracts binding on all parties) of items of trade (including but not limited to goods, services, international banking, insurance, monies, transportation, communications, data processing, advertising, accounting, design and engineering, management consulting, tourism, technology and transfer, and news gathering activities) for consideration between the United States and a treaty country. Title to the trade item must pass from one treaty party to the other.

[2] https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/fees/treaty.html

[3] The nationality of a business is determined by the nationality of its individual owners. The place of incorporation is irrelevant for purposes of E classification.

[4] As of January 11, 2021, countries eligible for Issuance of **BOTH** Treaty Trader (E-1) AND Treaty Investor (E-2) visas are Argentina, Australia, Austria, Belgium, Bolivia, Bosnia and Herzegovina, Canada, Chile, China (Taiwan only), Columbia, Costa Rica, Croatia, Denmark, Estonia, Ethiopia, Finland, France, Germany, Honduras, Ireland, Israel, Italy, Japan, Jordan, Korea (South), Kosovo, Latvia, Liberia, Luxembourg, Macedonia, Mexico, Montenegro, Netherlands, New Zealand, Norway, Oman, Pakistan, Paraguay, Philippines, Poland, Serbia, Singapore, Slovenia, Spain, Suriname, Sweden, Switzerland, Thailand, Togo, Turkey, United Kingdom and Yugoslavia.

[5]As of January 11, 2021, countries eligible for Issuance of Treaty Trader (E-1) Visas ONLY are Brunei and Greece.

[6] Substantial trade is that volume sufficient to ensure continuous flow (numerous transactions over time) of international trade between the U.S. and treaty country. There is no value or volume minimum. However, smaller businesses are expected to yield income sufficient to support the treaty trader and his/her family.

[7] Principal trade means that over 50 percent of the volume of the treaty trader's international trade is conducted between the U.S. and its country of nationality.

[8] As of January 11, 2021, countries eligible for issuance of Treaty Investor (E-2) Visas ONLY are Albania, Armenia, Azerbaijan, Bahrain, Bangladesh, Bulgaria, Cameroon, Congo, Czech Republic, Ecuador, Egypt, Georgia, Grenada, Jamaica, Kazakhstan, Kyrgyzstan, Lithuania, Moldova, Mongolia, Morocco, Panama, Romania, Senegal, Slovak Republic, Sri Lanka, Trinidad and Tobago, Tunisia and the Ukraine.

[9] Investment is the E-2 Treaty Investor's placement of lawfully acquired, owned and controlled capital at commercial risk with a profit objective, i.e., subject to loss if the investment fails. Placing investment funds in escrow pending approval of E classification for the investor can satisfy this irrevocable commitment requirement.

[10] A substantial amount of capital must be substantial relative to the purchase or establishment price of the enterprise, sufficient to ensure the treaty investor's commitment to success of the enterprise, and large enough so that the treaty investor is motivated to develop and direct the enterprise successfully. Note: Generally, the lower the value of the enterprise, the higher the investment must be to meet this test.

[11] To quality as bona fide, an enterprise must be a real, active, and operating commercial or entrepreneurial undertaking that produces goods and/or services for profit and meets requirements for doing business in the U.S. Marginal enterprises without appropriate profit-generating capacity do not qualify

[12] Whether the owner or an employee, a treaty investor must establish that the owner of the treaty enterprise owns at least 50 percent and controls its operations.