

E-2 Treaty Investor Visa: An Alternative to H-1B

By Darren B. Silver

H-1B visas have long been the visa of choice for foreign nationals seeking employment in the United States. But with H1B cap being closed as early as June this year, it is important to consider other alternatives. One of good alternative is the E-2 investor visa for nationals of countries with existing treaty with the U.S. which allows Filipinos to obtain an E-2 visa if they have invested or is in the process of investing in a business in the United States.

To obtain the visa, the foreign national must have invested or in the process of investing in a business. The funds invested must be at risk. Mere intent or prospective plans to invest are insufficient and uncommitted funds in a bank account are unacceptable.

The investment must be in an active enterprise and cannot be a passive investment. Investment in stocks or real estate, for example, will not result in an E-2 visa. The investment must be in a business run for profit.

The investor must be at least 50% owner of the business and he/she must invest a "substantial" amount of capital. The lower the cost of the business, the higher the investment must be to be considered a substantial amount. As much as possible, if the investment is \$100,000 or less, the E-2 investor should provide 100% of the investment.

The investment cannot be marginal. It must have the present and future capacity to generate more than minimal living for the investor and family. And it cannot be solely to earn a living for the investor and his or her family. The investor must also personally develop, direct and manage the business.

The E-2 investment visa, can be filed directly at the Consulate of the home country of the applicant without the prior approval of the USCIS and it can also be filed as a change of status if the applicant is in the United States. If filed in the U.S., the petition can be approved in a matter of a few weeks if the applicant is filing under premium processing.

The Spouse of the E-2 investor is eligible for an employment Authorization Card, (Work Permit) allowing the spouse the ability to work legally in the United States at any legal job not only the investment enterprise.

The E-2 visa must be extended every five (5) years however, 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.

Here are samples of business for which the Law Offices of Darren B. Silver successfully obtained an E-2 visa: newspaper publication; diamond wholesaler; hair salon; liquor store; international recruiter; information technology consultant; restaurant; accounting office; commercial cleaner; garment retailer and wholesaler; talent agency, screen printing business; carwash; convenience store; and many more.

Many kinds of business qualify for the E-2 investor visa. This article does not constitute legal advice but we hope it has been helpful in presenting an option to legally stay in the United States. If you have any questions about your particular situation, contact us for a [free consultation](#).

The Law Offices of Darren B. Silver & Associates concentrates exclusively to the practice of immigration and naturalization law. Mr. Silver has an extensive knowledge of all aspects of immigration law and procedures. His career in immigration includes a prior position as an Adjudications Officer for INS in Los Angeles, California. Mr. Silver served the INS for a period of three years, from 1992 through 1995. While working for INS, Mr. Silver assisted in recommending policy decisions, interviewing aliens for status changes and reviewed naturalization appeals.

Please contact the office for a free consultation

Tel: (213)384-1900

E-mail: info@darrensilver.com