

The ABC'S Of Immigration: E-1 and E-2 Visas

by
Gregory Siskind

The list of E-1 and E-2 countries has changed very little over the last few years. However, recently signed free trade agreements with Chile and Singapore now mean E-1 and E-2 visas are available to nationals of those countries. We are updating our ABCs article on this topic in order to account for the addition of these two countries to the program.

What is an E-1/E-2 visa?

Section 101(a)(15)(E) of the Immigration and Nationality Act (INA) provides treaty trader/investor nonimmigrant status for a national of any of the countries with which an appropriate treaty of commerce and navigation exists.

An individual who wishes to go to the US to carry on substantial trade, principally between the US and his/her own country, may apply for a treaty trader visa (E1). Someone who is going to the United States to develop and direct the operations of an enterprise in which he/she has invested, or is actively in the process of investing, a substantial amount of capital is welcome to apply for a treaty investor visa (E2). The category is popular because unlike the L-1 category, it is not necessary to maintain a business outside the US and also because unlike L-1 status, E-1 and E-2 visas can be renewed every five years without limits.

What documents are required to apply?

There are documents required for both visas and some documents required for either the E-1 or E-2 visa.

- o **E-1 Treaty Traders** must submit a comprehensive letter from the principal alien's company or employer identifying the applicant and describing in detail the nature and function of the business and the applicant's position. The letter must be on the current business/employers letterhead, with an original signature from an authorized company representative, and must be addressed to the Visa Office, Department of State. The letter should demonstrate the applicant's entitlement to E-1 status based on the continued trade between the US and the country of the applicant's nationality. The letter must contain a statement of unequivocal intent that the applicant will depart the US when E-1 status ends. If the visa applicant is the sole company employee in the US, submit the latest copy of the company's FICA and IRS forms with the applicant's letter of explanation. Please include the company's fax number.
- o **E-2 Treaty Investors** must submit a copy of the company's most recent financial statement. E-2 Treaty Investors must also submit a comprehensive letter from the principal alien's company or employer identifying the applicant and describing in detail the nature and function of the investment and the extent of the principal alien's participation in the investment. The letter must be on the current company/employer's letterhead, with an original signature from an authorized company representative, and must be addressed to the Visa Office, Department of State. The letter should contain a statement of unequivocal intent that the applicant will depart the US when E-2 status ends.

Both E-1 and E-2 applicants must submit

- o One Nonimmigrant Visa Application, Form DS-156, completed in English, with the applicant's original signature. Applicants MUST give their US home telephone number in the space numbered item 16. The principal applicant MUST give his/her telephone number in the space numbered item 16. The form must be typed or printed. Please spell out the month of birth (i.e., write "January 2," not 1/2 or 2/1). If the DS-156 is incomplete or improperly filled out, the passport(s) will be returned without visa(s). The Visa Office accepts only the February 2003 version of the DS-156. This version includes a space for a bar code sticker. An online version of this form is available at <https://evisaforms.state.gov/ds156.asp?lang=1>.
- o One Nonimmigrant Treaty Trader Investor Application, Form DS-156E, completed in English with the applicant's original signature. The applicant must provide information about the ownership of the US company, information about the investment, information about personnel and information about the principal applicant. An online version of this form is available online at <http://travel.state.gov/DS-0156E.pdf>.
- o One Supplemental Nonimmigrant Visa Application, Form DS-157, for all male applicants between the ages of 16 and 45, regardless of nationality, in addition to the DS-156. The DS-157 must be typed or printed. All questions on the DS-157 must be answered. Applicants whose native language is not written in the English alphabet should print their names in their native language in item 3 of the DS-157. An online version of this form is available at <http://travel.state.gov/DS-0157.pdf>.
- o One photograph stapled or glued to the DS-156 in the designated space, which meets the nonimmigrant photograph requirements. Do not submit a photograph in a glassine or other type of envelope. Staple or glue one photograph to the DS-156 in designated space.
- o A passport valid for travel to the US and valid at least six months beyond the visa application date (including Visa Office processing time). If more than one person is included in the passport, each person applying for a visa must submit a visa application. You must present the passport bearing your most recent E visa. Each applicant receives an individual visa, and each Machine Readable Visa (MRV) covers a full passport page. Therefore, passports must contain a blank, unmarked visa page for each US visa to be placed in the passport. Remove extraneous pieces of paper (slips of paper with phone numbers, old airline boarding passes, etc.) from the passport. You may submit a passport in a protective cover.
- o The original or a certified copy of Form I-94, Arrival-Departure Record annotated by the Department of Homeland Security (formerly INS) inspector from your most recent admission to the US.
- o If the spouse and/or dependent children are applying for visas separately from the principal alien, submit certified copies of the principal alien's valid visa and valid I-94 (front and back) in addition to the other listed requirements.
- o Visa issuance reciprocity fee, if applicable. Please consult the Visa Reciprocity Tables at <http://travel.state.gov/reciprocity/index.htm> to determine if you must pay a visa issuance reciprocity fee.

- o ? Nationals of the United Kingdom, please note that there is a reciprocal visa issuance fee in the E-2 category of \$105 per applicant. Reciprocity fees are in addition to the \$100 visa application processing fee that each applicant must pay.
- o A prepaid courier service airbill and envelope or a self-addressed stamped envelope for return of the passport and other documents. The Visa Office does not endorse the use of any particular commercial courier service. If using the US Postal Service, the Postal Service recommends a padded envelope for passport return. A family should submit one courier airbill/envelope or one self-addressed, stamped envelope for the return of their documents. Please use your address as the "from" address on the airbill or the self-addressed envelope. Please ensure that you have written your courier company account number or that you have given the courier company a valid credit card number on the airbill. Due to the large amount of documentation submitted with an E visa, ensure that your return envelope is large and strong enough to hold your documentation.

Note that both E-1 and E-2 applicants can submit a variety of other documents demonstrating that an investment or trade between the US and treaty country is substantial. Your immigration lawyer should be able to provide you with a document checklist.

Which countries have E-1 Treaty Trader Status?

The following countries have E-1 Treaty Trader Status: Argentina, Australia, Austria, Belgium, Bolivia, Bosnia & Herzegovina, Brunei, Canada, Chile, China (Taiwan), Colombia, Costa Rica, Croatia, Denmark, Estonia, Ethiopia, Finland, France, Germany, Greece, Honduras, Iran, Ireland, Israel, Italy, Japan, Jordan, Latvia, Liberia, Luxembourg, Macedonia, Mexico, Netherlands, Norway, Oman, Pakistan, Paraguay, Philippines, Singapore, Slovenia, South Korea, Spain, Suriname, Sweden, Switzerland, Thailand, Togo, Turkey, United Kingdom and Yugoslavia.

Which countries have E-2 Treaty Investor Status?

The following countries have E-2 Treaty Investor Status: Albania, Argentina, Armenia, Australia, Austria, Azerbaijan, Bahrain, Bangladesh, Belgium, Bolivia, Bosnia & Herzegovina, Bulgaria, Cameroon, Canada, Chile, China (Taiwan), Colombia, Congo (Brazzaville), Congo (Kinshasa), Costa Rica, Croatia, Czech Republic, Ecuador, Egypt, Estonia, Ethiopia, Finland, France, Georgia, Germany, Grenada, Honduras, Iran, Ireland, Italy, Jamaica, Japan, Jordan, Kazakhstan, Kyrgyzstan, Latvia, Liberia, Lithuania, Luxembourg, Macedonia, Mexico, Moldova, Mongolia, Morocco, Netherlands, Norway, Oman, Pakistan, Panama, Paraguay, Philippines, Poland, Romania, Senegal, Singapore, Slovak Republic, Slovenia, South Korea, Spain, Sri Lanka, Suriname, Sweden, Switzerland, Thailand, Togo, Trinidad & Tobago, Tunisia, Turkey, Ukraine, United Kingdom and Yugoslavia.

Can spouses or E-1 and E-2 visa holders work?

Yes. A spouse of an E-1 or E-2 visa holder can work with an employment authorization document. Spouses must file an I-765 application with a regional service center along with proof of the spouse's visa status.

Can one change to E-1 or E-2 status from within the US?

Yes, the USCIS has the authority to approve a change to E-1 or E-2 status from another non-immigrant visa. However, once an applicant leaves the US, the applicant must apply for E Visa status at a consulate. Because the consulate can reject the application, one risks being put in a position where a substantial investment is made in a business in the US and then the applicant is unable to return to the US to run the business. Consequently, applicants are urged to exercise caution when first attempting to apply for E status in the US.

Gregory Siskind (gsiskind@visalaw.com) is a partner in the law firm of Siskind, Susser, Haas and Devine (www.visalaw.com), which has offices in the United States and around the world. He is an active member of the American Immigration Lawyers Association (AILA). He is a member of the American Bar Association (ABA), where he currently serves as Chairman of the Law Practice Management Publishing Board and on the Governing Council of the Law Practice Management Section. He was one of the first lawyers in the country (and the very first immigration lawyer) to set up a website for his practice and he was the first attorney in the world to distribute a firm newsletter via e-mail listserv. He is a co-author of *The J Visa Guidebook* published by LexisNexis Matthew Bender, and the author of *The Lawyer's Guide to Marketing on the Internet*, published by the ABA. He graduated magna cum laude from Vanderbilt University and received his law degree from the University of Chicago.