

HAUSWIESNER KING LLP

Treaty Visas – Q&A

What is a treaty visa?

Treaty trader or investor visas (“E-visas”) enable aliens from certain countries to enter the United States under and in pursuance of the provisions of a treaty between the United States and the foreign country of which he is a national.

Do I qualify for a treaty visa?

There are several thresholds which have to be met to qualify for E visa status:

- 1) The country in question must have a treaty of friendship, commerce & navigation, a bilateral investment treaty, or a free trade agreement with the United States.
- 2) At least 50% of the company must be owned by nationals of this country.
- 3) The alien in question must have the nationality of the treaty country and the intent to depart from the United States after expiration of the visa.
- 4) The E-visa holder must be the principal trader or investor, or an employee coming to perform managerial duties.

Which countries have such a treaty with the United States?

Most European countries (such as Germany, France, Switzerland, Italy, United Kingdom) are both treaty trader and treaty investor countries. There is also a couple of non-European countries (such as Australia, Canada, Japan, Israel, South Korea, Turkey) which have such treaties with the United States.

What is the difference between an E-1 and E-2 visa?

E-1 visas are meant for treaty traders, while E-2 visas are granted to treaty investors.

My company does business with the United States, do I qualify?

First, it depends on the volume of trade your business has with the United States:

In order to qualify as a treaty trader, the trade must be substantial, which means that the amount of trade must be sufficient to ensure a continuous flow of international trade items between the U.S. and your home country. In addition, the trade must be principally between the U.S. and the treaty country which means that more than 50% of the total volume of international trade of the U.S. office must consist of trade between the U.S. and the treaty country.

Second, your professional duties must be either supervisory or executive as the primary function, or your qualifications must be essential to the success of the U.S. operation.

Can I qualify for an E-visa if I invest in the United States?

In case you are from a treaty country and have the required citizenship, you may qualify for an E-2 treaty investor visa.

The requirements are as follows:

- 1) The investment must be active, substantial and intended to generate profits.
- 2) The investment must be substantial in relationship to the total cost of purchasing an established company or creating this type of enterprise.
- 3) The investment must be sufficient to ensure the investor's financial commitment to the successful operation of the enterprise and of a magnitude that is very likely that the investor will successfully develop and direct the enterprise.

How long can I stay in the United States on an E-visa?

Generally, the visa is issued for four years but can be extended in increments of up to two years.

What is the application process?

In case the foreign worker is abroad, the visa application will be filed directly with the competent consulate or embassy in the treaty country. In case the applicant is in the United States, the petition will generally be filed with the USCIS.