

E-Visas as a Way to Gain Long-term, Non-immigrant Status in the United States

By: Matthew Roy

During my tenure as a Consular Officer at the U.S. Consulate General in Frankfurt, I adjudicated thousands of business-related visa applications. One of my favorite responsibilities was the Treaty Trader and Treaty Investor visa program, also known as E visas. In my opinion, this category of visa represents a very attractive, yet misunderstood and under-utilized, way to gain long-term, business-based non-immigrant status in the U.S.

E visas can work equally well for large and small business alike. They are especially attractive for small business owners and entrepreneurs looking to invest and establish a presence in the U.S., but they have also become the preferred immigration tool for large multinational corporations to transfer employees to the U.S., to support their large investments here. The best examples I saw of this phenomenon were the large German automobile manufacturers, who have established significant manufacturing operations in the southeastern United States. Through the E program, they have been able to send countless employees over to the U.S., quickly and flexibly, from the most senior executives, to the most specialized assembly line technicians.

For Treaty Trader status (E1 visa), the basic requirement is current and ongoing trade in goods and/or services between the U.S. and the applicant's home country. The dollar value of the trade need not be high, but rather the transactions should be regular, recurring, and of a significant volume.

For Treaty Investor status (E2 visa), the basic requirement is the investment of capital in a new or existing business in the U.S. Contrary to popular belief, there is no specific minimum level of capital that must be invested; rather, the applicant must demonstrate that the investment is "substantial", and that it is "more than marginal" (i.e. it will generate economic benefits beyond just the basic needs of the applicant). The best way to demonstrate that the investment meets the various requirements is through a detailed and well-written business plan; such a plan should walk the reader through the business concept, the operating plan, and the revenue and expense projections. In addition to the up-front investment of capital, the plan should explain all of the economic benefits that will accrue to the owners, employees, customers, and the local, regional, and national economies. The best examples of economic benefits to the U.S. economy include the employment of U.S. citizens, business relationships with multiple vendors of goods and services, taxes paid to local and state governments, and necessary services provided to customers. Substantial contributions in any or all of these areas can help demonstrate that the investment will have a far-reaching impact that is "more than marginal."

Under the E visa program, the individual who is the principal investor or trader is granted a non-immigrant E1 or E2 visa, typically valid for up to 5 years, with unrestricted travel and re-entry to the US. Spouses and dependent children are also granted the E1 or E2 visa. Additionally, E visas have a very high rate of renewal for additional 5 year periods, as long as the business venture that initially qualified for the visa is still active and viable.

Once the principal business owner has been granted E1 or E2 status, key employees of the business and their dependents may also receive E visas. The employee must demonstrate that they have significant executive and supervisory responsibilities within the enterprise, or that they have specialized skills which are essential to the business.

One major difference between E visas and other business-based categories (such as H1B and L categories) is the fact that E visas do not require that petitions be filed with and approved by the immigration service within the Department of Homeland Security. Applicants can submit their applications and supporting materials directly to the U.S. Consulate in their home country, and the case can be evaluated and decided by the Consular Officer at the time of the visa interview.

For these reason, the E1 and E2 visa categories can be very attractive alternatives to green cards, H1B visas, or other petition-based categories. Because of the long-term nature of the visa, and its high likelihood of renewal, E status can provide several years, even decades, of employment-enabled residence for non-US citizens.

About the Author

Matthew A. Roy is the founder of the **New Atlantic Management Group**, a business advisory firm that helps early-stage international businesses develop effective market-entry strategies and establish themselves in the U.S. From 2003-2006, Matt served as a Consular Officer at the US Consulate General in Frankfurt, Germany, during which time he was responsible for adjudicating the high volume of Treaty Trader (E1) and Treaty Investor (E2) visa applications. Matt currently partners with immigration attorneys to develop successful business plans and application strategies for their clients seeking E1 or E2 status. Matt is a graduate of Holy Cross, and received his MBA from the Amos Tuck School at Dartmouth College. He currently resides in East Greenwich, Rhode Island, with his wife and four little girls.