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# Navigating the Complex Landscape of E-2 Visas: Questions Clients Ask

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Whether one's practice is primarily insolvency law based, employment law focused, tax law intense, or any other specialized area, one may be asked questions which require some knowledge of immigration law.

As business lawyers, our assistance is sometimes requested as to international issues affecting personnel and business expansion.

In the United States, the E-2 visa is a tool for entrepreneurs and investors looking to establish a foothold in the world's largest economy. This is a non-immigrant visa in that it does not directly lead to permanent residency or citizenship. However, it does open doors for foreign nationals to enter and work in the U.S., provided they make a substantial investment in an American enterprise, and ultimately create U.S. based jobs.

The cornerstone of E-2 visa eligibility is a significant investment in a U.S. business. While there's no fixed threshold, investments typically start around \$100,000. This sum should be sufficient to ensure the enterprise's success and cover its operational needs.

However, it's not just about the money. The applicant must have substantial ownership or control of the business, either through majority ownership or a position that allows them to direct the company's operations.

Moreover, the proposed business must be more than just a concept on paper. It needs to be an active, operational enterprise, producing goods or services. Passive investments, such as real estate or stocks, won't suffice.

A comprehensive business plan is crucial, demonstrating how the investment will create jobs for U.S. workers and contribute positively to the American economy.

Nationality plays a pivotal role in E-2 visa eligibility. The applicant must hail from a country that maintains a treaty of commerce and navigation with the United States. This treaty relationship is fundamental and non-negotiable for E-2 visa applicants. The existence of said treaties can be verified with the U.S. Department of State.

We advise that there are several steps to the process:

A. The journey to securing an E-2 visa begins with establishing the business in the U.S. and ensuring it meets all necessary operational criteria.

B. Next comes the task of compiling a thorough application package, including proof of the investment, evidence of business operations, and documentation of the applicant's nationality.

C. Once the paperwork is in order, the petition is submitted to the U.S. embassy or consulate in the applicant's home country.

Unlike some visa categories where interviews may be waived, the E-2 visa always requires a personal interview for the primary applicant. This face-to-face interaction allows consular officers to assess the investor's intentions, understand the business plan, and evaluate the overall viability of the investment. It's crucial that all documentation and explanations are thorough and accurate at this stage.

The visa's duration can vary based on the applicant's nationality, with some fortunate investors receiving visas valid for up to five years. However, it's important to distinguish between the visa validity and the authorized stay.

While the visa might be valid for several years, the actual permitted stay in the U.S., as indicated on the I-94 form, is typically limited to two years at a time, with options for renewal.

One of the most appealing aspects of the E-2 visa program is its efficiency for established businesses. Once a company successfully registers under the E-2 program, the process becomes substantially streamlined for additional applicants associated with that company. This can be a game-changer for businesses looking to expand their U.S. operations quickly, as subsequent visa applications for employees or partners can be processed much more rapidly.

The application process isn't uniform across all U.S. embassies and consulates. Each diplomatic post may have its own specific requirements, documentation preferences, and processing nuances. This variability underscores the importance of working closely with legal counsel familiar with the intricacies of different embassies' procedures.

While The E-2 visa offers an opportunity for foreign investors, maximizing its potential requires careful navigation of its intricate requirements and procedures.

\*The author wishes to acknowledge and thank his colleague and friend Pablo Velez for his assistance in presenting this client alert and for his guidance in this area of the law.

Please note this is a general overview of developments in the law and does not constitute legal advice. Nothing herein creates an attorney-client relationship between the sender and the recipient. If you have any questions regarding the provisions discussed above, or any other aspect of bankruptcy law, please contact Michael H. Traison ([mtraison@cullenllp.com](mailto:mtraison@cullenllp.com)) at 312.860.4230.

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