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*IMMIGRATION ATTORNEYS REPRESENTING EMPLOYERS,
EMPLOYEES AND FAMILIES AROUND THE WORLD.*



THE E-1 AND E-2 VISA: TREATY TRADERS AND TREATY INVESTORS

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MAIONA WARD is a boutique law firm which limits its practice to immigration and naturalization law. With approximately 25 years of immigration experience between the partners of the firm, we strive to produce professional, honest and cost effective services to all of our clients. MAIONA WARD represents both corporations and individuals who desire to work, live and travel to the United States.

Our attorneys have held roles including Chapter Chair of the American Immigration Lawyers Association, liaison to US Citizenship & Immigration Services, Congressional liaison, liaison to the Executive Office of Immigration Review, Chair of the Military Assistance Program, Annual Conference Subcommittee Chair and other related roles. Our attorneys frequently lecture on the topic of immigration law both locally and nationally and are called upon by media for opinions regarding immigration law and policy.





What is a treaty trader? A treaty trader is one who engages in substantial international trade of goods, services, or technology between the treaty country and the United States. **What is a treaty investor?** A treaty investor directs and develops a business in which the investor has either already invested or is in the

process of investing. E employees are generally executives, supervisors or essential personnel. **How long is E status valid?** E status is valid up to two years and E visas are valid up to five years. Both of these may be extended as long as the E nonimmigrant continues to perform appropriate treaty activities. Spouses and minor children can also obtain E status and E spouses are entitled to work in the United States. E visa holders must have an intent to depart the United States at the conclusion of their stay but need not prove this with affirmative documentation. **Treaty of Commerce and Navigation:** Regardless of the specific subset of E visa chosen (E-1 or E-2), there must be a treaty of commerce and navigation between the United States and the country of the foreign national's nationality. Qualifying treaties include treaties of Friendship, Commerce and Navigation and Bilateral Investment Treaties. A list of qualifying treaties and countries is available in the Foreign Affairs Manual. It is important to note that an individual country may be a party to a treaty for E-1 or E-2 activities rather than both trader and investor activities. **Nationality:** The treaty trader or investor must hold the nationality of the treaty country as determined by the authorities of the foreign state of which the alien is a national. The nationality of a business is determined by the nationality of the individual owners of that business and at least 50 % of the business must be owned by nationals of the treaty country. This is generally easy with smaller businesses but can be more complicated with large and/or publically traded companies. **What**



are the E-1 Treaty Trader Requirements? E-1 treaty traders are admitted to the United States to be engaged principally and substantially in trade between the United States and the treaty country. Consular officers generally look to ensure that: (1) the treaty exists; (2) the individual and/or business possess the nationality of the treaty country; (3) the activities constitute trade; (4) the trade is substantial; (5) the trade is principally between the United States and the treaty country; (6) the visa applicant if an employee is destined to an executive/supervisory position or possesses skills essential to the firms operations in the United States; and (7) the E-1 visa applicant intends to depart the United States. Trade activities for E-1 purposes involves the commercial

exchange of goods or services in the international marketplace. **What are the E-2 Treaty Investors Requirements?** E-2 treaty investors are admitted to the United States solely to develop and direct the operations of an enterprise in which he has invested, or of an enterprise in which he is actively in



the process of investing a substantial amount of capital. Consular officers generally look to ensure that: (1) the treaty exists; (2) the individual and/or business possesses the nationality of the treaty country; (3) the visa applicant has invested or is actively in the process of in-

vesting; (4) the enterprise is a real and operating commercial enterprise; (5) the investment is substantial; (6) the investment is more than a marginal one solely for earning a living; (7) the applicant is in a position to develop and direct the enterprise; (8) the applicant if an employee, is destined to an executive/supervisory position or possess skills essential to the firms operation in the United States; and (9) the applicant intends to depart the United States when the E-2 status terminates. Finally, the E-2 investment must be for a commercial enterprise and must be for profit. The E-2 investor cannot invest in a non-profit organization. Can an **E-1 or E-2 applicant obtain lawful permanent residency?** The decision to apply for permanent residence in the United States can be complicated. In some situations the applicant can file an I-526 Immigrant Petition by an Alien Entrepreneur or in certain circumstances and I-140 Immigrant Visa Petition. Finally a labor certification or PERM application may be needed, but this could lead to an audit where the applicant has an ownership interest in the sponsoring employer. Therefore tread carefully when pursuing permanent residency.



Do I need a lawyer to obtain an E-1 or E-2 visa? Maiona Ward will use our vast experience of US immigration law and regulations to guide the applicant and/or company through the maze of issues to ensure the client is in a position to succeed. Competent and experienced immigration counsel is of critical importance when dealing with multiple governmental agencies such as US Citizenship & Immigration Services, US Customs & Border Protection, Department of State, individual US consulates and/or the US Department of Labor. Our office has the experience and knowledge to achieve your desires for nonimmigrant and permanent



status. If you have any questions regarding your E-1 or E-2 nonimmigrant visa, please contact attorney Matthew Maiona at (617) 695-2220 or at matthew@maionaward.com and he will arrange to meet with you and assist you in planning, researching and developing your E visa and subsequent permanent residency, so that it is successful.

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