

Motherboard's Immigration Help

Candidate purchases a franchise, finds an area, and obtains a lease for premises.

Does not lead to a Green Card:

If a Canadian,

He can apply at the border for a **B-1 Visa**. He has to show that he will be in the USA less than 90 days; has a firm relationship with Canada; and to return; and, will not be **employed**. He can then establish the franchise but is **not** eligible for a Green Card. He cannot draw W-2 income. He would have to show his income on a IRS Form K-1: His spouse is listed as B-2 and cannot work

He can apply for a **E-2 Treaty Investor Visa**.

- (1) Requisite treaty exists (see [9 FAM 402.9-4\(A\)](#) above and [9 FAM 402.9-10](#) below);
- (2) Individual and/or business possess the nationality of the treaty country (see [9 FAM 402.9-4\(B\)](#) above);
- (3) Applicant has invested or is actively in the process of investing (see [9FAM 402.9-6\(B\)](#) below);
- (4) Enterprise is a real and operating commercial enterprise (see [9 FAM402.9-6\(C\)](#) below);
- (5) Applicant's investment is substantial (see [9 FAM 402.9-6\(D\)](#) below);
- (6) Enterprise is more than a marginal one solely for earning a living (see [9FAM 402.9-6\(E\)](#) below);
- (7) Applicant is in a position to "develop and direct" the enterprise - (see [9FAM 402.9-6\(F\)](#) below);
- (8) Applicant is destined to an executive/supervisory position or possess essential to the firm's operations in the United States (see [9 FAM402.9-7\(B\)](#) and [9 FAM 402.9-7\(C\)](#) below); and
- (9) Applicant intends to depart the United States when the E-2 status terminates (see [9 FAM 402.9-4\(C\)](#) above).

Spouse & Children of E-2 investor applicants and E-2 derivatives do not need to submit a Form DS-156-E. All E-2 essential employees and managers are required to submit a Form DS-156-E, together with the Form DS-160. The Form DS-156-E must be scanned into each applicant's record.

Leads to a Green Card

He can apply for a **EB-5. \$1,000,000 investment in business**.

DOES NOT LEAD TO GREEN CARD
1 OR 2 YEAR TEMPORARY STATUS

SPOUSE AND CHILDREN CAN COME
GENERALLY SPOUSE CAN NOT WORK

E-2 Treaty Investor

Does not provide pathway to Permanent Residence (IE., Green Card)

- You must be a national of a treaty country.
- The U.S. investment enterprise must have the nationality of a treaty country. For an enterprise to have the nationality of a treaty country, at least 50 percent of the business or entity must be owned by persons with the treaty country's nationality.
- The investment in the U.S. must be substantial and sufficient to ensure the successful operation of the enterprise. Uncommitted or revocable funds in a bank account or similar security are generally not considered an investment.
- The U.S. enterprise must be a real and operating, commercial enterprise.
- The enterprise must generate more income than just to provide a living to you and family, or it must have a significant economic impact in the United States.
- If you are the principal investor, you must be coming to the United States to develop and direct the enterprise. If you are not the principal investor, you must be coming to the U.S. to be employed in a supervisory, executive or possess specialized skills essential to the efficient operation of the U.S. enterprise.
- You must intent to depart the U.S. when your E-2 status expires.
- engage in substantial trade, including trade in services or technology, in qualifying activities, principally between the United States and the treaty country;
- develop and direct the operations of an enterprise in which you have invested a substantial amount of capital; or
- work for the E visa enterprise as an executive, supervisor, or essentially skilled employee.

9 FAM 402.9-6(A) Evaluating E-2 Treaty Investor Applications

(CT:VISA-1641; 10-18-2022)

a. In adjudicating E-2 visa applications, you must determine whether the:

- (1) Requisite treaty exists (see 9 FAM 402.9-4(A) above and 9 FAM 402.9-10 below);
- (2) Individual and/or business possess the nationality of the treaty country (see 9 FAM 402.9-4(B) above);
- (3) Applicant has invested or is actively in the process of investing (see 9 FAM 402.9-6(B) below);
- (4) Enterprise is a real and operating commercial enterprise (see 9 FAM 402.9-6(C) below);
- (5) Applicant's investment is substantial (see 9 FAM 402.9-6(D) below);
- (6) Enterprise is more than a marginal one solely for earning a living (see 9 FAM 402.9-6(E) below);
- (7) Applicant is in a position to "develop and direct" the enterprise - (see 9 FAM 402.9-6(F) below);
- (8) Applicant is destined to an executive/supervisory position or possesses skills essential to the firm's operations in the United States (see 9 FAM 402.9-7(B) and 9 FAM 402.9-7(C) below); and
- (9) Applicant intends to depart the United States when the E-2 status terminates (see 9 FAM 402.9-4(C) above).

b. E-2 investor applicants and E-2 derivatives do not need to submit a Form DS-156-E. All E-2 essential employees and managers are required to submit a Form DS-156-E, together with the Form DS-160. The Form DS-156-E must be scanned into each applicant's record.

9 FAM 402.9-6(B) E-2 Applicant Must Have Invested or Be in Process of Investing

(CT:VISA-1765; 05-01-2023)

- a. **Concept of "Investment" and "In Process of Investing":** You must assess the nature of the investment transaction to determine whether a financial arrangement may be considered an "investment" within the meaning of INA 101(a)(15)(E)(ii). The core factors relevant to your analysis of whether the applicant has invested or is in the process of investing in an enterprise are discussed below.
- b. **Source, Possession, and Control of Funds:** The source of the investment may include capital assets or funds from savings, gifts, inheritance, contest winnings, loans collateralized by the applicant's own personal assets (see paragraph c below) or other legitimate sources. The source of the funds need

not be outside the United States. The source of the investment must not, however, be the result of illicit activities. You may request whatever documentation is needed to properly assess the source of the funds. The applicant must demonstrate possession and control of the invested capital assets and funds. Inheritance of a business itself does not constitute an investment.

- c. **Investment Connotes Risk:** The concept of investment connotes the placing of funds or other capital assets at risk, in the commercial sense, in the hope of generating a financial return. E-2 investor status must not, therefore, be extended to non-profit organizations. See 9 FAM 402.9-6(C) below. If the funds are not subject to partial or total loss if business fortunes reverse, then it is not an "investment" in the sense intended by INA 101(a)(15)(E)(ii). If the funds' availability arises from indebtedness, these criteria must be followed:
- (1) Indebtedness such as mortgage debt or commercial loans secured by the assets of the enterprise cannot count toward the investment, as there is no requisite element of risk. For example, if the business in which the applicant is investing is used as collateral, funds from the resulting loan or mortgage are not at risk, even if some personal assets are also used as collateral.
 - (2) Only indebtedness collateralized by the applicant's own personal assets, such as a second mortgage on a home or unsecured loan, such as a loan on the applicant's personal signature may be included, since the applicant risks the funds in the event of business failure.
- d. **Funds Must be Irrevocably Committed:** To be "in the process of investing" for E-2 purposes, the funds or assets to be invested must be committed to the investment, and the commitment must be real and irrevocable. The purchase of a business that is conditioned upon the issuance of the E-2 visa may still qualify as an irrevocable investment. Despite the condition, the purchase would constitute a solid commitment if the assets to be used are held in escrow for release or transfer once the condition is met. The point of the example is that to be in the process of investing, the investor must have entered into an agreement and have committed funds.
- e. Moreover, for the applicant to be "in the process of investing", the applicant must be close to the start of actual business operations, not simply in the stage of signing contracts (which may be broken) or scouting for suitable locations and property. Mere intent to invest, or possession of uncommitted funds in a bank account, or even prospective investment arrangements entailing no present commitment, will not suffice.
- f. **Payments for Leases or Rents as Investments:** Payments in the form of leases or rents for property or equipment may be calculated toward the investment in an amount limited to the funds devoted to that item in any one month. However, the market value of the leased equipment is not representative of the investment, and neither is the annual rental cost (unless

it has been paid in advance) as these rents are generally paid from the current earnings of the business.

- g. **Value of Goods or Equipment as Investment:** The amount spent for purchase of equipment and for inventory on hand may be calculated in the investment total. The value of goods or equipment transferred to the United States (such as factory machinery shipped to the United States to start or enlarge a plant) may be considered an investment. However, the applicant must demonstrate that the goods or machinery will be or are currently being used in an ongoing commercial enterprise. The applicant must establish that the purchased goods or equipment are for investment and not personal purposes.
- h. **Intangible Property:** Rights to intangible or intellectual property may also be considered capital assets to the extent to which their value can reasonably be determined. Where no market value is available for a copyright or patent, the value of current publishing or manufacturing contracts generated by the asset may be used. If none exist, the applicant may submit opinions regarding market value from experts in the field in question for consideration.

9 FAM 402.9-6(C) Commercial Enterprise Must Be Real and Active

(CT:VISA-1523; 04-01-2022)

The enterprise must be a real and active commercial or entrepreneurial undertaking, producing some service or commodity. If the investment relates to a new enterprise, then you must be convinced that it will be a real and active commercial or entrepreneurial undertaking that will produce some service or commodity if the visa is issued. It cannot be a paper organization or an idle speculative investment held for potential appreciation in value, such as undeveloped land or stocks held by an investor without the intent to direct the enterprise. The investment must be a commercial enterprise; it must be for profit, eliminating non-profit organizations from consideration.

9 FAM 402.9-6(D) Investment Must Be Substantial

(CT:VISA-1765; 05-01-2023)

- a. **General:** The purpose of the requirement is to ensure to a reasonable extent that the business invested in is not speculative but is, or soon will be, a successful enterprise. The rules regarding the amount of funds committed to the commercial enterprise and the character of the funds, primarily personal funds or loans based on personal collateral, are intended to weed out risky undertakings and ensure that the investor is unquestionably committed to the success of the business. Consequently, you must view the proportionate amount of funds invested, as evidenced by the proportionality test, considering the nature of the business and the projected success of the business. Once you determine that an applicant has invested a substantial sum, the applicant generally does not need to be evaluated under this

Treaty Countries

Country	Classification	Criteria/Date Period
Albania	D-2	January 4, 1998
Argentina	D-1	December 20, 1984
Argentina	D-2	December 20, 1984
Armenia	D-2	March 29, 1998
Australia	D-1	December 14, 1991
Australia	D-2	December 27, 1991
Australia 12	D-2	September 3, 2000
Austria	D-1	May 27, 1981
Austria	D-2	May 27, 1981
Azerbaijan	D-2	August 2, 2001
Bahrain	D-2	May 30, 2001
Bangladesh	D-2	July 21, 1999
Belgium	D-1	October 4, 1963
Belgium	D-2	October 4, 1963
Belize	D-1	November 21, 1987
Belize 12	D-2	June 4, 2001

Bahrain and Hong Kong 11	D-1	November 14, 1987
Bahrain and Hong Kong 11	D-2	November 14, 1987
Brazil	D-1	July 11, 1992
Bulgaria	D-2	June 2, 1994
Cameroon	D-2	April 4, 1989
Canada	D-1	January 1, 1994
Canada	D-2	January 1, 1994
Chile	D-1	January 1, 2004
Chile	D-2	January 1, 2004
China [Taiwan] 1	D-1	November 26, 1983
China [Taiwan] 1	D-2	November 26, 1983
Colombia	D-1	June 18, 1983
Colombia	D-2	June 18, 1983
Congo [Brazzaville]	D-2	August 11, 1994
Congo [Kinshasa]	D-2	July 25, 1991
Costa Rica	D-1	May 16, 1982
Costa Rica	D-2	May 16, 1982
Croatia 11	D-1	November 14, 1987
Croatia 11	D-2	November 14, 1987

Czech Republic 2	D-2	January 1, 1998
Denmark 2	D-1	July 20, 1961
Denmark	D-2	September 10, 2003
Dominic 14	D-2	May 11, 1997
Egypt	D-2	June 27, 1982
Ecuador	D-1	May 12, 1985
Ecuador	D-2	February 16, 1997
El Salvador	D-1	October 6, 1962
El Salvador	D-2	October 6, 1962
Ethiopia	D-1	August 14, 1994
Ethiopia	D-2	December 1, 1992
France 2	D-1	December 21, 1988
France 2	D-2	December 21, 1988
Georgia	D-2	August 17, 1997
Germany	D-1	July 14, 1956
Germany	D-2	July 14, 1956
Ghana	D-1	October 18, 1954
Ghana	D-2	March 3, 1964
Guatemala	D-1	July 19, 1932
Guatemala	D-2	July 19, 1932

Country	Year	Date
Beland	0-1	September 14, 1900
Beland	0-2	November 10, 1902
Israel [I]	0-1	April 3, 1954
Israel [I]	0-2	May 1, 2019
Italy	0-1	July 26, 1949
Italy	0-2	July 26, 1949
Jamika	0-2	March 7, 1967
Jepun [J]	0-1	Oktober 30, 1950
Jepun [J]	0-2	Oktober 30, 1950
Jordan	0-1	Disember 17, 2001
Jordan	0-2	Disember 17, 2001
Kanada	0-2	Januari 13, 1964
Korea (South)	0-1	November 7, 1927
Korea (South)	0-2	November 7, 1927
Kuwait [K]	0-1	November 15, 1962
Kuwait [K]	0-2	November 15, 1962
Myanmar	0-2	Januari 13, 1964
Lebanon	0-1	July 26, 1939
Lebanon	0-2	Disember 24, 2001

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Country	Year	Date
Libya	0-1	November 21, 1950
Libya	0-2	November 21, 1950
Lituania	0-2	November 23, 2001
Luxembourg	0-1	March 16, 1940
Luxembourg	0-2	March 26, 1960
Malaysia [M]	0-1	November 10, 1962
Malaysia [M]	0-2	November 10, 1962
Maroko	0-1	Januari 1, 1954
Maroko	0-2	Januari 1, 1954
Maldives	0-2	November 21, 1964
Mexiko	0-2	Januari 1, 1997
Mikronesia [F]	0-1	November 10, 1982
Mikronesia [F]	0-2	November 10, 1982
Moldova	0-2	May 23, 1991
Netherlands [N]	0-1	Disember 6, 1967
Netherlands [N]	0-2	Disember 6, 1967

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Country	Year	Date
New Zealand [N]	0-1	June 10, 2019
New Zealand [N]	0-2	June 10, 2019
Norway [N]	0-1	Januari 18, 1902
Norway [N]	0-2	Januari 18, 1902
Oman	0-1	June 11, 1968
Oman	0-2	June 11, 1968
Polandia	0-1	Februari 10, 1961
Polandia	0-2	Februari 10, 1961
Pakistan	0-2	May 23, 1960
Paraguay	0-1	March 27, 1960
Paraguay	0-2	March 27, 1960
Philippines	0-1	September 4, 1950
Philippines	0-2	September 4, 1950
Roland	0-1	Agust 4, 1964
Roland	0-2	Agust 4, 1964
Rumawi	0-2	Januari 18, 1964
Senegal	0-2	Oktober 25, 1960
Serbila [S]	0-1	November 10, 1962
Serbila [S]	0-2	November 10, 1962
Singapura	0-1	Januari 1, 2004
Singapore	0-2	Januari 1, 2004
Slovak Republic [S]	0-2	Januari 1, 1993
Slovenia [S]	0-2	November 10, 1991

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Country	Year	Date
Slovenia [S]	0-2	November 10, 1991
Spain [S]	0-1	April 14, 1962
Spain [S]	0-2	April 14, 1962
St. Lucia	0-2	May 1, 1979
Swaziland	0-1	Februari 10, 1962
Swaziland	0-2	Februari 10, 1962
Sweden	0-1	Februari 25, 1960
Sweden	0-2	Februari 25, 1962
Switzerland	0-1	November 23, 1962
Switzerland	0-2	November 23, 1962
Thailand	0-1	June 8, 1940
Thailand	0-2	June 8, 1940
Togo	0-1	Februari 5, 1967
Togo	0-2	Februari 5, 1967
Tokelau & Tokelau	0-2	Disember 24, 1996
Turkida	0-2	Februari 7, 1963
Taiwan	0-1	Februari 18, 1950
Taiwan	0-2	May 18, 1990
Tunisia	0-2	November 10, 1962

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	1971	1991
United Kingdom (1)	01	July 01, 1971
United Kingdom (2)	02	July 01, 1973
Nepal (1)	01	November 15, 1987
Nepal (2)	02	November 15, 1988

Country Specific Treaties

- China (Taiwan)** - Pursuant to Section 6 of the Taiwan Relations Act (TRA) Public Law 96-4, 96 Stat. 14, and Executive Order 12205, 48 FR 5719, this agreement which was concluded with the Taiwan authorities prior to January 01, 1979, is administered as a non-governmental treaty by the American Institute in Taiwan, a non-profit charitable Columbia corporation, and administered without recognition of the Taiwan authorities as the continuation of any official relationship with Taiwan.
- Czech Republic and Slovak Republic** - The Treaty with the Czech and Slovak Federal Republic entered into force on November 10, 1990; entered into force for the Czech Republic and Slovak Republic as separate states on January 01, 1993.
- Denmark** - The Treaty which entered into force on July 05, 1987, does not apply to Greenland.
- France** - The Treaty which entered into force on December 01, 1960, applies to the departments of Martinique, Guadeloupe, French Sahara and Reunion.
- Japan** - The Treaty which entered into force on October 30, 1950, was made applicable to the South Islands on June 05, 1946, and to the

British Islands on May 15, 1972.

- Netherlands** - The Treaty which entered into force on December 02, 1967, is applicable to Aruba and Netherlands Antilles.
- Norway** - The Treaty which entered into force on September 12, 1950, does not apply to Svalbard (Spitzbergen) and certain lesser islands.
- Spain** - The Treaty which entered into force on April 14, 1963, is applicable to all territories.
- Suriname** - The Treaty with the Netherlands which entered into force December 02, 1967, was made applicable to Suriname on February 16, 1975.
- United Kingdom** - The Convention which entered into force on July 05, 1978, applies only to British territory in Europe (the British Isles (except the Republic of Ireland), the Channel Islands and Gibraltar) and to "subjects" of such territory. This term, as used in the Convention, means "one who resides ordinarily and permanently in a given place, and has his domicile there." Also, in order to qualify for treaty trader or treaty investor status under this Treaty, the alien must be a national of the United Kingdom, individuals having the nationality of members of the Commonwealth other than the United Kingdom do not qualify for treaty trader or treaty investor status under this Treaty.
- Nepal (1)** - The U.S. view is that the Federal Republic of Nepal (FRN) has dissolved and that the successor that formerly made up the FRN - Nepal and Haryana, Doshi, the Republic of Nepal, Nepal, Nepal, Nepal, Nepal, and Nepal, a successor to be found by treaty in force with the FRN and the time of dissolution.
- The C-Entry is for nationals of the Commonwealth of Australia who wish to enter the United States to perform services in a "seasonally occupation."**

The term "seasonally occupation" means an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States. The definition is the same as the Immigration and Nationality Act definition of an H-1B specialty occupation.

- Bolivia** - Bolivian nationals with qualifying investments in place in the United States by June 10, 2012 continue to be entitled to E-2 classification until June 10, 2012. The only nationals of Bolivia (other than those qualifying for derivative status based on a familial relationship to an E-2 principal alien) who may qualify for E-2 visas at this time are those applicants who are coming to the United States to engage in E-2 activity in furtherance of covered investments established or acquired prior to June 10, 2012.
- Bosnian** - Bosnian nationals with qualifying investments in place in the United States by May 15, 2011 continue to be entitled to E-2 classification until May 15, 2011. The only nationals of Bosnia (other than those qualifying for derivative status based on a familial relationship to an E-2 principal alien) who may qualify for E-2 visas at this time are those applicants who are coming to the United States to engage in E-2 activity in furtherance of covered investments established or acquired prior to May 15, 2011.
- Israel** - Pursuant to a treaty of friendship, commerce, and navigation between the United States and Israel that entered into force on April 9, 1954 entitled nationals of Israel to E-1 status for treaty trader purposes. Nationals of Israel are not entitled to E-2 classification for treaty investor purposes under that treaty. Public Law 112-188 (June 5, 2012), awards nationals of Israel E-2 status for treaty investor purposes if the Government of Israel provides similar nonimmigrant status to nationals of the United States. The Department has confirmed that Israel offers

seasonally occupation information for E-2 classification until the date they are issued to nationals of Israel beginning on May 1, 2014.

- New Zealand** - Public Law 115-203, enacted on August 1, 2018, awarded nationals of New Zealand to E-1 and E-2 status for treaty trader/treaty investor purposes if the Government of New Zealand provides similar nonimmigrant status to nationals of the United States. The Department has confirmed that New Zealand offers similar nonimmigrant status to U.S. nationals and E-2 visas may be issued to nationals of New Zealand beginning on June 10, 2018.

NONIMMIGRANT TREATY TRADER/INVESTOR VISA APPLICATION INSTRUCTIONS

This form, together with Form DS-160, Online Nonimmigrant Visa Application, constitutes the application for an E-1 Treaty Trader or E-2 Treaty Investor Nonimmigrant Visa. See visa requirements below. Incomplete or undocumented applications will be returned.

All first-time applicants seeking Treaty Trader or Treaty Investor status must complete Parts I and II. Parts I and II must be updated periodically. All individual applicants must complete Part III and Form DS-160. You must answer all relevant questions. Enter "Not applicable" where appropriate. If an enterprise is not yet fully operational, estimates and projections should be made concerning potential income, job creation, volume of sales, etc.

Supporting documents should be submitted in a binder with a table of contents and tabs. The following are examples of supporting documentation which should be attached to first-time applications (*not every type of document is applicable in each case; the consular officer may request additional information if required*): Evidence of possession and control of investment funds (*bank records, financial statements, loans, savings, promissory notes, etc.*); evidence of remittance to the United States (*bank drafts, transfers, exchange permits, receipts, etc.*); evidence of establishment of business in the United States (*articles of incorporation, partnership agreement, organization and staffing charts, shares, titles, contracts, receipts, licenses, leases, etc.*); evidence of the nationality of the investors/traders (*passports, articles of incorporation of parent company, stock exchange listings, etc.*); evidence of trade between the United States and the treaty country (*invoices, bills of lading, customs clearances, warehouse receipts, shipping receipts, sales receipts, contracts, etc.*); evidence of investment in the United States (*titles, receipts, contracts, loans, bank statements, etc.*); evidence of substantiality (*financial statements, audits, U.S. corporate or business tax returns, etc.*); evidence that the enterprise is not marginal (*payroll records, IRS Form 941, personal tax returns, evidence of other personal assets and income*); evidence that the business is a real, operating enterprise (*annual reports, catalogs, sales literature, news articles, and other evidence as appropriate*); curriculum vitae of the proposed visa recipient (*optional*). Specific instructions may vary by post and applicants should refer to post websites for more details.

Use additional sheets of paper, as necessary, to complete responses.

TREATY TRADER AND TREATY INVESTOR VISA REQUIREMENTS

Section 101(a)(15)(E) of the Immigration and Nationality Act provides nonimmigrant visa status for a national of any of the countries with which the United States maintains an appropriate treaty of commerce and navigation, who is coming to the United States to carry on substantial trade, including trade in services or technology, principally between the United States and the treaty country, or to develop and direct the operations of an enterprise in which the national has invested, or is actively in the process of investing, a substantial amount of capital. The requirements for Treaty Trader and Treaty Investor visas are further elaborated in 22 CFR Part 41.51. These requirements are summarized below:

Requirements for a Treaty Trader (E-1) nonimmigrant visa are:

1. The applicant must be a national of a treaty country.
2. The trading firm for which the applicant is coming to the United States must have the nationality of the treaty country.
3. The international trade must be "substantial" in the sense that it is of a high enough quantum and continuity of trade.
4. The trade must be principally between the United States and the treaty country, which means that more than 50% of the international trade involved must be between the United States and the country of the applicant's nationality. Trade means the international exchange of goods, services and technology. The item of trade, and title of that item, must pass from one party to the other in exchange for consideration.
5. The applicant must be employed in a supervisory or executive capacity, or possess specialized skills essential to the successful and efficient operation of the commercial enterprise. Ordinarily skilled or unskilled workers generally do not qualify.

Requirements for a Treaty Investor (E-2) nonimmigrant visa are:

1. The investor, either a real or corporate person, must be a national of a treaty country.
2. The investment must be substantial. It must be sufficient to ensure the treaty investor's commitment to the successful operation of the enterprise. The percentage in investment required for a low-cost business enterprise is generally higher than the percentage of investment required for a high-cost enterprise.
3. The investment must be in a real operating commercial enterprise. Speculative or idle investment does not qualify. Uncommitted funds in a bank account or similar security are not considered an investment.
4. The investment may not be marginal. It must have the capacity to generate significantly more income than just to provide a living to the investor and family, or it must have a significant economic impact in the United States.
5. The investor must have control of the funds, and the investment must be at risk in the commercial sense. Loans secured with the assets of the investment enterprise are not considered to be at risk.
6. The investor must be coming to the United States solely to develop and direct the enterprise. If the applicant is not the principal investor, he or she must be employed in a supervisory, executive, or specialized skills capacity. Ordinarily skilled and unskilled workers generally do not qualify.

CONFIDENTIALITY AND PAPERWORK REDUCTION ACT STATEMENTS

Confidentiality Statement - INA Section 222(f) provides that visa issuance and refusal records shall be considered confidential and shall be used only for the formulation, amendment, administration, or enforcement of the immigration, nationality, and other laws of the United States. Certified copies of visa records may be made available to a court which certifies that the information contained in such records is needed in a case pending before the court.

Paperwork Reduction Act Statement - *Public reporting burden for this collection of information is estimated to average 4 hours per response, including time required for searching existing data sources, gathering the necessary documentation, providing the information and/or documents required, and reviewing the final collection. You do not have to supply this information unless this collection displays a currently valid OMB control number. If you have comments on the accuracy of this burden estimate and/or recommendations for reducing it, please send them to: PRA_BurdenComments@state.gov

10. To measure the amount of international trade with the United States, please complete the following. (For trade in merchandise, exports and imports, refer to shipment and sale of goods across international boundaries. For trade in services and technology, exports and imports, refer to the sale of services by treaty-country nationals to nationals of the United States and other countries.)

Gross International Trade of the U.S. Enterprise in _____ (year)	<input type="checkbox"/> Calendar Year	<input type="checkbox"/> Fiscal Year	Ending _____
	DOLLAR VALUE	NO. OF TRANSACTIONS (Optional)	PERCENT OF TOTAL TRADE
Imports from treaty country to U.S. business	_____	_____	_____
Exports from U.S. business to treaty country	_____	_____	_____
Imports from third countries to U.S. business	_____	_____	_____
Exports from U.S. to third countries	_____	_____	_____
Domestic U.S. production/manufacturing	_____	_____	_____
Total:	_____	_____	100%

11. Type of Investment (Check one)
 Creation of a new business Total Start-up Costs: _____
 Purchase of an existing business Purchase Price: _____
 Continuation of an existing business Fair Market Value of Business: _____

12. Total Investment from Abroad Made in the United States (Attach documentation)
 FOR YEAR _____ Calendar Fiscal

	INITIAL INVESTMENT	TOTAL CUMULATIVE INVESTMENT
Cash	_____	_____
Inventory	_____	_____
Equipment	_____	_____
Premises	_____	_____
Other (describe)	_____	_____
TOTAL	_____	_____

13. Source of Investment Capital (personal funds, corporate funds, loans, stocks, debentures, bonds, etc.); Evidence of Possession and Control of Funds in the United States (Attach full documentation)

PART II - STAFF

14. Type of Personnel in the United States (Attach staffing chart)
 Specify: Calendar Year Fiscal Year

	MANAGERIAL EXECUTIVE		SPECIALIZED ESSENTIAL		ALL OTHER EMPLOYEES	
	This Year	Next Year	This Year	Next Year	This Year	Next Year
Nationals of Treaty Country on E, H, & L Visas:	_____	_____	_____	_____	_____	_____
U.S. Citizens and Legal Permanent Residents:	_____	_____	_____	_____	_____	_____
Other (Third-Country Nationals):	_____	_____	_____	_____	_____	_____
TOTAL:	_____	_____	_____	_____	_____	_____

15. List all personnel of U.S. business holding executive, managerial and/or specialist positions by subsidiary/branch office. If aliens, indicate nonimmigrant visa status or lawful permanent resident (LPR) status.

NAME AND POSITION/TITLE/DIVISION	NATIONALITY	U.S. VISA		
		TYPE	DATE (mm-dd-yyyy)	PLACE OF ISSUANCE
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

PART III - APPLICANT

16. Name of Applicant (Family Name) _____ (First Name) _____ (Middle Name) _____				
17. Type of Applicant:				
<input type="checkbox"/> Principal owner/investor/trader		<input type="checkbox"/> Supervisor		<input type="checkbox"/> Specialist
<input type="checkbox"/> Manager		<input type="checkbox"/> Executive		<input type="checkbox"/> Other _____
18. Present Position and Duties (Describe in detail)				
19. Name and Address of Employer				
20. Years with Present Employer		21. Highest Level of Education		
		School	Major/Subject	Degree
				Year
22. Other Relevant Experience and Education (Attach Curriculum Vitae - Optional)				
23. Position in the United States				
Title _____				
Description of duties (include names and titles of all immediate subordinates)				
24. Annual U.S. Salary and Benefit Package				
_____ Salary		25. Name of Person in the United States Being Replaced _____		
_____ Allowances/Benefits		Type of Visa _____	If NOT a replacement, is this:	
_____ TOTAL		Date issued (mm-dd-yyyy) _____	a. An increase in staff? <input type="checkbox"/> Yes <input type="checkbox"/> No	
		Place issued _____	b. Continuation of existing employment in the United States? <input type="checkbox"/> Yes <input type="checkbox"/> No	
26. I do solemnly swear or affirm that all statements which appear in this application are true and complete to the best of my knowledge and belief.				
_____ Signature of Responsible Officer		_____ Printed Name and Position or Office		_____ Date (mm-dd-yyyy)
27. Name and Address of Person Who May Be Contacted About This Application				
			Telephone: _____	
			FAX: _____	

Visas for Canadian and USMCA Professional Workers

Generally, a noncitizen who wishes to travel to the United States must first obtain a visa, either a nonimmigrant visa for temporary stay, or an immigrant visa for permanent residence. The United States-Mexico-Canada Agreement (USMCA) created special economic and trade relationships for the United States, Canada, and Mexico. Click [United States-Mexico-Canada Agreement](#) to visit the Office of the United States Trade Representative website to learn more.

The nonimmigrant USMCA Professional (TN) visa allows eligible citizens of Canada and Mexico to work in the United States as USMCA professionals in prearranged professional level business activities for U.S. or foreign employers. Permanent residents of Canada and Mexico are not able to apply for TN visas to work as USMCA professionals. Select [TN USMCA Professionals](#) on the USCIS website to learn more about TN nonimmigrant status.

Canadians and Mexicans may be eligible to work in the United States as NAFTA professionals under the following conditions:

- Applicant is a citizen of Canada or Mexico;
- Profession is on the [USMCA list](#);
- Position in the United States requires a USMCA professional;
- Applicant will work in a prearranged full-time or part-time job for an employer (see [Required Documentation](#)). **Self-employment is not permitted;**
- Applicant has the appropriate qualifications for the profession, including education requirements or experience.

With some exceptions, each profession requires a baccalaureate (bachelor's) degree as an entry-level requirement. If a baccalaureate is required, experience cannot be substituted for that degree. In some professions, an alternative to a bachelor's degree may be acceptable. For some professions, experience is required in addition to the degree. For a complete list of professions with minimum education requirements and alternative credentials, see [Appendix 1603.D.1](#) of USMCA Chapter 16.

A visa is not required for a Canadian citizen entering the United States as a USMCA Professional, although a visa can be issued to a qualified Canadian TN visa applicant upon application at a U.S. embassy or consulate.

A Canadian citizen can apply for TN nonimmigrant status at a U.S. port-of-entry. Learn about these requirements on the [U.S. Customs and Border Protection \(CBP\)](#) and [U.S. Citizenship and Immigration Services \(USCIS\)](#) websites. More information about receiving TN status without applying for a visa is also available on the [U.S. Embassy Ottawa](#) website.

When is a USMCA Professional (TN) visa required for a Canadian citizen? A Canadian who lives outside Canada with a non-Canadian spouse and/or child(ren), and who plans to enter the United States as a USMCA professional with their family member(s), will need a TN visa in order for the family member(s) to be eligible to apply for derivative TD nonimmigrant visa(s).

B-1³

Does not provide pathway to Permanent Residence (IE., Green Card)

Who is Eligible for a B-1 Visa?

If you are entering the United States for business purposes, you may require a B-1 visa. The B-1 visa is a very fast and relatively simple means of visiting the United States for business purposes. Canadians, in particular, are usually not issued formal B-1 visas but rather receive a stamp on their passport admitting them on B-1 Status, which they can obtain at a U.S./Canadian port of entry.

It is important to note that like the TN visa and L-1 visa, a **B-1 visa** status is for a temporary period and the applicant is required to leave the United States when the B-1 activity is completed.

How Do I Know if I Need a B-1 Visa or a U.S. Work Visa?

The answer is not that clear. Basically, activities which "engage the U.S. labor market" are not permitted; that is, you are not supposed to engage in productive activities which are normally performed by U.S. workers. In practical terms, if you are being paid for services directly by a U.S. employer, chances are you will need a U.S. work permit. However, there are exceptions. Contact our law firm for an assessment to determine if you need a U.S. work permit or can enter the U.S. just on a B-1.

What Business Can You Do in the U.S. on a B-1 Visa?

The following is considered as legitimate B-1 visa activities for which a U.S. work permit is not required:

- Attend business meetings
- Consult with associates
- Attend business conferences and conventions
- Negotiate contracts
- Investigate business opportunities
- Purchase property in the U.S

B-1 visa holders may conduct work in the following fields:

- **Research and design**, including technical, scientific, and statistical research
- **Growth, manufacturing, and production**, including harvest owners supervising harvesting crews and purchasing and production management personnel conducting commercial transactions.
- **Marketing**, including market researchers and analysts and trade fair and promotional personnel attending trade conventions.
- **Sales**, including sales representatives and agents taking orders and negotiating contracts for goods or services, but not delivering goods or providing services; buyers purchasing for an enterprise located in Canada.
- **Distribution**, including transportation operators delivering to, or loading and transporting from Canada or the United States, with no intermediate loading or delivery within the United States; customs brokers performing brokerage duties associated with the export of goods.
- **After-sales service**, including installers, repair and maintenance personnel, and supervisors possessing specialized knowledge essential to the seller's contractual obligation, performing services or training workers to perform such services pursuant to a warranty or other service

³ <https://www.visaplace.com/usa-immigration/visitor-visas/b1-business-visa/>

contract incidental to the sale of commercial or industrial equipment or machinery, including computer software purchased from an enterprise located outside the country, during the life of the warranty or service agreement.

What Documents are Required for a B-1 Visa Application?

B-1 applicants may be advised to present the following documentation in support of their B-1 case:

- Evidence of ties to the home country, such as bank records
- Evidence of close family relatives
- Property deeds and any other documentation that shows that the applicant will return to their home country before or upon the expiry of B-1 status
- Documents showing that the applicant will be engaging in permissible B-1 activities

LEADS TO GREEN CARD



Home > Working in the United States > Permanent Workers > Employment-Based Immigration: Fifth Preference EB-5 > About the EB-5 Visa Classification

About the EB-5 Visa Classification

[This page in Simplified Chinese. \(PDF, 228.14 KB\)](#)

USCIS administers the [EB-5 Immigrant Investor Program](#), which was created by Congress in 1990 to stimulate the U.S. economy through job creation and capital investment by foreign investors. Under a program first enacted as a pilot in 1992 and regularly reauthorized since then, investors may also qualify for EB-5 classification by investing through regional centers designated by USCIS based on proposals for promoting economic growth. On March 15, 2022, President Biden signed the EB-5 Reform and Integrity Act as part of the Consolidated Appropriations Act, 2022 (Public Law 117-103), which created new requirements for the EB-5 immigrant visa category and the Regional Center Program. Immigrant visas are authorized under the Regional Center Program through Sept. 30, 2027.

This page provides a brief overview of the basic requirements for an EB-5 immigrant visa under the EB-5 Reform and Integrity Act. USCIS policy on EB-5 adjudications is in [Volume 6, Part G of the USCIS Policy Manual](#) for petitions filed before and after the enactment of the EB-5 Reform and Integrity Act. USCIS will continue to update its Policy Manual with the provisions of the EB-5 Reform and Integrity Act.

USCIS policy on EB-5 adjudications is in [Volume 6, Part G of the USCIS Policy Manual](#).

All [EB-5 investors](#) must invest in a new commercial enterprise that was established:

- After Nov. 29, 1990; or



- On or before Nov. 29, 1990, that was:
 - Purchased and the existing business is restructured or reorganized in such a way that a new commercial enterprise results; or
 - Expanded through the investment, resulting in at least a 40% increase in the net worth or number of employees.

A new commercial enterprise means any for-profit activity formed for the ongoing conduct of lawful business, including:

- A sole proprietorship;
- Partnership (whether limited or general);
- Holding company and its wholly owned subsidiaries (provided that each subsidiary is engaged in a for-profit activity formed for the ongoing conduct of a lawful business);
- Joint venture;
- Corporation;
- Business trust;
- Limited liability company; or
- Other entity, which may be publicly or privately owned.

This definition does not include noncommercial activity, such as owning and operating a personal residence.

Close All Open All

Job Creation Requirements



An EB-5 investor must invest the required amount of capital in a new commercial enterprise that will create full-time positions for at least 10 qualifying employees.

- For a new commercial enterprise not located within a regional center, the new commercial enterprise must directly create the full-time positions to be counted. This means that the new commercial enterprise (or its wholly owned subsidiaries) must itself be the employer of the qualifying employees.

- For a new commercial enterprise located within a regional center, the new commercial enterprise can directly or indirectly create the full-time positions. Up to 90% of the job creation requirement for regional center investors may be met using indirect jobs.
 - Direct jobs establish an employer-employee relationship between the new commercial enterprise and the persons it employs.
 - Indirect jobs are held outside of the new commercial enterprise but are created as a result of the new commercial enterprise.
- In the case of a troubled business, the EB-5 investor may rely on job maintenance.
 - The investor must show that the number of existing employees is, or will be, no less than the pre-investment level for a period of at least two years.



A troubled business is one that has been in existence for at least two years and has incurred a net loss during the 12- or 24-month period before the priority date on the immigrant investor's Form I-526. The loss for this period must be at least 20% of the troubled business' net worth before the loss. When determining whether the troubled business has been in existence for two years, USCIS will consider successors in interest to the troubled business when evaluating whether they have been in existence for the same period of time as the business they succeeded.

A qualifying employee is a U.S. citizen, lawful permanent resident, or other immigrant authorized to work in the United States, including a conditional resident, temporary resident, asylee, refugee, or a person residing in the United States under suspension of deportation. This definition does not include immigrant investors; their spouses, sons, or daughters; or any noncitizen in any nonimmigrant status (such as an H-1B nonimmigrant) or who is not authorized to work in the United States.

Full-time employment means employment of a qualifying employee by the new commercial enterprise in a position that requires a minimum of 35 working hours per week. In the case of the regional center program, full-time employment also means employment of a qualifying employee in a position that has been created indirectly that requires a minimum of 35 working hours per week.

A job-sharing arrangement where two or more qualifying employees share a full-time position will count as full-time employment provided the hourly requirement per week is met. This definition does not include combinations of part-time positions even if, when combined, the positions meet the hourly requirement per week.

Jobs that are intermittent, temporary, seasonal, or transient do not qualify as permanent full-time jobs. However, jobs that are expected to last at least two years are generally not considered

intermittent, temporary, seasonal, or transient.



Capital Investment Requirements

Capital means cash and all real, personal, or mixed tangible assets owned and controlled by the immigrant investor. All capital will be valued at fair-market value in U.S. dollars.

The definition of capital does not include:

- Assets acquired, directly or indirectly, by unlawful means (such as criminal activities);
- Capital invested in exchange for a note, bond, convertible debt, obligation, or any other debt arrangement between the immigrant investor and the new commercial enterprise;
- Capital invested with a guaranteed rate of return on the amount invested; or
- Capital invested that is subject to any agreement between the immigrant investor and the new commercial enterprise that provides the immigrant investor with a contractual right to repayment, except that the new commercial enterprise may have a buy back option that may be exercised solely at the discretion of the new commercial enterprise.

Note: Immigrant investors must establish that they are the legal owner of the capital invested. Capital can include their promise to pay (a promissory note) in certain circumstances.

The minimum investment amounts by filing date and investment location are:

Petition Filing Date	Minimum Investment Amount	Targeted Employment Area Investment Amount	High-Employment Area Investment Amount
Before 3/15/2022	\$1,000,000	\$500,000	\$1,000,000

Petition Filing Date	Minimum Investment Amount	Targeted Employment Area Investment Amount	High-Employment Area Investment Amount
On or After 3/15/2022	\$1,050,000	\$800,000 (includes infrastructure projects)	N/A

Future adjustments will be tied to inflation using the change in the Consumer Price Index for All Urban Consumers (CPI-U) from March 15, 2022, to the date of adjustment. These adjustments will occur every five years, with the first such adjustment effective for petitions filed on or after Jan. 1, 2027.

A targeted employment area can be, at the time of investment, either:

- A rural area; or
- An area that has experienced high unemployment (defined as at least 150% of the national average unemployment rate).

A rural area is any area other than an area within a metropolitan statistical area (MSA) (as designated by the Office of Management and Budget) or within the outer boundary of any city or town having a population of 20,000 or more according to the most recent decennial census of the United States.

A high-unemployment area consists of the census tract or contiguous census tracts in which the new commercial enterprise is principally doing business, which may include any or all directly adjacent census tracts, if the weighted average unemployment for the specified area based on the labor force employment measure for each tract is 150% of the national unemployment average.

Regional center investors may choose to invest in a new commercial enterprise engaged in an infrastructure project. An infrastructure project is a capital investment project in a filed or approved business plan, which is administered by a governmental entity (such as a Federal, State, or local agency or authority) that is the job-creating entity contracting with a regional center or new commercial enterprise to receive capital investment under the regional center program from alien investors or the new commercial enterprise as financing for maintaining, improving, or constructing a public works project of these set-aside visas that go unused are held in the same set-aside category for one more fiscal year. After the second fiscal year, any remaining unused immigrant visas in these set-

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About the EB-5 Visa Classification | USCIS

aside categories are released to the unreserved EB-5 immigrant visa numbers during the third fiscal year.



Immigrant Visa Set-Asides



Close All Open All

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