

E & L VISA

Both visas are nonimmigrant work visas, and require employment at a U.S. business/enterprise. The business/enterprise for both visas can be a "new/start-up" company. **However, the L visa necessitates that there be an overseas company (normally, a parent company). The E visa can does not require such.**

E VISA

The E visa is based on a treaty between the applicant's (individual and/or company) home country (nationality) and the United States, to engage in trade or investment (providing goods and/or services). In general, the E-1 is for "treaty-traders" and the E-2 for "treaty-investors." In these situations, the applicant will obtain the E visa to trade or invest in the United States; however, at the same time, employees of businesses in the United States that qualify under the E visa requirements can also obtain E status to work. (This is a nonimmigrant visa, and it is NOT the "immigrant investor visa" that requests for permanent residency "green card" status. The E visa can be approved for up to five years initially, with indefinite extensions.)

E applicants are:

- E-1 TREATY-TRADER, APPLICANT
- E-2 TREATY-INVESTOR, APPLICANT
- E-2 EMPLOYEE, EMPLOYEE OF QUALIFYING E BUSINESS

QUALIFYING U.S. BUSINESS/ENTERPRISE

The nature of the business can vary, but it must be a for-profit, commercial and active enterprise. The business either engages in "trade," or if based on an investment, provides goods or services. The business should not exist solely to employ the E visa principal trader/investor/employee, but provide employment opportunities to domestic U.S. workers (U.S. citizens, "green card" holders). There is no requirement that the E Business/Enterprise be new. Purchasing or investing in an existing business, and meeting the E requirements for either the E-1 or E-2 is possible. All requirements of either the E-1 or E-2 must be met, but some requirements may be easier to establish by purchasing or investing in an existing business. For example, for E-1 visas that requires a showing of "substantial trade" between the U.S. and the foreign country of the applicant's nationality, an applicant can acquire a company that already has an established practice of such trade. For E-2 visas that requires a showing of investing a "substantial amount," an applicant can make an investment in a commercially active and "bona fide" enterprise by considering the "cost of the business." Existing U.S. domestic employees of the business to be purchased/invested, may also be positive factors in the application.

E-1 Business: Trade-Based

- The trade must be "substantial trade which in international in scope principally between the U.S. and the foreign state of which s/he is a national."
- Trade can include the following: goods, services, international banking, transportation, communications, accounting, design, consulting, tourism, technology transfer, etc.
- Substantial means at least 50% of the trade is between the United States and the foreign country of the nationality of the business.
- The amount of trade is not necessarily determined on the number of trading activity, but may be the "volume" and "amount" of trade.
- It must also be an active and continuing trade. (For example, a one-time substantial trade may be considered insufficient.)

E-2 Business: Investment-Based

- An "active" investment is required into a "bona fide" enterprise, and a mere transfer of funds into a bank account is insufficient (however, the investment capital can be protected while the application is pending). Notwithstanding such protection, it must be committed and subject to loss, and the source of funds must be known.
- The amount must be substantial and sufficient, in relation to the nature of the enterprise, to develop, continue, or expand a business that is not "marginal."
- "Substantial" investment can vary, with applications approved for investments ranging from \$75,000.00 (even less) to \$300,000.00 (sometimes more). Service enterprises are considered to require less investment, but the investment amount and active enterprise must not merely support the visa applicant and his/her family members in the United States.

VALIDITY: E VISA "STAMP/STICKER" & "STATUS/DURATION"

The visa "stamp/sticker" inside a passport is an "entry document" (issued by the U.S. Dept. of State [Consulate/Embassy]) that allows the individual to enter the United States with the same visa "status." The status, however, is determined by the I-94 Arrival/Departure card (issued by the U.S. INS, when entering the United States - or - when applying to change status [in the United States]).

It is possible to obtain an E-1 or E-2 visa "stamp/sticker" that is valid for 5 years from the U.S. Dept. of State. However, the period of the status/duration in the United States is limited to 2 years, even with a 5 year visa "stamp/sticker." This means that once every 2 years, the E visa holder in the U.S. needs depart the United States and re-enter, or obtain an extension of the status/duration while in the United States.

Extensions of the visa "stamp/sticker" and "status/duration" are possible, indefinitely, and therefore, some feel that this visa is similar to having permanent residency status "green card" status. However, unlike the H or L visas where such visa holders can safely apply for permanent residency, the E visa does not have "dual intent." This means that E visa holders can only have nonimmigrant intent, and not both. (For example, filing a labor certification for permanent residency, and thereafter requesting the E visa at a U.S. Consulate, may result in a denial.)

Note: For E-2 employees entering the U.S. to work in an essential/specialist capacity for a new E business, obtaining an extension after the initial 2-year visa status validity may be difficult in certain situations.

APPLICATION PROCEDURES

There are two possibilities with the E visa application.

Direct U.S. Dept. of State Filing

The U.S. Dept. of State (Consulate/Embassy) can directly process the E visa application overseas.

In this case, the approval means that the E visa "stamp/sticker" will be issued, up to 5 years.

When re-entering the United States, the "status/duration" will be for only 2 years. However, by leaving the United States, or extending the status in the United States, the 5 year visa holder can work and travel for at least 5 years.

Note: However, sometimes, directly applying at a certain U.S. Consulate/Embassy can be difficult to establish "active" investment or trade.

Therefore, some applicants first file with the U.S. INS (if he/she is in the U.S. and can file a change of status), commence or continue the E-1 "trade" or E-2 "investment," and further strengthen their meeting of the E visa requirements.

Thereafter, he/she will depart the United States, and apply for the E visa with more documentation. --->>>

Filing with the U.S. INS

The U.S. INS, will accept a change of status application for an applicant in the United States.

In this case, approval means that the E visa "status" will be issued, only for 2 years.

If the status holder departs the United States, then the individual must obtain the "entry document," the E visa "stamp/sticker" (from the U.S. Dept. of State).

Note: However, unlike other visa "stamp/sticker" applications by an individual who already has an approved "status," the applicant must once again, normally provide all documentation to the U.S. Consulate/Embassy, and approval is not automatic. In fact, it is more akin to applying for the E visa for the first time.

«--- Therefore, some applicants prefer to file directly with the U.S. Dept. of State.

E VISA DOCUMENTS

- Essential documents must first include "nationality" documents relating to the individual applicant as well as the business enterprise located in the United States where the E visa holder will work (i.e., applicant is Japanese, and 60% of the business enterprise is owned by Japanese), as well as relating to "substantial trade" or "substantial investment." The crucial factors are to demonstrate that the business enterprise in the U.S. is or will be active and "bona fide."
- Documents relating to the bona fide nature of the business enterprise may include a licenses/certificates to do business, a detailed business plan, commercial leases, contracts, invoices, client/customer list, marketing analysis, appraisal information about the business entity, etc.
- A new business enterprise may require substantial documentation that indicates that the for-profit enterprise will commence immediately and that necessary preliminary steps, normal for the type of business, have already been undertaken.
- An existing business may require showing of its past and current business activity, including tax documents and payroll information.

ADDITIONAL E VISA DOCUMENTS

(MAY NOT APPLY IF "NEW" BUSINESS)

- Regardless of new or existing business, a business plan that provides details of the active and bona fide business, for 3 to 5 years.
- Corporate documents, such as licenses, incorporation documents, certificates, insurance, memberships, etc.
- Financial documents, such as financial statements, bank accounts, investment capital source and amount, corporate tax returns, etc.
- Marketing documents, including advertisements, brochures, etc.
- Commercial lease for offices, warehouses, etc.
- Inventory, equipment, machinery, etc.
- Hierarchy chart, employee list, payroll documents, insurance, etc.
- If affiliated with other companies (overseas companies), documentation relating to association/affiliation, etc.
- Documents relating to applicant's nationality as well as qualifications to fulfill the post, that may include employment verification letters, diplomas, certificates, etc., as well as detailed information of the duties and responsibilities, depending on the type of E visa requested.

CORPORATE DOCUMENTS

[See below "CORPORATE DOCUMENTS"]

L VISA

The L visa is for "transferees" entering the United States to work for a U.S. "subsidiary/affiliate" of an overseas (parent) company in the capacity of a manager (L-1A), executive (L-1A), or specialist (L-1B; not merely "professional," but with specialized skill/ability). The "transferee" can also start the U.S. enterprise/business for the overseas company

L applicants are:

- L-1A MANAGER (total validity: 7 years; if start-up, 1 yr. + extensions)
- L-1A EXECUTIVE (total validity: 7 years; if start-up, 1 yr. + extensions)
- L-1B SPECIALIST (total validity: 5 years; if start-up, 1 yr. + extensions)

COMPANIES

Overseas (parent) company and U.S. company (affiliate, subsidiary, etc.) are legal entities (the U.S. business/enterprise may be a "new").

U.S. company must establish "affiliation" to parent company, such as majority ownership of both companies.

New/start-up company limits the transferee's initial L nonimmigrant period to one (1) year.

There is no limitation on the size of companies, but U.S. company cannot simply act as an "agent" of the overseas company.

The overseas and U.S. company must be "actively engaged in business."

EMPLOYEES, L-1A OR L-1B

The applicant/transferee is not required to have a degree, but must establish qualification for managerial, executive, or specialized skill capacity. Also, the individual must have "qualifying employment." This means that the

transferee must have been employed "continuously" at the Parent (overseas) company for at least one year within the past three (1 out of 3) years, unless filing for a "Blanket L" application.

"Blanket L":

The President signed HR 2278 that reduces the qualifying employment duration (normally 1 out of 3 years) for some L-1 visa applicants. The law reduces the period of time from one year to six (6) months during which intracompany transferees have to be continuously employed before applying for admission to the U.S. if the employer has obtained approval of a blanket petition from the INS. The requirements are:

- The U.S. and foreign offices must be engaged in commercial trade or services;
- The U.S. company must have been in business for at least a year;
- The company must have at least three domestic or foreign branches, subsidiaries, or affiliates; AND
- The company must show one of the following:
 - a) at least ten L-1 visas were approved in the last year, AND
 - b) the company had U.S. sales of at least \$25 million, OR
 - c) the U.S. work force numbers over 1,000 workers.

CORPORATE DOCUMENTS

Depending on the type, category, and nature of the business(es) for the "E" or "L" visa, information about the overseas enterprise may not be necessary.

U.S. Company:

1. Articles of Incorporation
2. Ownership documents (i.e., stock certificate(s))
3. Business license, permits, or similar documentation
4. Lease
5. Proof of the existence and viability of the business, including, financial statement (income, taxes, employees, etc.). If "new/start-up" company: U.S. investment and financial ability to remunerate the transferee and to commence doing business in the United States.
6. Business activity documents (customer/client list, bank accounts, etc.)
7. The organizational structure of the U.S. subsidiary.

Details:

* = ***"new/start-up" company***

- *1. Certificate of Incorporation, or equivalent documentation
- *2. Business license, office insurance, permits, registration, or equivalent documentation
3. Trademarks, logos, etc.
- *4. Office/lease to premises or title deed to fixed property
- *5. Business Operations hierarchy chart
6. Public relations materials (advertisements, stationary, business cards, etc.)
7. Brochures
8. Photographs of sample products, or information about services
9. Invoices to customers and from suppliers and/or contracts showing ongoing business activity
- *10. Ownership documents (stocks, certificates, etc.)
- *11. Ownership hierarchy chart
12. Financial statements
- *13. Bank account/bank statements
14. Tax documents
15. Employee payroll documents (health insurance, etc.)
16. Employee hierarchy chart

- * 17. Business Plan (3yr - 5 year): include information about marketing, profitability, future employees, etc.
- * 18. U.S. investment documents (U.S. bank account showing ability to pay the initial applicant/employee, and to commence doing business in the U.S.
- * 19. Initial BUSINESS OPERATIONS documents (initial purchases of equipment, furniture, stationary, etc.).

- * 20. Initial **MARKETING** documents (initial contacting vendors, customers, clients, advertising, etc.).
- * 21. Initial **EMPLOYEE/EMPLOYMENT** documents (initial resumes of potential employees, job offer advertisements, etc.).

Overseas Company:

1. Certificate of incorporation, registration, or similar documentation
 2. Business license, permits, or similar documentation
 3. Lease
 4. Ownership documents.
 5. Proof of the existence and viability of the business, including, financial statement (income, taxes, employees, etc.).
 6. Business activity documents (customer/client list, bank accounts, etc.)
- Foreign language documents must have certified English translations.

Details:

1. Certificate of Incorporation, or equivalent documentation
2. Business license, office insurance, permits, registration, or equivalent documentation
3. Trademarks, logos, etc.
4. Office/lease to premises or title deed to fixed property
5. Business Operations hierarchy chart
6. Public relations materials (advertisements, stationary, business cards, etc.)
7. Brochures
8. Photographs of sample products, or information about services
9. Invoices to customers and from suppliers and/or contracts showing ongoing business activity
10. Ownership documents (stocks, certificates, etc.)
11. Ownership hierarchy chart
12. Financial statements
13. Bank statements
14. Tax documents
15. Employee payroll documents (employee insurance documents)
16. Employee hierarchy chart

Applicant's Documents:

1. Tax return reflecting income earned from overseas company (if any) AND for L visas: tax return must reflect that individual was employed at least one (1) year within the preceding three (3) years (unless "Blanket L" application).
2. Employment documents/information (duties) revealing management, executive, or necessary ability/knowledge to fulfill duties for the U.S. company. (Including supporting documents for work experience and/or education.)
3. Details of the position/responsibility to be fulfilled at the U.S. company.

Details:

1. Passport(s).
 2. I-94 Arrival/Departure Card (in the United States).
 3. Social Security card and EAD (work authorization document), if any.
 4. Prior/current immigration documents.
 5. Diploma(s) and transcript(s), if necessary.
 6. Complete/current resume.
- Other:
6. Evaluations, if necessary.
 7. Prior employment verification letters, if necessary.
 8. Tax returns & payroll documents from prior/current employment, if necessary.
 9. Relationship documents (for spouses/children), if necessary.

Marcos, Negrón & Akaike, LLP is a recipient of the American Bar Association's Pro Bono Publico Service Award.

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