



# E-2 VISA

## Treaty Investor Visa

### 1. Background

A Treaty Investor Agreement has been signed between the United States and Israel which allows Israelis to apply for an E-2 investor visa either for themselves or their Israeli employees. The visa will be issued based on one of the following: 1) an investment in an active commercial business; 2) the applicant is in a managerial position; or 3) the applicant has specialized knowledge which is crucial for business activity. As the Head of the Visa Committee of the Israel-America Chamber of Commerce, Adv. Tsvi Kan-Tor initiated and pursued the laws that now grant an E-2 visa to citizens of Israel.

This visa has special significance for those employees whose businesses “fell between the cracks” in the system of visas to the United States, by allowing, for example, those who do not have an academic degree or more than one year of experience in the field, to obtain a work visa.

#### 1.1. Kan-Tor & Acco

Kan-Tor & Acco (KTA) is a global immigration law firm comprised of three inter-related practice areas: Israel-bound immigration, U.S.-bound immigration & global immigration. In addition, we are proud to offer as well as a department engaged in notary, apostille, and translation services. The firm is the leading and largest in Israel and provides services to all areas of the business sector. The firm is continuously working with top international organizations within the legal field. For further details, please, visit <https://www.ktalegal.com> and [www.e2visa.co.il](http://www.e2visa.co.il).

The attorneys of our firm specialize in consular proceedings taking place in Israel. Since the E-2 process is taking place in the U.S. embassy in Israel, there is great importance in understanding the embassy's unique requirements. As part of the services provided to you for the E-2 visa, an expert attorney will accompany you throughout all stages of the visa process, including during the interview at the Embassy.

The U.S. department of KTA employs both American and Israeli lawyers with deep understanding of these two cultures and legal schools of thought. Our KTA lawyers and attorneys are members of the Israeli Bar, AILA (American Immigration Lawyers Association), IPBA (Inter-Pacific Bar Association) and several United States Bar Associations.

#### 1.2. Summary

This brochure does not constitute professional advice or a substitute for an attorney specializing in the field of work visas to the U.S. This publication is intended to provide a better understanding of the process of obtaining an E-2 visa and to facilitate communication with attorneys and other professionals involved in the process. For further information, please, visit [www.e2visa.co.il](http://www.e2visa.co.il).



## 2. What is the E-2 Visa?

The E-2 visa is a temporary work visa in the United States, designated for the investors who are citizens of a country with which the United States has the applicable treaty, as is the case with Israel.

The U.S. and Israeli governments, instigated by the Visa Committee of Israel-America Chamber of Commerce, have successfully brought about appropriate legislation in both countries. It has allowed Israeli citizens to apply for an E-2 work visa in the U.S. and at the same time allows U.S. citizens to apply for a B-5 investor visa in Israel.

## 3. Advantages of the E-2 visa

The E-2 visa has several advantages that are very difficult to find in other temporary work visas. The following is a partial list of the E-2 visa benefits:

### ❖ **Unlimited duration:**

The E-2 visa is usually issued to an employee for a period of up to five years, and up to three years for the company. Requests for extension of stay in the U.S. for an employee can be submitted indefinitely, as long as the business meets the requirements.

### ❖ **Flexible application process:**

The application for an E-2 visa may be submitted to the U.S. Embassy in Israel or under certain conditions, directly to USCIS.

### ❖ **Possible residence abroad:**

It is not necessary for an E-2 visa holder to relocate to the United States since this is not an immigration visa. The place of residence in Israel can be maintained during the period of the visa.

### ❖ **Great flexibility regarding the types of companies:**

The E-2 visa is available for all types of companies, from small companies to large corporations across a variety of industries and trades.

### ❖ **Work permit in the United States for a Spouse:**

The spouse of an E-2 status worker can obtain a work permit in the United States (EAD Certificate) without the need of a sponsorship or a job offer from the U.S. employer.

### ❖ **No annual quota:**

There is no annual quantitative limit on the number of E-2 applications that can be approved. Therefore, you can request and receive the E-2 visa throughout the year, and in relation to any number of employees, as necessary.



❖ **There is no requirement for an academic degree, seniority or exceptional skills:**

Employees in the E-2 status do not need to have an academic degree, work experience, or specialized knowledge in the company or field. As a result, it is possible to recruit an Israeli employee and place him in the U.S. shortly after his employment with the Israeli company.

## **4. Examples of the E-2 visa applicants**

### **4.1 Examples of the E-2 visa applicants:**

- ❖ Investor purchased several gas stations; in order to be president of the company in New Jersey, he applied for the E-2 status for the American company he founded.
- ❖ A wine manufacturer invested in a winery in California. He applied for an E-2 visa so that he would be able to manage and supervise the winery closely.
- ❖ An Israeli computer engineer invested in creating a software company in Silicon Valley. He then submitted an application for the E-2 visa so that he may serve as Vice President of Research and Development in the software company in California.
- ❖ The investor purchased from a Los Angeles branch of a nation-wide chain of restaurants. He then applied for an E-2 visa to manage the restaurant.
- ❖ A law firm invested in setting up an office in New York. One of the Israeli partners applied for an E-2 visa in order to expand and develop the activity of the U.S. office.
- ❖ An Israeli entrepreneur established a property management company in Atlanta and applied for an E-2 visa in order to establish a management company which will facilitate the purchase of properties, renovations, management, and sales.
- ❖ An accounting firm invested in setting up an office in Los Angeles. The Office Manager applied for an E-2 visa in order to establish the U.S. branch.
- ❖ A partnership which provides branding services invested in establishing a business in Miami. One of the partners applied for an E-2 visa to establish a subsidiary in Palo Alto.
- ❖ A computer engineer founded a health application development company in Boston. In order to manage the new company he submitted an application for an E-2 visa.

📌 **Note:** In Israel the start-up companies, diamond industries, and private entrepreneurs are the main beneficiaries for the E-2 status.

## **5. Eligibility requirements to obtain the E-2 status**

### **5.1 Eligibility Requirements - Israeli citizenship**

The initial condition for submitting an E-2 visa application is an Israeli citizenship for both the company and the employee/applicant.



## **5.2 How to identify the company's citizenship?**

A preliminary condition for obtaining an E-2 visa is for the company to be considered an "Israeli citizen". The rule is that citizenship of the company is not determined according to the country in which the company was incorporated, but according to the citizenship of the shareholders.

The issue of a company's citizenship can be extremely complex legally. The difficulty comes from the fact that the company can have a large number of investors, some of whom have different nationalities. In addition, there are various types of corporations, including private companies, public companies, partnerships of various types, etc. Sometimes the ownership of the company is not that of people, but of another company ("parent company") owned by several companies or by a trust fund.

## **6. Investment**

### **6.1 Investment**

The E-2 visa is granted only after actual investment has been made in the U.S. or the purchase of an existing business.

It must be an investment in the capital, which includes, according to the regulations, funds, or other assets that have been obtained legally. In any case, the investment must be in a profit-making business (and not a non-profit organization). It must be an active business and not a speculative or passive investment, such as buying a home, passive investment in real estate, or stocks.

### **6.2 The Investment Must Be At Risk**

Another important component of investment conditions for an E-2 visa is proof that the capital invested in the new venture is at risk. In other words, the investment should involve a substantial commitment of capital that will ensure the success of the business initiative. It must be shown that the capital was invested with the goal of making profit, and that it can be lost (completely or partially) if the investment fails. Therefore, a loan secured only by the assets of the business cannot be used as an investment, since this investment is not a risk element. Accordingly, the investment of funds secured by a third party, which is not a foreign investor, will not be considered an investment in regards to obtaining the E-2 visa.

### **6.3. The Investment Must Be Substantial**

It must be an investment of "substantial capital". The definition of "substantial capital" is not included in the law as a defined monetary value. Therefore, the law does not require a minimum amount of investment. The absence of the determined amount comes from the fact that each business is unique and stands on its own, and therefore each business requires a different investment. To clarify, "substantial capital" investment is an investment required to cover all costs of establishing a business, and developing it to the point when the business can operate.



## **7. Marginality requirements for the business**

The investment enterprise may not be marginal. A marginal enterprise is one that does not have the present or future capacity to generate more than enough income to provide a minimal standard of living for the treaty investor and his or her family.

Depending on the facts, a new enterprise might not be considered marginal even if it lacks the current capacity to generate such income. In such cases, however, the enterprise should have the capacity to generate such income within five years from the date that the treaty investor's E-2 classification begins.

### **7.1 Real Enterprise (Bona Fide Enterprise)**

According to USCIS, a business which an E-2 investor applicant wishes to acquire or start must be a bona fide enterprise. The immigration authorities define "bona fide enterprise" as "a real, active commercial or entrepreneurial undertaking which produces services or goods for profit. The enterprise cannot be an idle investment held for potential appreciation in value, such as undeveloped land or stocks held by an investor who has no intent to direct the enterprise."

### **7.2. Operational business**

This is the most complex requirement for E-2 visa applicants. In order for the company to receive the E-2 visa status, the business must be proved to be in its operational stage. That is, the business is already in a phase of activity, such as the production of goods or providing services.

Therefore, it is recommended to consult an attorney who has experience in the field in order to receive guidance on the matter. As a rule, you cannot apply for a visa if the business is not ready to start business activity once the visa is obtained.

**It is important to emphasize** that, in practice, the decision regarding the business being operational or not is at the individual consul's discretion. There are cases when the business is at an initial operational phase and the consul will determine that in light of the limited scope of commercial activity, the business is insufficient to meet the visa requirements.

### **7.3. A business that makes a profit**

In a few cases, applications for an E-2 visa are rejected because the business generates marginal profit only (a marginal enterprise). This means that the business does not have the present or future capacity to generate more than enough income to provide a minimal standard of living for the treaty investor and his or her family. It is important to submit a comprehensive business plan that clearly states the projected future earning capacity within five years from the date the foreign national commences business activity. The plan must also be credible and based on objective and verifiable evidence.

### **7.4. Creating jobs for US citizens**

While the law does not specifically mention the creation of jobs, this requirement gets as the core of why the E-2 investor visa exists. That is, the purpose of the visa is to permit an investor



to start a business that will have a positive economic impact and expand job opportunities in the local community and the U.S. As such, the investor must be able to demonstrate that the proposed enterprise will have the ability to provide jobs for U.S. workers. However, the marginality requirement does not require the E-2 enterprise to be a large business that hires dozens of employees. There are many successful E-2 businesses that have 3 employees and do not plan on increasing their staff.

## **8. Eligibility Requirements for the Visa Applicant**

### **8.1 An investor, a manager or an employee with essential knowledge**

As noted before, the investor (or investors) may apply themselves as company owners or for their employees on the basis of an E-2 visa in order to manage the business they have invested in. In order to be eligible for an E-2 visa, employees must meet the eligibility requirements.

### **8.2 Qualifying conditions of Israeli citizenship**

The citizenship of the employee applying for a visa is determined by the Israeli law of citizenship. In other words, only an Israeli citizen is eligible to apply for an E-2 visa. Therefore, the place of birth is not sufficient proof of Israeli citizenship. In case there is any doubt about the Israeli citizenship of the employee or company owners, it is recommended to consult with a professional.