EB5 ATTORNEYS

E 2 Treaty Investor Visa: Complete Guide

A comprehensive guide from EB5 Attorneys

The E 2 treaty investor visa allows nationals of countries that maintain a qualifying treaty of commerce and navigation with the United States to enter and work solely to develop and direct a qualifying investment enterprise. Unlike EB 5, E 2 is a nonimmigrant visa with no path to permanent residence in most cases. There is no minimum investment amount set by statute, but investment must be substantial, and the enterprise must not be marginal. This guide covers the treaty country requirement, investment standards, the marginality test, costs, and how E 2 compares to EB 5.

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Treaty Country Requirement: Who Qualifies

The E 2 treaty investor visa is available only to nationals of countries that have a qualifying treaty with the United States as listed at 22 CFR 41.51(b)(1) and maintained by the State Department. As of 2025, approximately 80 countries have qualifying treaties, including the United Kingdom, Germany, Japan, South Korea, Canada, Australia, France, Italy, Spain, and many others.

Notably absent from the list are China (People's Republic), India, Brazil, Vietnam, and Russia. Nationals of these countries are not eligible for E 2 status regardless of the amount they invest or the nature of the enterprise. This limitation makes E 2 inaccessible to many of the world's largest investor populations, which is one reason EB 5 is far more commonly used by investors from China and India.

Nationality for E 2 purposes is determined by citizenship, not by country of domicile or residence. An investor holding dual citizenship may claim E 2 status under either nationality if one qualifying treaty country is among their citizenships. Some investors from non treaty countries have pursued citizenship by investment in qualifying E 2 treaty countries such as Grenada, Turkey, or certain nations with citizenship programs, then used that secondary citizenship to apply for E 2 status.

The State Department maintains current treaty country information in its E Visa Overview at travel.state.gov. Investors should confirm current treaty status because treaties can be modified or supplemented. The specific treaty determines which investor categories are covered; some treaties extend to E 2 employees of E 2 companies rather than only the investing principals, a point explored further in the section on E 2 employees.

For the application process, nationality must be documented at the time of the E 2 application and must be maintained throughout the E 2 stay. A treaty investor who naturalizes as a U.S. citizen during their E 2 period no longer needs the E 2 visa, while a treaty investor who loses their qualifying treaty country citizenship (for example through renunciation) loses E 2 eligibility.

The Substantial Investment Standard

No statutory minimum investment amount exists for E 2 status. Instead, the investment must be substantial under INA Section 101(a)(15)(E)(ii) and the implementing State Department regulations at 22 CFR 41.51. The substantiality test involves a proportionality analysis: the investment must be substantial in relationship to the total cost of either purchasing an established enterprise or establishing a new one.

State Department guidance establishes an inversely proportional or sliding scale test. For enterprises requiring low total investment, the percentage of the total cost that must come from the investor's committed funds is higher. For more expensive enterprises, a lower percentage satisfies the test, but the absolute amount must still be significant. As a practical matter, investments under $100,000 face significant scrutiny, and officers at U.S. embassies abroad have historically been reluctant to approve E 2 status for investments under $100,000 to $150,000 without compelling circumstances. Investments above $500,000 generally satisfy the substantiality standard for enterprises of appropriate scale.

The investment must be real and active. It must be funds or assets that have been put at risk in the commercial sense, with a real possibility of loss. The investor cannot simply place money in a bank account designated for future business activities and claim that as the investment. Assets must have been committed, meaning actually invested or irrevocably committed to investment, before the E 2 application is filed. Promissory notes, conditional funds, and amounts held in personal accounts that have not been transferred to the enterprise or used to acquire business assets generally do not qualify.

An escrow arrangement can satisfy the committed requirement if the funds are committed irrevocably to the enterprise and released only upon E 2 approval or commencement of business. These arrangements must be carefully structured with the assistance of an attorney to ensure they meet the committed standard while protecting the investor's capital if the visa application is denied.

The Marginality Test: Not Just Supporting Yourself

One of the most frequently litigated and misunderstood aspects of E 2 adjudications is the marginality test. Under 22 CFR 41.51(a)(1)(v), the enterprise cannot be marginal, meaning it must have the present or future capacity to generate more than enough income to provide a minimal living for the treaty investor and their family.

A marginal enterprise is one that does not have the present or future capacity to generate more than enough income to provide a minimal living for the investor and the investor's family. Put simply, a business that generates only enough income to support the investor as a self employed person, without generating additional economic contribution (such as employing U.S. workers or generating export revenue), is marginal.

The State Department's Foreign Affairs Manual at 9 FAM 402.9 7(A) clarifies that an enterprise is not marginal merely because it does not currently produce income, as long as it has a good faith expectation of generating revenues sufficient to support the investor's household and contribute beyond that level within five years. This forward looking component is important for businesses in startup or development phases.

Commonly denied E 2 applications on marginality grounds include: small food trucks or sole proprietor retail operations that generate revenue comparable to a domestic wage; home based consulting businesses with limited client base and low overhead; small cleaning services or childcare businesses structured entirely around the investor's personal labor; and any enterprise where the only job created is the investor's own position. Applications that proactively address marginality by demonstrating a business plan with projected growth, planned U.S. employee hires, and credible revenue projections fare better in the adjudication process.

USCIS and consular officers scrutinize the business plan, financial projections, industry comparisons, and market analysis carefully. Independent financial and market analysis from qualified business consultants can significantly strengthen E 2 applications where marginality might otherwise be a concern.

Enterprise Requirements and Qualifying Investment Structure

The enterprise receiving the E 2 investment must be a real, operating, and commercial or entrepreneurial undertaking that produces services or goods for profit under 22 CFR 41.51(a)(1)(i). Purely speculative investments (such as undeveloped land held without any active development or operational plan) do not qualify. The enterprise must be actively managed by the investor.

The investor must have at least 50 percent ownership of the enterprise, or must possess operational control through a managerial position or other corporate device if ownership is not majority. An investor who owns 49 percent of an enterprise cannot qualify unless they have actual operational control through special voting rights, a management agreement, or similar mechanism.

Acquiring an existing U.S. business satisfies the investment requirement if the purchase price constitutes a substantial investment under the proportionality test. A new business must demonstrate commitment of funds and development of a genuine enterprise. The enterprise does not need to be located in a particular type of area, and there are no TEA (Targeted Employment Area) requirements as in EB 5.

Franchises are common E 2 vehicles because they come with established business models, recognized brand names, and documented franchise disclosure documents that facilitate the business plan documentation USCIS and consulates require. Fast food franchises, service industry franchises, and retail franchises have all been successfully used as E 2 enterprises when the investment amount is substantial relative to the total franchise cost.

The investment must be in a lawful enterprise. An investment in a business that violates U.S. law (for example, a cannabis dispensary in a state where such businesses are legal under state law but remain federally illegal) presents complications because federal agencies adjudicating E 2 applications cannot approve investments in enterprises that violate federal law.

E 2 vs EB 5: Comparing the Two Main Investor Pathways

E 2 and EB 5 are the two primary U.S. immigration pathways for investors, but they serve fundamentally different purposes and are appropriate for different investor profiles and goals.

The most significant difference is immigration status: E 2 is a nonimmigrant visa that does not lead to a green card for most applicants, while EB 5 is an immigrant visa category that results in conditional and then unconditional permanent residence. An E 2 investor who eventually wants a green card must qualify through an entirely different category (such as EB 1C if they grow their business to qualify, or through family sponsorship).

Investment amounts differ substantially. E 2 has no statutory minimum and in practice can be satisfied with $100,000 to $500,000 depending on the enterprise. EB 5 requires a minimum of $1,050,000 (or $800,000 in a Targeted Employment Area) under INA Section 203(b)(5) as amended by the EB 5 Reform and Integrity Act of 2022.

Job creation requirements differ significantly. EB 5 requires direct or indirect creation of at least 10 full time positions for qualifying U.S. workers. E 2 requires only that the enterprise not be marginal, meaning it can support more than the investor's household, but there is no numerical floor on jobs created.

Treaty country eligibility limits E 2 dramatically. EB 5 is open to investors of any nationality. This is the primary reason E 2 is not a viable option for Chinese, Indian, and Brazilian investors who represent the bulk of EB 5 demand.

E 2 visa processing at a U.S. consulate abroad is typically faster (2 to 4 months) and less expensive than EB 5, which involves multi year processing times and significantly higher legal and filing fees. For eligible treaty country nationals who want to establish a business in the U.S. and do not require permanent residence immediately, E 2 can be an efficient solution. For investors who require permanent residence, EB 5 is the appropriate pathway. For data on current EB 5 processing timelines and investment terms, eb5status.com provides current reporting on regional center projects and petition processing.

E 2 Employees: Treaty Employees of E 2 Companies

The E 2 treaty investor framework also extends to employees of the E 2 enterprise in certain circumstances. Under 22 CFR 41.51(b)(3), a national of the same treaty country who is employed in a supervisory, executive, or essential skills capacity by an E 2 enterprise may qualify for E 2 employee status.

For E 2 employee status, the employee must: (1) be a national of the same treaty country as the qualifying investment enterprise; (2) be destined to work in the United States in a supervisory or executive capacity, or in a capacity that requires the employee to have skills that are essential to the efficient operation of the enterprise; (3) be coming to work for an employer who is a treaty investor or an organization at least 50 percent owned by treaty nationals.

The essential skills requirement is meaningfully different from L 1B specialized knowledge. Essential skills for E 2 employees requires showing that the employee has unique skills essential to the company's successful operation that cannot readily be filled from the U.S. labor market, and that the employee will be training U.S. workers to eliminate the need for an essential skills employee within a reasonable period.

E 2 employee status is tied to the employing E 2 enterprise. If the enterprise loses its E 2 operating status (for example, due to shutdown or change of majority ownership to non treaty nationals), the E 2 employees also lose their E 2 basis.

For treaty country nationals seeking to work in the U.S. for an employer that has an existing E 2 presence, the E 2 employee pathway offers a faster and less expensive option than starting a new enterprise or going through employment based nonimmigrant categories that require employer specific H 1B petitions subject to the lottery.

E 2 Renewals and Duration of Status

E 2 visas are issued at a U.S. consulate abroad for varying periods depending on the treaty country. Most treaty countries receive two year E 2 visa stamps, though some countries receive longer periods under reciprocity agreements. Once in the U.S., the E 2 investor is admitted for two year periods (regardless of visa stamp validity), and each admission stamp says "D/S" (duration of status) indicating authorized stay for the duration of the E 2 enterprise operation.

E 2 status may be renewed an unlimited number of times as long as the investor continues to meet all E 2 requirements: the enterprise remains operational and non marginal, the investment remains substantially at risk, the investor remains in control of and directing the enterprise, and the investor's treaty country nationality is maintained.

Renewal of the E 2 visa stamp requires a return visit to a U.S. consulate. Inside the U.S., an extension of E 2 status is filed on Form I 539 (for principal investors in some cases) or the investor may simply depart and re enter with a renewed visa stamp. Some E 2 investors obtain Canadian, Mexican, or other convenient country consular appointments to renew their visa stamps without returning to their home country.

In practice, E 2 investors can live in the U.S. indefinitely through successive two year renewals. However, the absence of a permanent residence pathway means that an E 2 investor's U.S. presence is always contingent on the continued success and qualifying status of the enterprise. An investor who sells the enterprise, winds down operations, or whose enterprise becomes marginal must depart the U.S. or change to another status.

E 2 to Green Card: Options and Limitations

One of the most frequently asked questions about E 2 status is whether it can lead to a green card. The direct answer is that E 2 status itself does not lead to permanent residence. Unlike EB 5, which is an immigrant visa, E 2 is nonimmigrant and does not place the investor on a pathway to a green card.

However, E 2 investors who grow their business may eventually qualify for permanent residence through other categories. If an E 2 investor's U.S. enterprise grows to a size where it qualifies for EB 1C multinational manager or executive sponsorship (the U.S. entity can sponsor the investor as a manager or executive if the business has been in existence for at least one year and the investor has been employed as a manager or executive), the investor may pursue EB 1C, which requires no PERM labor certification. This is the most common green card pathway for E 2 investors.

EB 2 and EB 3 with PERM are also available if the E 2 investor can find a separate sponsoring employer willing to go through the process, but self sponsoring through the E 2 enterprise for PERM is generally not viable because PERM requires demonstrating that the position cannot be filled by a U.S. worker, and a business owner typically cannot credibly advertise for and reject U.S. applicants for their own position.

EB 5 itself is an option for E 2 investors who can meet the $800,000 or $1,050,000 investment thresholds and the job creation requirements. An E 2 investor who has successfully built a U.S. business might qualify for direct EB 5 investment in their own enterprise, provided the enterprise and their investment meet all EB 5 statutory requirements.

Family based immigration options are not foreclosed by E 2 status. If an E 2 investor marries a U.S. citizen or has U.S. citizen children who reach age 21, family sponsorship pathways become available. E 2 investors with U.S. citizen immediate relatives should consult an immigration attorney about concurrent or future family based sponsorship as a backup to business based pathways.

Frequently Asked Questions

1. Is there a minimum investment amount for an E 2 visa?

No statute sets a minimum dollar amount for E 2 investments. The investment must be substantial in proportion to the total cost of establishing or purchasing the enterprise, and it must be real, active, and at risk. In practice, consular officers have historically been skeptical of applications involving investments under $100,000. Most E 2 attorneys recommend ensuring investments of at least $100,000 to $150,000 to reduce the risk of marginality or substantiality challenges, though higher investment amounts in appropriately scaled enterprises are always stronger.

2. Can I apply for an E 2 visa if I am from China or India?

No. E 2 treaty investor status is available only to nationals of countries that have a qualifying treaty of commerce and navigation with the United States. China (People's Republic), India, Brazil, Vietnam, and Russia are not among the approximately 80 qualifying treaty countries. Investors from these countries cannot obtain E 2 status regardless of investment amount. For investors from non treaty countries who seek a U.S. investor visa, EB 5 is the primary available pathway.

3. How long can I stay in the U.S. on an E 2 visa?

E 2 investors are admitted for two year periods, and there is no statutory maximum on the number of times E 2 status can be renewed. As long as the qualifying enterprise continues to operate and the investor meets all E 2 requirements, the investor may remain in the U.S. indefinitely through successive renewals. The E 2 visa stamp must be renewed at a U.S. consulate to reenter after international travel, but authorized stay inside the U.S. continues until the enterprise ceases to qualify or the investor changes status.

4. What is the marginality test and why does it matter?

The marginality test requires that the E 2 enterprise have present or future capacity to generate more than enough income to provide a minimal living for the treaty investor and family. A business that generates revenue only sufficient to support the investor personally, without creating jobs or economic contribution beyond that, is marginal and will be denied. The test is particularly important for small service businesses, sole proprietorships, and enterprises in early stages. Demonstrating growth projections, plans to hire U.S. workers, and revenue targets that exceed the investor's living expenses is essential for passing the marginality test.

5. Can E 2 employees qualify for the same status as the investor?

Yes, under certain conditions. Nationals of the same treaty country who are employed by the E 2 enterprise in supervisory, executive, or essential skills capacities may qualify for E 2 employee status. The employee must be from the same treaty country as the enterprise's qualifying investors (or majority owner) and must be coming to fill a role that cannot be filled from U.S. workers. E 2 employee status is derivative of the enterprise's E 2 status and ends if the enterprise loses its qualifying E 2 basis.

6. What are the most common reasons E 2 applications are denied?

The most frequent denial grounds in E 2 applications are: (1) failure to demonstrate the investment is substantial relative to the total enterprise cost; (2) funds not truly committed or at risk (money in personal accounts, conditional commitments); (3) the enterprise is marginal, meaning it will only support the investor's household without broader economic contribution; (4) failure to show the investor will develop and direct the enterprise rather than simply being employed by it; and (5) nationality issues where the investor's treaty country connection is insufficiently documented. Addressing each of these grounds proactively with thorough documentation and a well prepared business plan is the foundation of a successful E 2 application.

Disclaimer: This guide is provided for general informational purposes only and does not constitute legal advice. Every immigration case is unique. Consult a qualified immigration attorney for advice specific to your circumstances.

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