



## Here are the major eligibility criteria and considerations:

### TREATY COUNTRY NATIONALITY

The investor (or the investing entity) must be a national of a country with which the U.S. maintains a qualifying treaty of commerce and navigation.

### SUBSTANTIAL INVESTMENT

You must have invested, or be in the process of investing, a “substantial” amount of capital in a bona fide U.S. enterprise.

- There is no fixed dollar-amount; it’s judged on a proportionality (“sliding scale”) basis relative to the size/cost of the enterprise.
- The capital must be “at risk” (i.e. subject to loss) and irrevocably committed to the business.

### BONA FIDE ENTERPRISE / ACTIVE BUSINESS

The investment must be in a real, active, for-profit business. Passive investments (e.g. owning undeveloped land or stocks without control) generally don’t qualify.

The enterprise must have the capacity to produce income beyond just providing a minimal living to the investor and family (i.e., not be “marginal”).

### CONTROL / DIRECTION / OWNERSHIP

The investor must be coming to the U.S. to develop and direct the enterprise. This is typically shown by owning at least 50% of the enterprise or having operational control via a managerial position or other corporate device.

If the principal is not an individual (i.e., a company), at least 50% of that entity must be owned by nationals of the treaty country.

### SOURCE OF FUNDS / LAWFUL ACQUISITION

You must show that the funds used for the investment were obtained lawfully (not from any illegal activity).

You may need to “trace” the funds from the source through transfers to the U.S. enterprise.

### INTENT TO DEPART / NONIMMIGRANT INTENT

Because E-2 is a nonimmigrant visa, you must show an

intent to depart the U.S. when your E-2 status ends.

However, unlike many nonimmigrant visas, you generally don’t need to maintain a foreign residence during your stay.

### ROLE IN BUSINESS

The investor must come to manage, direct, or develop the business. You can’t simply be a passive investor.

## Additional Considerations & Rules

### EMPLOYEES / KEY PERSONNEL

Certain employees of the E-2 investor can also qualify for E-2 visas (if they share the investor’s nationality) provided they are in executive, managerial, or “essential” roles.

### EXTENSIONS / RENEWALS

The E-2 visa is typically granted for up to 2 years initially (depending on the particular consulate or USCIS). It can be extended in increments (often 2 years at a time) indefinitely, so long as the business continues to satisfy the E-2 criteria.

### CONSULAR PROCESSING VS. CHANGE OF STATUS

- If you’re outside the U.S., you apply for an E-2 visa at a U.S. consulate in your home country.
- If you’re already in the U.S. in another lawful status, you may apply for a “change of status” to E-2 by filing Form I-129 with USCIS.

- If you change status and then leave the U.S., you will likely need to obtain an E-2 visa stamp at a U.S. consulate to reenter.

### VISA ISSUANCE / FEES

Each E-2 visa applicant must submit a nonimmigrant visa application (e.g. Form DS-160 at the consulate). There is generally a visa application fee. Some nationals also must pay a reciprocity fee (depending on bilateral agreements).

### DEPENDENTS (SPOUSE & CHILDREN)

- Spouse and unmarried children under 21 may accompany the principal.
- The spouse may apply for employment authorization, usually via USCIS (e.g. Form I-766).
- Children may attend school but usually are not permitted to work.