Nonimmigrant Treaty Traders and Investors and Immigrant Employment-Based Alien Entrepreneurs

OVERVIEW

The E1 and E2 nonimmigrant visa categories are comprised of treaty traders and treaty investors entitled to be in the United States under a bilateral treaty of commerce and navigation between the United States and the country of which the treaty trader or investor is a citizen or national.

- The purpose of a treaty trader is to carry on substantial trade in goods, services and technology, principally between the United States and the foreign country of which s/he is a citizen or national.
- The purpose of a treaty investor is to direct the operations of an enterprise in which s/he has invested, or is actively investing, a substantial amount of capital in the United States.

Spouses and unmarried children under the age of 21 of an E1 or E2 nonimmigrant may be granted the same status to accompany the E1 or E2.

The EB5 immigrant employment-based visa category is for individuals who wish to reside permanently in the United States with the intent of creating or developing a business enterprise in the U.S. The EB5 visa category allows for conditional residency for persons who invest $1 million (or under certain circumstances $500,000) in a new commercial enterprise that employs 10 U.S. citizens or authorized immigrant workers full-time and engage in the business through day-to-day management or policy formation.

Nonimmigrant Treaty Traders, Treaty Investors and Immigrant Alien Entrepreneurs:

Read Disclaimer

Chapter 1 E1 Treaty Traders

OVERVIEW

The E-1 classification is for a foreign national who is coming to the United States solely to engage in trade of a substantial nature, principally between the United States and the foreign national's country. The trade involved must be the international exchange of items of trade between the United States and a treaty country. Title to the trade item must pass from one treaty party to the other under successfully negotiated contracts that are binding on all parties.

If the foreign national is already inside the United States, the individual must submit a Form I-129, Petition for Non-immigrant Worker, to USCIS in order to request a change of status or an extension of stay. If the foreign national is outside of the United States, the individual must apply for an E-1 visa at a U.S. consular office abroad.

What information or benefit are you seeking?

General FAQs

Filing for E1 Status

Changing Status/Changing Employers/Extension of Stay/Travel/Intent to Become Permanent Resident

Family Members of E-1s

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General FAQs

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What is a "Treaty Country"?

A treaty country is a foreign state with which the United States has a qualifying Treaty of Friendship, Commerce, or Navigation or its equivalent.

What is a Treaty Country Nationality?

The authorities of the foreign state of which the alien is a national determine the nationality of an individual treaty trader. In the case of an enterprise or organization, ownership must be traced as best as is practicable to the individuals who are ultimately its owners.

What are the requirements for the Treaty Trader Category?

E1 status is designed for qualifying individuals who are citizens or nationals of countries with a qualifying commerce and navigation treaty with the U.S., and who will only engage in substantial trade in goods, services and technology principally between the U.S. and that foreign country.

How does USCIS define "trade"?

Immigration regulations define trade as the existing international exchange of items of trade for consideration between the United States and the treaty country.

How much trade is considered "substantial trade"?

Substantial trade is an amount of trade sufficient to ensure a continuous flow of international trade items between the United States and the treaty country. Essentially, trade is considered substantial when there are numerous transactions over a period of time and the income derived is sufficient enough to support the treaty trader.

Note: A one-time transaction, no matter how great the value, does not constitute substantial trade.

What items are considered "items of trade"?

Items of trade include but are not limited to goods, services, international banking, insurance, monies, transportation, communications, data processing, advertising, accounting, design and engineering, management consulting, tourism, technology and its transfer, and some news gathering activities.

What does "principal trade" mean?

Principal trade between the United States and the treaty country exists when over 50 percent of the volume of international trade of the treaty trader is conducted between the United States and the treaty country of the treaty trader's nationality.

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Which countries or regions are on the list for the Treaty Trader Services?

For a list of Treaty Trader countries, please visit the U.S. Department of State's webpage on treaty countries.

What are "Special Qualifications"?

Special qualifications are those skills and/or aptitudes that an employee in a lesser capacity brings to a position or role that are "essential" to the successful or efficient operation of the treaty enterprise.

What is VIBE?

The Web-based *Validation Instrument for Business Enterprises* (Vibe) is a tool designed to enhance USCIS's adjudications of certain employment-based immigration petitions. Vibe uses commercially available data from an independent information provider (IIP) to validate basic information about companies or organizations petitioning to employ alien workers. Currently, the independent information provider for the VIBE program is Dun and Bradstreet (D&B).

For more information about VIBE, please visit our website at www.uscis.gov/vibe.

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Filing for E1 Status

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Is labor certification necessary for an E1 status?

Labor certification is not necessary nor a requirement for the E1 classification.

How does an individual seeking E1 status for himself/herself or an employee apply for an E1 Treaty Trader status?

The following table describes the procedures that an individual seeking E1 status for him/herself or for an employee must follow:

If beneficiary is…	Then the beneficiary should file the:
In the United States in a valid nonimmigrant status	Petition for a Nonimmigrant Worker (Form I-129)
In the United States out of status	The beneficiary must depart the U.S. and apply for a visa at the U.S. consulate abroad.
Outside the United States	Nonimmigrant Treaty Trader/ Investor Visa Application (Form DS-156E) at the United States consulate nearest their place of residence that accepts nonimmigrant visa applications.

Must an individual file the Petition for a Nonimmigrant Worker (Form I-129) to get an E1 status?

No. It is only necessary to file the Form I-129 if the individual is in the United States in a valid nonimmigrant status seeking an E1 status or an extension of E1 status. Otherwise, the E1 visa can be applied for directly at the nearest U.S. consulate that processes nonimmigrant visas.

Can a U.S. employer file for E1 status for an employee?

No. A United States employer cannot petition for E1 status for an employee since this visa classification is specifically set aside for foreign nationals, including foreign employers, with a Treaty of Friendship, Commerce, Navigation or some similar type of agreement between the United States and a foreign nation.

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Can an employer get E1 status for an employee?

An employer can get E1 status for an employee if the employee meets all of the requirements to get E1 status.

What is the filing fee for the Form I-129 when filing for E1 status?

Please refer to the www.uscis.gov website -- Forms and Fees -- for current fees.

Where does the employer file the Form I-129?

Note: For instructions on how to file the forms, see the USCIS website at www.uscis.gov/i-129 and provide the client with information on the "Where to File" section

How can an individual seeking E1 status expedite the Form I-129?

An employer can file a Request for Premium Processing Service, Form I-907, with the appropriate fee, concurrently with Form I-129 or after receiving the receipt notice for Form I-129, at the USCIS location where the I-129 was filed. For more information on premium processing, please see our website at www.uscis.gov.

Note: The processing time for the I-907 is usually 15 calendar days. If USCIS does not adjudicate the form within 15 calendar days, the fee will be refunded.

How can an employer check on the status of a pending Form I-129?

An employer should be encouraged to check on the status of a pending Form I-129 by using the case status online system via the USCIS web site. However, some other options are outlined in the following table:

If the employer…	**Then the employer…**
Does not receive a decision within the estimated time annotated on their receipt notice	• Should call the USCIS Service Center at the phone number listed on their receipt notice; or • Send a written inquiry to the address on the receipt notice.
Filed the Form I-907 with Form I-129	Can forward an inquiry to the e-mail address of the USCIS Service Center where the Form I-129 and Form I-907 were filed. The following are the e-mail addresses for the USCIS Service Centers concerning "E" status: • Vermont Service Center VSC-Premium.Processing@dhs.gov • California Service Center CSC-Premium.Processing@dhs.gov

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Can the E1 employee file the Form I-129 for him/herself?

No. The E1 employer or the employer abroad must always file the Form I-129 on behalf of an E1 employee.

What requirements must an individual meet to become an E1 Treaty Trader?

To obtain an E1 Treaty Trader status, the following are eligibility requirements:

- A treaty, with treaty trader provisions, exists between United States and foreign state;
- The individual and/or business possess the nationality of the treaty country;
- Business activities constitute trade;
- Trade is substantial and international in scope;
- Trade is principally between United States and the treaty country; and
- The individual intends to depart the United States when the E1 status terminates.

What requirements must the employee meet to become an E1 employee?

To obtain E1 employee status, the following are eligibility requirements:

- The employee must be a national of the treaty country;
- The employee's employer must either be in valid E1 status, or if outside of the U.S., the employer is classifiable under E1 status;
- The employee is coming to the United States to fill an executive or supervisory position, or has special qualifications essential to the firm's operations in the United States; and
- The beneficiary intends to depart the United States when the E1 status terminates.

What initial evidence or documents must be filed with the E1 Nonimmigrant Visa Application at the U.S. Consulate?

The individual should be directed to the U.S. consulate nearest to the individual's place of residence or to the Department of State's website at www.state.gov.

Can one petition be filed for the E1 employer and the E1 employee?

No. Separate petitions must be filed for employer and employee. The filing and approval of the employer's Form I-129 must precede the employee's filing of the Form I-129.

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Changing Status/Changing Employers/Extension of Stay/Travel/Intent to Become Permanent Resident

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Can the E1 who is an employee change employers and remain in E status?

An E1 employee cannot change employers and remain in E1 status. However, another employer may sponsor the employee for E1 status. USCIS must approve any substantive changes in the terms or conditions of E status prior to the change of employment.

Can the E1 who is an employee work for more than one employer?

No. An E1 employee can only work for the employer that filed the petition or one of the employer's affiliates, subsidiaries, or branches.

What is the initial period of admission granted to an E1 nonimmigrant?

An E1 nonimmigrant is usually granted an initial period of admission of two years.

What is the maximum period of stay granted to an E1 nonimmigrant?

E1 Treaty Traders do not have a maximum period of stay.

Note: E1 Treaty Trader employees involved in start-up activities only receive two years since it is presumed they will conclude their activities in a two-year period.

What is an employer held liable for after an E1 is in their employ?

An employer petitioning for an E1 has employment responsibilities not covered by immigration law. These inquiries should be directed to the Department of Labor.

How can an E1 extend their status if their status is expiring?

An extension of stay in the E1 category may be authorized in increments of up to two years. Each extension must be applied for.

Can an E1 travel outside of the U.S. and reenter with the same status?

Yes. An E1 visa allows an alien holding that status to reenter the U.S. with a valid E1 visa and a valid passport.

Can an individual seeking an E1 or an employer petitioning for E1 employee file the Form I-129 petition for the E1 with the intent of ultimately petitioning for permanent resident status?

An E1 alien shall maintain an intention to depart the United States upon expiration or termination of their E1 status. When applying for the temporary visa, nearly all nonimmigrant workers must prove that they only intend to work in the U.S. for a temporary period of time.
However, E1 nonimmigrant workers can be beneficiaries of an immigrant visa petition, or take other steps toward "lawful permanent resident" status without affecting their nonimmigrant, temporary worker visa status.

Note: "Intent" as used here only applies to the employer's intentions at the time of the filing of the Form I-129.

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How do you change the status of someone who is already in another valid nonimmigrant status to an E1 nonimmigrant status?

If the beneficiary is not in one of the visa categories listed below, follow the process for applying for an initial E1 visa.

If the beneficiary is in C, D, K, S, or J visa categories, see below:

C Visa: The beneficiary cannot change status.

D Visa: The beneficiary cannot change status.

K-1/K-2: The beneficiary cannot change status.
K-3/K-4: The beneficiary cannot change status while physically present in the U.S.

S Visa: The beneficiary cannot change status.

J Visa: The beneficiary cannot change status if subject to the two-year foreign residency requirement unless he/she returns home and physically resides in his/her country for 2 years following departure from the U.S., or obtains a waiver of the two-year residency requirement.

As noted below, most J-1 waiver applications require filing Form DS-3035 with the Department of State (DOS). For more information on the requirements for filing Form DS-3035, please see the DOS J-1 visa waiver website.
There are 5 kinds of J-1 waivers:

- Persecution – You would be subject to persecution on account of race, religion, or political opinion if you were to return to your country of residence. To apply, you would file Form DS-3035 with the DOS, and then file Form I-612 with USCIS.
- Hardship – Departure from the U.S. would impose exceptional hardship on your U.S. Citizen/Lawful Permanent Resident spouse or child. To apply, you would file Form DS-3035 with the DOS, and then file Form I-612 with USCIS.
- No objection – Your country issues a “no objection statement” that states that your country does not object to the waiver. To apply, first you would file Form DS-3035 with the DOS, or at the U.S. consulate abroad.
- Request by U.S. agency – This waiver is initiated by a U.S. agency showing that the waiver is in the public interest and that requiring the J-1 to return to his/her country for 2 years would be “clearly detrimental” to the official interest of the agency. Filing Form DS-3035 with the DOS is also required for this waiver.
- Conrad State 30 Program – For medical graduates who have agreed to practice medicine for at least 3 years in a medically underserved area. For this waiver, the J-1 applicant would apply with the state public health department, and then file Form I-612 with USCIS.

Waiver applications and eligibility requirements are complex. It may be in your best interest to seek legal advice from a licensed immigration attorney or from a nonprofit agency accredited by the Board of Immigration Appeals.

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Family Members of E-1s

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How can an E1 nonimmigrant bring family members to the U.S. or change the status of family members in the U.S.?

In order for an E1 to obtain an E1 visa or status for their dependents, please use the process in the following table:

If the E-1's dependents are….	**Then the E1's dependents should….**
Inside the U.S. in a valid nonimmigrant status	File one Application to Extend or Change Nonimmigrant Status (Form I-539) for all dependents either: • With the E1's Form I-129 or • Separately upon approval of E1's Form I-129 at the USCIS Service Center that has jurisdiction where the dependents reside.
Inside the U.S. out of status	The beneficiary must depart the U.S. and apply for a visa at the U.S. consulate abroad.
Outside the U.S.	Contact the nearest U.S. Consulate to find out the procedures to obtain a nonimmigrant visa.

Note: The term "dependents" as used in this answer is defined as the spouse and unmarried children under the age of 21 of an E-1 nonimmigrant.

Can the dependents of the E1 extend their stay?

The dependents can extend their stay to remain with the principal E1 status. They must use Form I-539 to apply.

Can the dependents of the E1 work and/or go to school in the U.S.?

The husband or wife of an E1 may be authorized to work in the U.S. They must use Form I-765 to apply. In addition, they must apply under category (a) (17) in question 16 of the form. The other dependents may not work in the U.S.

As long as the dependents are in E1 status, they can attend school without changing to another nonimmigrant status.

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Chapter 2 E2 Treaty Investors

OVERVIEW

The E-2 classification is authorized for a foreign national who is coming to the United States solely to direct and develop the operations of an enterprise in which the individual has invested or is actively involved in the process of investing a substantial amount of capital.

The investment involved must place lawfully acquired, owned, and controlled capital at commercial risk with a profit objective, and it must be subject to loss if the investment fails.

If the foreign national is already inside the United States, the individual must submit Form I-129, Petition for Non-immigrant Worker, to USCIS to request a change of status or an extension of stay. If the foreign national is outside of the United States, the individual must apply for an E-2 visa at a U.S. consular office abroad.

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General FAQs

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What is a "Treaty Country"?

A treaty country is a foreign state with which a qualifying Treaty of Friendship, Commerce, or Navigation or its equivalent exists with the United States.

What is a Treaty Country Nationality?

The authorities of the foreign state of which the alien is a national determine the nationality of an individual treaty investor. In the case of an enterprise or organization, ownership must be traced as best as is practicable to the individuals who are ultimately its owners.

Which countries or regions are on the list for the Treaty Investor Services?

For a list of Treaty Investor countries, please visit the U.S. Department of State's webpage on treaty countries.

What are the requirements for the Treaty Investors Category?

E2 status is designed for qualifying individuals who are citizens or nationals of countries with a qualifying commerce and navigation treaty with the U.S., and who will solely develop and direct the operations of an enterprise in which he/she has invested or is actively in the process of investing substantial capital.

How does USCIS define "investment"?

USCIS defines investment as the treaty investor's placing of capital, including funds and other assets, at risk in the commercial sense with the objective of generating a profit.

Note: The funds used by the investor must be the investor's own unsecured personal funds, not a loan or some other secured financial instrument.

What is considered a "bona fide enterprise"?

A bona fide enterprise means that the enterprise must be a real, active, and operating commercial or entrepreneurial undertaking that actually produces services or goods for profit.

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How much is considered a "substantial amount of capital"?

A substantial amount of capital is considered an amount, which meets the following three criteria:

- That is substantial in relationship to the total cost of either purchasing an established enterprise or creating the type of enterprise being considered;
- Sufficient to ensure the treaty investor's financial commitment to the enterprise's success; and
- Of a magnitude to support the likelihood that the treaty investor will successfully develop and direct the enterprise.

What does "solely to develop and direct" mean?

Solely to develop and direct means that the treaty investor can demonstrate he or she develops and directs the investment enterprise by:

- Showing control via ownership of at least 50% of the enterprise; or
- Showing operational control through a managerial position or other corporate device, or by other means.

What is a "marginal enterprise"?

A marginal enterprise is an enterprise that does not have the present or future capacity to generate more than enough income to provide a minimal living for the treaty investor and his or her family. In other words, a marginal enterprise is only sufficient enough to provide a minimal living and nothing more for an investor.

What are "Special Qualifications"?

Special qualifications are those skills and/or aptitudes that an employee in a lesser capacity brings to a position or role that are "essential" to the successful or efficient operation of the treaty enterprise.

What is VIBE?

The Web-based *Validation Instrument for Business Enterprises* (Vibe) is a tool designed to enhance USCIS's adjudications of certain employment-based immigration petitions. Vibe uses commercially available data from an independent information provider (IIP) to validate basic information about companies or organizations petitioning to employ alien workers. Currently, the independent information provider for the VIBE program is Dun and Bradstreet (D&B).

For more information about VIBE, please visit our website at www.uscis.gov/vibe.

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Filing for E2 Status

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Is labor certification necessary for an E2 status?

Labor certification is not necessary nor a requirement for the E2 classification.

How does an individual seeking E2 status for himself/herself or an employee apply for an E2 Treaty Investor status?

The following table describes the procedures that an individual seeking E2 status for him/herself or for an employee must follow:

If beneficiary is…	**Then the beneficiary should file the:**
In the United States in a valid nonimmigrant status	Petition for a Nonimmigrant Worker (Form I-129)
In the United States out of status	The beneficiary must depart the U.S. and apply for a visa at the U.S. consulate abroad.
Outside the United States	Nonimmigrant Treaty Trader/ Investor Visa Application (Form DS-156E) at the United States consulate nearest their place of residence that accepts nonimmigrant visa applications.

Must an individual file the Petition for a Nonimmigrant Worker (Form I-129) to get E2 status?

No. It is only necessary to file the Form I-129 if the individual is in the United States in a valid nonimmigrant status seeking E2 or an extension of E2 status. Otherwise, the E2 can be applied for directly at the nearest U.S. consulate that processes nonimmigrant visas.

Can a U.S. employer file for E2 status for an employee?

No. A United States employer cannot petition for E2 status for an employee since this visa classification is specifically set aside for foreign nationals, including foreign employers, with a Treaty of Friendship, Commerce, Navigation or some similar type of agreement between the United States and a foreign nation.

Can an employer get E2 status for an employee?

An employer can get E2 status for an employee if the employee meets all of the requirements for E2 status.

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What is the filing fee for Form I-129 when filing for E2 status?

Please refer to the www.uscis.gov website -- Forms and Fees -- for current fees.

Where does the employer file the Form I-129?

Note: For instructions on how to file the forms, see the USCIS website at www.uscis.gov/i-129 and provide the client with information on the "Where to File" section

How can an individual seeking E2 status expedite the Form I-129?

An employer can file a Request for Premium Processing Service, Form I-907, with the appropriate fee, concurrently with Form I-129 or after receiving the receipt notice for Form I-129, at the USCIS location where the I-129 was filed. For more information on premium processing, please see our website at www.uscis.gov.

Note: The processing time for the Form I-907 is usually 15 calendar days. If USCIS does not adjudicate the form within 15 calendar days, the fee will be refunded.

How can an employer check on the status of a pending Form I-129?

An employer should be encouraged to check on the status of a pending Form I-129 by using the case status online system via the USCIS web site. However, some other options are outlined in the following table:

If the employer…	Then the employer…
Does not receive a decision within the estimated time annotated on their receipt notice	• Should call the USCIS Service Center at the phone number listed on their receipt notice; Or • Send a written inquiry to the address on the receipt notice.
Filed Form I-907 with the Form I-129	Can forward an inquiry to the e-mail address of the USCIS Service Center where the Form I-129 and Form I-907 was filed. The following are the e-mail addresses for the USCIS Service Centers concerning "E" status: • Vermont Service Center VSC-Premium.Processing@dhs.gov • California Service Center CSC-Premium.Processing@dhs.gov

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Can the E2 employee file the Form I-129 for himself or herself?

No. The E2 employer or the employer abroad must always file the Form I-129 on behalf of an E2 employee.

What requirements must an individual meet to become an E2 Treaty Investor?

In order to obtain an E2 Treaty Investor status, one must meet the following eligibility requirements:

- A treaty, with treaty investor provisions, exists between United States and foreign state;
- The individual and/or business possess the nationality of the treaty country;
- Has invested or is actively in the process of investing a substantial amount of capital in a bona fide enterprise in the United States;
- Is seeking entry solely to develop and direct the enterprise; and
- Intends to depart the United States upon the expiration or termination of treaty investor (E2) status.

Note: A substantial amount of capital is distinct from a relatively small amount of capital in a marginal enterprise that is solely for the purpose of earning a living.

What requirements must the employee meet to become an E2 employee?

In order to obtain E2 employee status, one must meet the following eligibility requirements:

- The employee must be a national of the treaty country;
- The employee's employer must either be in valid E2 status, or if outside of the U.S., the employer is classifiable under E2 status;
- The employee is coming to the United States to fill an executive or supervisory position; or has special qualifications essential to the firm's operations in the United States; and
- The beneficiary intends to depart the United States when the E2 status terminates.

What initial evidence or documents must be filed with the E2 Nonimmigrant Visa Application at the U.S. Consulate?

The individual should be directed to the U.S. consulate nearest the individual's place of residence or to the Department of State's website at www.state.gov.

Can one petition be filed for the E2 employer and employee?

No. Separate petitions must be filed for employer and employee. The filing and approval of the employer's Form I-129 must precede the employee's filing of the Form I-129.

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Changing Status/Changing Employers/Extension of Stay/Travel/Intent to Become Permanent Resident

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Can the E2 who is an employee change employers and remain in E status?

An E2 employee cannot change employers and remain in E2 status. However, another employer may sponsor the employee for E2 status. USCIS must approve any substantive changes in the terms or conditions of E status prior to the change of employment.

Can the E2 who is an employee work for more than one employer?

No. An E2 employee can only work for the employer that filed the petition or one of the employer's affiliates, subsidiaries, or branches.

What is the initial period of admission granted to the E2 nonimmigrant?

An E2 nonimmigrant is usually granted an initial period of admission of 2 years.

What is the maximum period of stay granted to the E2?

E2 Treaty Investors do not have a maximum period of stay.

Note: E2 Treaty Investors involved in start-up activities only receive 2 years since it is presumed they will conclude their activities in a two year period.

What is an employer held liable for, after the E2 is in their employ?

An employer petitioning for the E2 has employment responsibilities not covered by immigration law. These inquiries should be directed to the Department of Labor.

How can the E2 extend their status if their status is expiring?

An extension of stay for an E2 may be authorized in increments of up to two years. Each extension must be applied for.

Can an E2 travel outside of the U.S. and reenter with the same status?

Yes. An E2 visa allows an alien holding that status to reenter the U.S. with a valid E2 visa and a valid passport.

Can an individual seeking an E2 or an employer petitioning for E2 employee file the Form I-129 petition for an E2 with the intent of ultimately petitioning for permanent resident status?

An E2 alien shall maintain an intention to depart the United States upon expiration or termination of their E2 status. When applying for the temporary visa, nearly all nonimmigrant workers must prove that they only intend to work in the U.S. for a temporary period of time.
However, E2 nonimmigrant workers can be beneficiaries of an immigrant visa petition, or take other steps toward "lawful permanent resident" status without affecting their nonimmigrant, temporary worker visa status.

Note: "Intent" as used here only applies to the employer's intentions at the time of the filing of Form I-129.

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How do you change the status of someone who is already in another valid nonimmigrant status to an E2 nonimmigrant status?

If the beneficiary is not in one of the visa categories listed below, follow the process for applying for an initial E2 visa.

If the beneficiary is in C, D, K, S, or J visa categories, see below:

C Visa: The beneficiary cannot change status.

D Visa: The beneficiary cannot change status.

K-1/K-2: The beneficiary cannot change status.
K-3/K-4: The beneficiary cannot change status while physically present in the U.S.

S Visa: The beneficiary cannot change status.

J Visa: The beneficiary cannot change status if subject to the two-year foreign residency requirement unless he/she returns home and physically resides in his/her country for 2 years following departure from the U.S., or obtains a waiver of the two-year residency requirement.

As noted below, most J-1 waiver applications require filing Form DS-3035 with the Department of State (DOS). For more information on the requirements for filing Form DS-3035, please see the DOS J-1 visa waiver website.
There are 5 kinds of J-1 waivers:

- Persecution – You would be subject to persecution on account of race, religion, or political opinion if you were to return to your country of residence. To apply, you would file Form DS-3035 with the DOS, and then file Form I-612 with USCIS.
- Hardship – Departure from the U.S. would impose exceptional hardship on your U.S. Citizen/Lawful Permanent Resident spouse or child. To apply, you would file Form DS-3035 with the DOS, and then file Form I-612 with USCIS.
- No objection – Your country issues a "no objection statement" that states that your country does not object to the waiver. To apply, first you would file Form DS-3035 with the DOS, or at the U.S. consulate abroad.
- Request by U.S. agency – This waiver is initiated by a U.S. agency showing that the waiver is in the public interest and that requiring the J-1 to return to his/her country for 2 years would be "clearly detrimental" to the official interest of the agency. Filing Form DS-3035 with the DOS is also required for this waiver.
- Conrad State 30 Program – For medical graduates who have agreed to practice medicine for at least 3 years in a medically underserved area. For this waiver, the J-1 applicant **would apply with the state public health department, and then file Form I-612 with USCIS.**

Waiver applications and eligibility requirements are complex. It may be in your best interest to seek legal advice from a licensed immigration attorney or from a nonprofit agency accredited by the Board of Immigration Appeals.

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Family Members of E-2s

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How can an E2 nonimmigrant bring family members to the U.S. or change the status of family members in the U.S.?

In order for an E2 to obtain an E2 visa or status for their dependents please use the process in the following table:

If the E2's dependents are….	Then the E2's dependents should….
Inside the U.S. in a valid nonimmigrant status	File one Application to Extend or Change Nonimmigrant Status (Form I-539) for all dependents either: • With the E2's Form I-129 or • Separately upon approval of E2's Form I-129 at the USCIS Service Center that has jurisdiction where the dependents reside.
Inside the U.S. out of status	The beneficiary must depart the U.S. and apply for a visa at the U.S. consulate abroad.
Outside the U.S.	Contact the nearest U.S. Consulate to find out the procedures to obtain a nonimmigrant visa.

Note: The term "dependents" as used in this question is defined as the spouse and unmarried children under the age of 21 of an E2 nonimmigrant.

Can the dependents of the E2 extend their stay?

The dependents can extend their stay to remain with the principal E2 status. They must use Form I-539 to apply.

Can the dependents of the E2 work and/or go to school in the U.S.?

The husband or wife of an E2 may be authorized to work in the U.S. They must use Form I-765 to apply. In addition, they must apply under category (a)(17) in question 16 of the form. The other dependents may not work in the U.S.

As long as the dependents are in E2 status, they can attend school without changing to another nonimmigrant status.

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Chapter 3 EB5 Employment-Based Alien Entrepreneurs

OVERVIEW

The "employment creation" visa category is for a foreign national who invests $1 million in a new enterprise that employs 10 U.S. workers, not including the immigrant, the immigrant's spouse, or the immigrant's children. The amount of the investment only needs to be $500,000 in a targeted employment area. A "targeted employment area" is a rural area or other designated area where the unemployment rate equals 150 percent of the national average.

Immigrant visas for individuals who invest in targeted areas are limited to 3,000 per year. To obtain an employment-creation immigrant visa, a foreign national must submit a Form I-526, “Immigrant Petition by Alien Entrepreneur,” to USCIS. If USCIS approves Form I-526, the foreign national may obtain permanent resident status, on a conditional basis, for two years. Prior to the expiration of the two-year period, the individual must apply to USCIS to remove the conditional basis.

There is also an Immigrant Investor Pilot Program. This Pilot Program established the creation of Regional Centers to focus investment in geographic areas. The individual investor must meet all the criteria of employment creation investors except he or she can demonstrate that investment in the regional center will create jobs indirectly beyond the commercial enterprise.

What information are you seeking? (Please choose one of the following options)

Definitions

Process and Evidence Requirements

Filing Process Questions for Conditional Permanent Residence

Filing and Evidence Requirements for Removal of Conditions

Immigrant Investor Regional Center Pilot Program FAQs

Other FAQs

Back to: Nonimmigrant Treaty Traders and EB-5s

Definitions

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What does “capital” mean?

Capital means cash, equipment, inventory, other tangible property, cash equivalents, and indebtedness secured by assets owned by the alien entrepreneur that were acquired by lawful means.

What does “invest” mean?

Invest means to contribute capital. This can be in the form of cash, equipment, inventory, and any debt secured by assets owned by the entrepreneur for which he is personally and primarily liable. Any loan, promissory note, mortgage, or other debt arrangement secured by the assets of the newly created enterprise does not constitute an investment. Likewise, any loan or debt arrangement between the entrepreneur and the newly created enterprise does not constitute an investment.

Note: A contribution of capital in exchange for a note, bond, convertible debt, obligation, or any other debt arrangement between the alien entrepreneur and the new commercial enterprise does not constitute a contribution of capital.

What does “commercial enterprise” mean?

Commercial enterprise means any for-profit, lawful activity, such as:

- a newly created business, or
- the purchase and restructuring of an existing business such that a new commercial enterprise results, or
- the expansion of an existing business such that there is a 40% increase in the net worth or in the number of employees.

What areas are considered “targeted employment areas”?

A targeted employment area is considered an area that, at the time of investment, is a rural area or an area that has experienced high unemployment of at least 150 per cent of the national average rate.

What areas are considered “rural areas”?

Rural area means any area not within either a metropolitan statistical area (as designated by the Office of Management and Budget) or the outer boundary of any city or town having a population of 20,000 or more.

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What is a “troubled business”?

A troubled business is a business that has:

- Been in existence for at least two years;
- Incurred a net loss for accounting purposes during the 12 or 24 month period prior to the priority date on the alien entrepreneur's Form I-526; and
- The loss for such period is at least equal to 20 percent of the troubled business's net worth prior to such loss.

Who are “qualified employees?

Qualified employee means a United States citizen, a lawful permanent resident, or other immigrants employed lawfully in the United States.

A qualified employee does not include the alien entrepreneur, his/her spouse or children (even if they are U.S. citizens or permanent residents), or any nonimmigrant.

What is a “conditional permanent resident”?

A conditional permanent resident is an alien who has been lawfully admitted for permanent residence, except that a conditional permanent resident is also subject to certain conditions and responsibilities set forth in immigration law.

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Process and Evidence Requirements

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Can an alien filing under this classification apply for him/herself?

Yes. The employment-creation visa category was implemented expressly to allow alien investors seeking to engage in a commercial enterprise in the U.S. to immigrate here permanently.

Is it necessary to obtain a labor certification when filing as an alien entrepreneur?

No. A labor certification is not necessary since there is generally not an adverse effect on the wages of U.S. workers and since this is a classification based on investment and employment creation and not the alien's employment-based skills.

What are the initial requirements for the alien entrepreneur?

To be initially eligible for the alien entrepreneur classification, an alien must meet the following:

- Established a new commercial enterprise:
    1. In which the alien will engage in a managerial or policy-making capacity;
    2. In which the alien has invested or is actively in the process of investing the amount required for the area in which the enterprise is located;
    3. Which will benefit the U.S. economy; and
    4. Which will create full-time employment in the U.S. for at least 10 U.S. citizens, permanent residents, or other immigrants authorized for employment.

Note: Unless adjusted downward for targeted areas or upward for areas of high employment, the amount of investment shall be $1 million.

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What initial evidence must the alien entrepreneur seeking conditional permanent residency provide to USCIS?

- In order to demonstrate establishment of new commercial enterprise, the alien must provide:

    A. An organizational document such as:
        1. Copies of articles of incorporation,
        2. Certificate of merger or consolidation,
        3. Partnership agreement,
        4. Certificate of limited partnership,
        5. Joint venture agreement,
        6. Business trust agreement; and

    B. A certificate evidencing authority to do business in a state or municipality, or if such is not required, a statement to that effect; or

- Evidence that the required amount of capital has been transferred to an existing business resulting in a substantial increase in the net worth or number of employees, or both. This evidence must be in the form of:

    A. Stock purchase agreements,
    B. Investment agreements
    C. Certified financial reports,
    D. Payroll records; or
    E. Similar instruments, such as agreements or documents evidencing the investment and the resulting substantial change.

- In order to demonstrate that the alien entrepreneur has invested or is actively in the process of investing the amount required for the area in which the business is located the alien can provide evidence from the list below or evidence similar to:

    A. Copies of bank statements,
    B. Evidence of assets that have been purchased for use in the enterprise,
    C. Evidence of property transferred from abroad for use in the enterprise,
    D. Evidence of monies transferred or committed to be transferred to the new commercial enterprise in exchange for shares of stock,
    E. Any loan or mortgage, promissory note, security agreement, or other evidence of borrowing that is secured by assets of the petitioner and not secured by assets of the newly created enterprise.

Answer continues on next page

- In order to demonstrate capital obtained through lawful means, the alien must provide, if applicable, the following evidence:

    A. Foreign business registration records,
    B. Tax returns of any kind filed within the last five years in or outside the United States,
    C. Other sources of capital,
    D. Certified copies of any judgment, pending governmental civil or criminal actions, or private civil actions against the petitioner from any court in or outside the United States within the past 15 years.
    E. Where the source of the capital is from the sale of real estate or a business, copies of the sales contracts and/or deeds.

- In order to demonstrate that the enterprise will create at least 10 full-time positions for U.S. citizens, permanent residents, or aliens lawfully authorized to be employed (except yourself, your spouse, sons, or daughters, and any nonimmigrant aliens). The alien can submit the following:

    A. Copies of relevant tax records,
    B. Forms I-9, pay-stubs and payroll records, or other similar documents, if the employees have already been hired, or
    C. A comprehensive business plan showing that due to the nature and size of the newly created business at least 10 qualifying employees will be needed, including the approximate dates within the next two years that such employees will be hired.
        a. Such a comprehensive business plan may include, if applicable, the following: description of the business, description of the organizational structure, market analysis, marketing strategy, list of required permits and licenses obtained description of the manufacturing or production process, staffing requirements, and sales, cost, and income projections.
    D. And if the commercial enterprise qualifies as a troubled business, evidence to show that the existing employees will be retained, such as a comprehensive business plan.

- In order to demonstrate that you are or will be engaged in the management of the enterprise, either through the exercise of day-to-day managerial control or through policy formulation, the alien can submit evidence that may include:

    A. A statement of your position title and a complete description of your duties,
    B. Evidence that you are a corporate officer or hold a seat on the board of directors, or
    C. If the new enterprise is a partnership, evidence that you are engaged in either direct management or policy-making activities.

- If applicable, to demonstrate that the enterprise has been established in a targeted employment area, the following evidence may be submitted:

    A. Evidence about the statistical area from the U.S. Census Bureau and a letter from the state agency designating the area as one with high unemployment and the method by which the unemployment statistics were obtained, including a description of the boundaries.

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Filing Process Questions for Conditional Permanent Residence

How does an alien apply for conditional permanent residency based on employment creation?

Is the alien filing under this classification eligible to file Form I-485, Application to Register Permanent Residence or to Adjust Status, concurrently with Form I-526, Immigrant Petition by Alien Entrepreneur?

Does an alien entrepreneur have to wait for a visa number to become available before filing Form I-485?

How can the alien entrepreneur check for visa availability?

Where does an alien entrepreneur file the Form I-526, Immigrant Petition by Alien Entrepreneur?

What is the filing fee for Form I-526?

Where does an alien entrepreneur file Form I-485, Application to Register Permanent Residence or to Adjust Status?

What is the filing fee for Form I-485?

How can I check on the status of Form I-526?

If mailing a status inquiry, what information should I include?

Can the spouse and unmarried children under 21 of an alien entrepreneur gain permanent residency through this category? If so, what and when can they file?

Once Form I-485 is approved, what immigrant classification will be given to the alien entrepreneur and qualifying dependents?

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How does an alien apply for conditional permanent residency based on employment creation?

There are two distinct pathways for an alien investor to gain lawful permanent residence: the Basic Program and the Regional Center Pilot Program. Each alien investor must file Form I-526 to establish eligibility under either the Basic Program or the Regional Center Pilot Program. The alien seeking permanent residency must follow the process in the following table:

Step	Action
1	The alien files a Form I-526, Immigrant Petition by Alien Entrepreneur, with USCIS.
2	Upon approval of I-526, the alien files Form I-485, Application to Register Permanent Residence or Adjust Status, if a visa number is available and the individual is in the U.S. If the alien is outside the United States when an immigrant visa number becomes available, he or she will be notified and must complete the process at his or her nearest U.S. consulate office.
3	The alien beneficiary is granted conditional permanent residency for a two-year period. They receive proof of permanent residence, an I-551 stamp, at the port of entry or at the local USCIS office, which is contingent upon whether or not the individual received an immigrant visa abroad or adjusted status in the U.S.
4	Ninety days before the two-year anniversary of being granted conditional permanent residency, the alien entrepreneur must file a Form I-829, Petition by Entrepreneur to Remove Conditions, at the California Service Center.

Is the alien filing under this classification eligible to file Form I-485, Application to Register Permanent Residence or to Adjust Status, concurrently with Form I-526, Immigrant Petition by Alien Entrepreneur?

No. The privilege of concurrently filing Form I-485 with an immigrant petition does not apply to the alien entrepreneur filing Form I-526.

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Does an alien entrepreneur have to wait for a visa number to become available before filing Form I-485?

Yes. The alien entrepreneur classification, which falls under the EB-5 visa category, is subject to visa limitations, and therefore an alien entrepreneur would have to wait for a visa to become available before filing for adjustment of status.

How can the alien entrepreneur check for visa availability?

The employer or the self-petitioning alien can check for visa availability by accessing the Department of State's Visa Bulletin on their website. Beginning with the October 2015 visa bulletin, the Department of State will publish two charts:

- An "Application Final Action Dates" chart, which shows what priority dates are currently for the purpose of issuing immigrant visas and when individuals may file their adjustment of status application, and
- A "Dates for Filing Visa Applications" chart, indicating when immigrant visa applicants should be notified to assemble and submit required documentation to the National Visa Center.

If USCIS determines that there are more immigrant visas available for the fiscal year than there are known applicants for such visas, the "Dates for Filing Visa Applications" chart" may be used to determine when to file an adjustment of status application with USCIS.

Where does an alien entrepreneur file the Form I-526, Immigrant Petition by Alien Entrepreneur?

Note: For instructions on how to file Form I-526, see the USCIS website at www.uscis.gov/i-526 and provide the client with information on the "Where to File" section

What is the filing fee for Form I-526?

Note: For instructions on the fiing fee for Form I-526, see the USCIS website at www.uscis.gov/i-526.

Where does an alien entrepreneur file Form I-485, Application to Register Permanent Residence or to Adjust Status?

Note: For instructions on how to file Form I-485, see the USCIS website at www.uscis.gov/i-485 and provide the client with information on the "Where to File" section

What is the filing fee for Form I-485?

Note: For instructions on the fiing fee for Form I-485, see the USCIS website at www.uscis.gov/i-485.

How can I check on the status of Form I-526?

Please check the processing time on our website at https://egov.uscis.gov/cris/processTimesDisplay.do. If Form I-526 is beyond posted processing times, you may send a status inquiry email to the following address:
USCIS.ImmigrantInvestorProgram@uscis.dhs.gov.

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If mailing a status inquiry, what information should I include?

You should include the following information:

- The alien's current name and address and, if different, the alien's name as it appears on the application;
- The alien number, which is an 8 or 9 digit number following the letter "A", assigned to the employee or to their application
- The alien's date of birth;
- The date and place where their application or petition was filed;
- The receipt number from the receipt notice issued by USCIS for the application or petition; and
- A copy of the most recent notice sent to you by USCIS on your case, if you have received one.

Can the spouse and unmarried children under 21 of an alien entrepreneur gain permanent residency through this category? If so, what and when can they file?

Yes, the spouse and unmarried children under 21 of an employment-creation alien can gain permanent residency based on the principal alien.

If dependents file subsequent to the principal alien filing the I-485, dependents must wait until the principal applicant receives a Form I-797, Notice of Action from USCIS. Thereafter, dependents must include a copy of the principal applicant's Form I-797 with their filings. The principal's Notice of Action will facilitate matching dependent's subsequent filings with principal's file, thereby reducing the chances of delays in the file routing.

Once Form I-485 is approved, what immigrant classification will be given to the alien entrepreneur and qualifying dependents?

The following table indicates the immigrant classification that will be given to alien entrepreneurs as well as their qualifying dependents either entering the U.S. with an immigrant visa or adjusting status in the U.S.

If the alien is an Employment-creation alien immigrant (not in a targeted area), then the classification granted to employment creation aliens and their dependents would be:

- For those admitted to U.S. with a immigrant visa:
  - C51 Employment creation alien
  - C52 Spouse of an Employment creation alien
  - C53 Child of an Employment creation alien
- For those who adjusted status in the U.S.:
  - C56 Employment creation alien
  - C57 Spouse of an Employment creation alien
  - C58 Child of an Employment creation alien

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Filing and Evidence Requirements for Removal of Conditions

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What are the initial eligibility requirements for the alien entrepreneur seeking to remove conditions?

In order to remove conditions, an alien entrepreneur must meet the following initial eligibility requirements:

- Must have been granted conditional permanent residence; and
- Must have evidence of a commercial enterprise.

What initial evidence must the alien entrepreneur seeking to remove conditions provide to USCIS?

- In order to prove that the alien entrepreneur is a conditional permanent resident he/she should include a copy of their Permanent Resident Card and if applicable, copies of the permanent resident card for spouse and child or children.

- In order to show evidence of commercial enterprise evidence of the following must be submitted:

    A. Evidence that the alien established a commercial enterprise. Such evidence includes but is not limited to federal tax returns;

    B. Evidence that the alien invested or was actively in the process of investing the amount of capital required for the location of the enterprise. Such evidence includes but is not limited to an audited financial statement; and

    C. Evidence of the number of full-time employees at the beginning of the investment and at present. Such evidence includes but is not limited to:

        1. Payroll records;
        2. Relevant tax documents; and
        3. I-9 Forms.

    D. Evidence that the alien sustained the enterprise and the investment in it throughout the alien's period of conditional permanent residence. Examples of such evidence are:

        1. Bank statements;
        2. Invoices and receipts;
        3. Contracts;
        4. Business licenses; and
        5. Federal or state income tax returns or quarterly tax statements.

How and when does the alien entrepreneur file to remove the conditions from their permanent residency?

For removal of conditional residency status, Form I-829, Petition by Entrepreneur to Remove Conditions, is submitted within the 90-day period preceding the second anniversary of his/her admission to the U.S. as a conditional permanent resident. Form I-829 is to be filed with the California Service Center. Petitioner's spouse and children may be included in the petition to remove conditions.

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Where does the alien entrepreneur file Form I-829?

Note: For instructions on how to file Form I-829, see the USCIS website at www.uscis.gov/i-829 and provide the client with information on the "Where to File" section

What is the filing fee for Form I-829?

Note: For instructions on the fiing fee for Form I-829, see the USCIS website at www.uscis.gov/i-829.

Is it necessary for the alien entrepreneur to file a separate Form I-829 for his or her dependents?

No. They should be included in the conditional resident's petition on Form I-829, Part 3 and Part 4.

Can only the spouse and minor children of an alien entrepreneur have conditions removed from permanent resident card?

No. The following individuals may be included in the conditional resident's petition or may file a separate petition on Form I-829:

- Children who have reached the age of 21;
- Children who have married during the period of conditional permanent residence; and
- The former spouse of an entrepreneur, who was divorced from the entrepreneur during the period of conditional residence.

Once Form I-829 is approved, what immigrant classification will be given to the alien entrepreneur and qualifying dependents?

Once the I-829 is approved, the alien entrepreneur and qualifying dependents will receive the following immigrant classifications:

- E56 Employment creation immigrant
- E57 Spouse of an employment creation immigrant alien
- E58 Child of an employment creation immigrant alien

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Immigrant Investor Regional Center Pilot Program FAQs

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What is the Regional Center Pilot Program?

The Regional Center Pilot Program differs in certain ways from the standard immigrant-investor visa. The Pilot Program was established to achieve increased economic activity and job creation by encouraging investors to invest in economic units known as "Regional Centers." Regional Center designation is approved by USCIS and is intended to provide a coordinated focus of foreign investment towards specific geographic regions. Up to 3,000 visas may be set aside annually for the Pilot Program. Alien entrepreneurs may invest in any of the Regional Centers that currently exist to qualify for their conditional permanent resident status.

What is a Regional Center?

A Regional Center is defined as any economic unit, public or private, engaged in the promotion of economic growth, including increased export sales (if applicable), improved regional productivity, job creation, and increased domestic capital investment.

How does a Regional Center qualify for the Pilot Program?

The basic requirements for Regional Centers wishing to participate in the Pilot Program are as follows:

- Focus on a geographic region;
- Promote economic growth through increased export sales, **if applicable**;
- Promote improved regional productivity;
- Create a minimum of 10 jobs directly or indirectly per investor;
- Increase domestic capital investment;
- Be promoted and publicized to prospective investors;
- Have a positive impact on the regional or national economy as demonstrated by such factors as increased household earnings, greater demand for business services, utilities maintenance and repair, and construction jobs both in and around the center;
- Is supported by economically or statistically valid forecasting tools.

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What should a Regional Center designation proposal include?

The principals of a proposed Regional Center should submit a proposal that:

- Clearly describes how the regional center focuses on a geographical region of the United States, and how it will promote economic growth through increased export sales, improved regional productivity, job creation, and increased domestic capital investment;
- Provides in verifiable detail how jobs will be created indirectly;
- Provides a detailed statement regarding the amount and source of capital which has been committed to the regional center, as well as a description of the promotional efforts taken and planned by the sponsors of the regional center;
- Contains a detailed prediction regarding the manner in which the regional center will have a positive impact on the regional or national economy in general as reflected by such factors as increased household earnings, jobs, greater demand for business services, utilities, maintenance and repair, and construction both within and without the regional center; and
- Is supported by economically or statistically valid forecasting tools, including but not limited to feasibility studies, analyses of foreign and domestic markets for the goods or services to be exported, and/or indirect job creation multipliers.

What is the process to apply for Regional Center designation?

To request Regional Center designation, Form I-924 must be filed with USCIS, along with the required fee.

What are the requirements for an investor in the Pilot Program?

The requirements for an investor in the Pilot Program are essentially the same as in the basic EB-5 investor program except the Pilot Program allows for a less restrictive requirement of “indirect” rather than “direct” job creation. The capital investment requirement for any EB-5 investor, inside or outside a Regional Center, is $1 million or $500,000 for an investment in a Targeted Employment Area or a Rural Area. To apply, any EB-5 investor, inside or outside a Regional Center, submits Form I-526 to USCIS. For the Pilot Program, the investor should demonstrate that his or her qualifying investment is within an approved Regional Center and that the investment will create jobs indirectly beyond the commercial enterprise.

How can the investor show that the investment will result in indirect job creation?

The requirement of creating at least 10 new full-time jobs may be satisfied by showing that, as a result of the investment and the activities of the new enterprise, at least 10 jobs will be created indirectly through an employment creation multiplier effect. To show that 10 or more jobs are actually created indirectly by the commercial enterprise, reasonable methodologies may be used, such as multiplier tables, feasibility studies, analysis of foreign and domestic markets for the goods or services to be exported, and other economically or statistically valid forecasting methods that support the likelihood that the commercial enterprise will result in increased employment.

Does the Regional Center Pilot Program have an expiration date?

Yes. Pending a further extension, the Pilot Program was recently extended through December 11, 2015.

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Other FAQs

Where can I find additional information about the EB-5 visa classification?

Does an alien under this classification with a pending I-485 based on employment have to obtain work authorization to continue working in the U.S.?

Does an alien under this classification with a pending I-485 based on employment have to obtain advance parole prior to leaving the U.S. to reenter the U.S. after travel abroad?

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Where can I find additional information about the EB-5 visa classification?

If you wish to:

- Revise general contact information, such as attorney, address, phone number;
- Inquire about the status of Form I-526 or Form I-829 that is still pending and beyond posted processing times;
- Inquire about a pending Regional Center Proposal that is beyond posted processing time;
- Provide an updated G-28. (You must also mail an original Form G-28 as outlined in the G-28 filing instructions);
- Request expedited processing of already filed Forms I-526, I-829, or Regional Center Proposals;
- Bring to the attention of USCIS any EB-5 case decision or notice that appears to be in gross error;
- Make a request for suggested filing instructions and procedures for Regional Center Proposals, procedures and general Regional Center program information;
- Advise of any problems regarding receipt notices, such as instances where a petition receipt notice or ASC notice has not been received or the notice reflects incorrect information; or
- Advise of problems with the EB-5 related biometric processing,

Send an email to USCIS.ImmigrantInvestorProgram@dhs.gov.

Note:

- For general information regarding the EB-5 visa classification, refer callers to the USCIS home page, have callers select the “Green Card” hyperlink and then select “Green Card Through a Job” in the dropdown menu. Instruct callers to then select the link “Green Card Through Investment” and click on the “EB-5 Immigrant Investor” link that appears on the right hand side.
- For questions regarding future EB-5 Stakeholder Meetings, refer callers to the Office of Public Engagement at public.engagement@dhs.gov.

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Does an alien under this classification with a pending I-485 based on employment have to obtain work authorization to continue working in the U.S.?

An alien under this classification will have to obtain work authorization to work in the U.S. if they do not have one of the following:

- A valid H-1B visa or a valid L-1 visa.

Does an alien under this classification with a pending I-485 based on employment have to obtain advance parole prior to leaving the U.S. to reenter the U.S. after travel abroad?

An alien under this classification will have to obtain an advance parole prior to leaving the U.S. to reenter the U.S. after travel abroad if they do not have one of the following:

- A valid H-1B visa or a valid L-1 visa

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Disclaimer

The information contained here is a basic guide to help you become generally familiar with many of our rules and procedures. Immigration law can be complex, and it is impossible to describe every aspect of every process. After using this guide, the conclusion reached, based on your information, may not take certain factors such as arrests, convictions, deportations, removals or inadmissibility into consideration. If you have any such issue, this guide may not fully address your situation, as the full and correct answer may be significantly different.

This guide is not intended to provide legal advice. If you believe you may have an issue such as any described above, it may be beneficial to consider seeking legal advice from a reputable immigration practitioner such as a licensed attorney or nonprofit agency accredited by the Board of Immigration Appeals before seeking this or any immigration benefit.

For more information about immigration law and regulations, please see our website at www.uscis.gov.

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