COMING TO AMERICA

The E-2 Visa Process: For those from Canada, Europe and the World

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As a non-US citizen, the residents of many countries may be eligible for issuance of an E-2 Visa. For example, someone from Canada is eligible as a Treaty Investor, if you satisfy the following criteria:

(1) Own at least 50% of a business in the United States;

(2) invest an amount that is "more than marginal" for the type and size of the enterprise;

(3) plan to or actually do employ US workers (defined as US citizens or US permanent residents); and

(4) participate in the operations of the business on a regular/ on-going basis.

Some common questions I receive about these factors include:

(1) What kind of business can I own? The answer is anything that interests you. It can be a service or goods based business. The legal format of the business can be a sole proprietorship, partnership, LLC or a corporation. You can have partners/ additional shareholders, as long as you own a minimum of 50%; those partners/ shareholders can be US or Canadian citizens.

(2) How much do I have to invest? Although some attorneys have a bright-line rule regarding the investment amount, I apply a "reasonableness" standard to the amount. If you purchase a business for sale, the market value has already set the "reasonableness" of the investment. If you start your own business, it must be an amount that would be expected to be able to hit the ground running after the E-2 visa is issued. Note that the US Consulate will require that the investment be committed before issuing the E-2; presenting a bank account statement with a plan for investment is not sufficient. However, the Consulate will accept a business purchase contract that has the E-2 issuance as a condition precedent to final closure of escrow. Please consult with Mr. Hughes on this specific point, as he has had great success in having sellers accept these into purchase agreements.

(3) How many jobs do I have to create/ how many US workers do I need to employ? This answer will again be dependent on the type of business. However, the US business must be more than simply provide a pathway to moving to the US for the E-2 investor and his/ her family. The employees can be hourly/ salaried employees, or independent contractors.

(4) Do I really need to run the business? The answer is yes. The E-2 is issued only for active business management. You can employ an on-site manager, but the US government expects that you will materially participate in the business, to manage and grow your investment.

E-2 visas are issued only through the US Consulates in Vancouver and Toronto, depending upon your domicile in Canada, and can be granted for up to 5 years; extensions can be granted in additional 5-year increments. Spouses and minor children (defined as those unmarried children under age 21) can apply for E-2 dependents' visas as well. Once in the US, E-2 spouses have the option of applying for an Employment Authorization Card, which permits unrestricted US employment for that spouse. E-2 children cannot currently obtain such Employment Authorization, but may attend school (public or private at any level, including university/ college).

This is intended only to provide general information, and does not create an attorney-client relationship. I strongly encourage you to work with Mr. Hughes on the identification and purchase of a US business, as he has already valued the business, and determined its likelihood for ongoing success. Please contact myself or Mr. Hughes with any additional questions.

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