

# **E Visa Guidance and Frequently Asked Questions**

## **U.S. Embassy Buenos Aires**

### **Treaty Trader (E-1) Qualifications**

- (1) Requisite treaty exists (see 9 FAM 402.9-4(A) and 9 FAM 402.9-10);
- (2) Individual and/or business possess the nationality of the treaty country (see 9 FAM 402.9-4(B));
- (3) Activities constitute trade within the meaning of INA 101(a)(15)(E) (see 9 FAM 402.9-5(B));
- (4) Applicant must be coming to the United States solely to engage in substantial trade (see 9 FAM 402.9-5(C));
- (5) Trade is principally between the United States and the treaty country (see 9 FAM 402.9-5(D));
- (6) Applicant, if an employee, is destined to an executive/supervisory position or possesses skills essential to the firm's operations in the United States (see 9 FAM 402.9-7(B) and (C)); and
- (7) Applicant intends to depart the United States when the E-1 status terminates (see 9 FAM 402.9-4(C)).

### **Treaty Investor (E-2) Qualifications**

- (1) Requisite treaty exists (see 9 FAM 402.9-4(A) and 402.9-10);
- (2) Individual and/or business possess the nationality of the treaty country (see 9 FAM 402.9-4(B));
- (3) Applicant has invested or is actively in the process of investing (see 9 FAM 402.9-6(B));
- (4) Enterprise is a real and operating commercial enterprise (see 9 FAM 402.9-6(D));
- (5) Applicant's investment is substantial (see 9 FAM 402.9-6(E));
- (6) Investment is more than a marginal one solely for earning a living (see 9 FAM 402.9-6(F));
- (7) Applicant is in a position to "develop and direct" the enterprise (see 9 FAM 402.9-6(F));
- (8) Applicant, if an employee, is destined to an executive/supervisory position or possesses skills essential to the firm's operations in the United States (see 9 FAM 402.9-6(B) and (C)); and
- (9) Applicant intends to depart the United States when the E-2 status terminates (see 9 FAM 402.9-4(C)).

### **I received a change of status from the U.S. Citizenship and Immigration Service (USCIS). Is that all that I need in order to receive an E visa at your office?**

No. Investors or traders who have changed status in the United States with USCIS must follow the steps for all first-time applicants. Such a change of status remains valid only while the applicant remains in the United States. Once the applicant has left the United States, he or she

requires an E visa to return and resume the running of his or her business. Change of status does not guarantee the issuance of a visa, nor does it exempt the investor or trader from the normal process of filing documents in advance with the U.S. Embassy in Buenos Aires.

**Must the E-1 trading company exist and/or the E-2 investment have been made before the visa can be issued?**

Trade must already be established at the time of visa application. Investments, however, may be prospective, provided that the funds are irrevocably committed to the investment, contingent only upon the issuance of the visa. Investment funds may come from any country, including the United States, as long as they are controlled by the investor applicant.

**What is substantial trade?**

Substantial trade contemplates a continuous flow of trade items between the U.S. and the treaty country. This means numerous transactions rather than a single transaction, regardless of monetary value.

**What is a substantial amount of capital?**

There is no fixed amount which is considered substantial. A substantial amount of capital constitutes that amount which is sufficient to ensure the investor's financial commitment to the successful operation of the enterprise as measured by the proportionality test. This proportionality test compares the total amount invested in the enterprise with the cost of establishing a viable enterprise of the nature contemplated or the amount of capital needed to purchase an existing enterprise.

**What is "more than marginal"?**

The investment must do more than merely yield a return capable of supporting the investor and family. A marginal enterprise is an enterprise which does not have the capacity to generate significantly more than enough income to provide a living for the investor, family, and other alien employees.

**Are joint ventures permitted?**

Yes, provided that the business or individual investor applying for the visa is in a position to "develop and direct" the enterprise. The applicant is in such a position by controlling the enterprise through at least 50% ownership, possessing operational control through a marginal position or other corporate device, or by other means showing the applicant controls the enterprise.

### **How long may the Treaty Trader or Investor stay in the United States?**

The applicant must intend to depart the United States upon the conclusion of the commercial activities. Nevertheless, holders of E visas may reside in the United States as long as they meet E visa qualifications. For Argentines, the E visa is normally valid for 60 months.

“Essential employees” may remain only as long as their skills are required to operate the business, and only as long as the owner can show either that U.S. workers cannot be trained to duplicate the skills or that the owner is making reasonable efforts to train U.S. workers as replacements.

### **Is a visa available to the applicant’s spouse and children?**

Yes. Spouses and children under age 21 qualify for derivative E visas based upon the principal applicant’s qualification. It is not necessary that they hold the nationality of the principal applicant. Common law spouses and fiancés do not qualify for derivative status.

### **My spouse would like to work while in the United States. Is an E visa appropriate for that?**

Spouses may work in the United States if they have obtained an [Employment Authorization Card](#) from the U.S. Department of Homeland Security. They may apply for this card after they enter the United States. Dependent children may not work in the United States although they may attend school.

### **Can I request an expedited appointment for my E visa application?**

We receive many requests for expedited processing of E visa cases due to business-related purposes. Expedited appointments are generally reserved for those cases where there is an acute humanitarian need for urgent travel to the United States. The Department of State does not provide premium or expedited processing for an additional fee.