

E-1 Information

Description

Designed for use by business owners, managers, and employees in order to allow them to oversee a business that is engaged in substantial trade in the U.S.

Basic Requirements Summary

Applicants are not required to submit the typical I-129 Petition, rather, application procedures may be completed entirely abroad through a U.S. Consulate. The candidate need not maintain foreign residence as long as the person declares an intention to leave the U.S. upon the expiration of the visa.

Three Necessary Requirements

1. A treaty of Freedom, Commerce and Navigation (FCN) or Bilateral Investment Treaty (BIT) must exist between the U.S. and the specific foreign country X
2. The company ownership/control must be held by nationals of foreign country X
3. Each individual person seeking this status must be a citizen of country X

Treaty Requirement

The State Department provides the list of countries with which treaties exist. See the end of this document for a list of qualifying countries.

There are special conditions that exist with a limited number of countries

China, Eritrea, United Kingdom

(Please call us for an explanation of special conditions.)

Definition Requirements for Substantial Trade (E-1)

Trade is considered to be the purchase, sale, or exchange of goods or services

Examples of services: Data processing, law firms, advertising,
accounting, design, management firms

The company must show an "Exchange" between the US and its foreign location.

Example: A foreign company may not open a U.S. branch and employ mostly U.S. workers with a majority of the profits remaining in the U.S.

Substantial Trade may typically be determined by money and profits, or services directly exchanging or it may be argued that the existence of numerous contracts and sales volume will represent exchange even if it never leaves the U.S. The argument for the latter is that the foreign company will receive greater reputation and name recognition as the "exchange".

How much is Substantial?

Measured by volume, number of transactions, and continued course of trade. The flow of trade items must be existing, continuous, and numerous – a single transaction no matter how large will not constitute substantial trade.

Principal Involvement by U.S. company

More than 50% of the total volume of international trade must consist of trade between the U.S. and the treaty country

Typical Duties for Key Employees of E-1 Treaty Trader or Entity

1. Those performing supervisory or executive duties.
2. Those serving in lower positions with skills that are “essential to the successful operation of the enterprise”.

Note – skills with language are not recognized and the specialty skill must be directly essential to the company

Alternatives to the E-category

If a company or investor/trader is unable to qualify for either of the E category visas or if there is no treaty, then alternative visas may be appropriate:

L-1: Intra-company Transferees

B-1: Business Visitors

H-1B: Specialty Occupation

Validity Term

Initial period is 2 years; there are unlimited extensions available as long as requirements are met.

Extensions to the initial two-year period occur two ways.

1. Automatically if the alien leaves the U.S. and is readmitted
2. Through an application for extension (2 yr. increments) with the CIS

Dependents

Dependents (spouses and minor children) may accompany the primary visa holder. Dependent spouses of E-1 visa holders can obtain work authorization during their stay in the US. The expiration of the dependents' visas is co-terminus with the expiration date of the primary visa holder. In addition, the spouse and minor children of the principal E applicant can be granted dependent E status regardless of nationality.

The countries that maintain E-1 treaty status with the United States include:

- Argentina
- Australia
- Austria
- Belgium
- Bolivia
- Bosnia & Herzegovina
- Brunei
- Canada
- Chile
- China (Taiwan)
- Colombia
- Costa Rica
- Croatia
- Denmark
- Estonia
- Ethiopia
- Finland
- France
- Germany
- Greece
- Honduras
- Ireland
- Israel
- Italy
- Japan
- Jordan
- Korea (South)
- Latvia
- Liberia
- Luxembourg
- Macedonia
- Mexico
- Netherlands
- Norway
- Oman
- Pakistan
- Paraguay
- Philippines
- Singapore
- Slovenia
- Spain
- Suriname
- Sweden
- Switzerland
- Thailand
- Togo
- Turkey
- United Kingdom
- Yugoslavia