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**E2 Visa: A Useful Visa for Investors From Certain Countries**

At a time when it is increasingly difficult to get a valid visa into the U.S., there is a visa for investors from certain countries with which the United States has a special commercial treaty. These are known as E-1 (treaty-trader) and E2 (treaty investor) visas. If the country has the appropriate treaty with the U.S., nationals of that country may enter the U.S. for the purpose of directing and developing the operations of the enterprise (E-2) or for the purpose of conducting trade (E-1).

The E-2 visa applicant must show that he or she has invested or is in the process of investing a substantial amount of capital. The exact meaning of "substantial amount" is not defined but it is generally thought that amounts less than \$50,000 are too small to qualify.

However, the "substantiality" of the investment will depend upon how much is necessary to start a business in the particular field. So, for example, the cost of starting a franchise window dealership is likely to be less than the cost of opening an airline. The Consular officer in Poland told me plainly that with some fields like IT consulting, an investment of far less than \$50,000 might be enough. The amount necessary to invest in order to qualify for the visa will be less if the business requires less to get started.

Another requirement is that the money be already invested or in the process. The applicant must place at risk the investment, which means that he or she is subject to a loss of the capital if the investment fails. However, we have been able to use escrow accounts for this purpose. In other words, the money is sent into an escrow account and invested only if the visa is approved. CIS regulations state that this is acceptable.

The applicant can be either the owner of the enterprise or one of its workers. The owner and national of the treaty country must show that he controls the enterprise by showing ownership of at least 50% of the enterprise. The owner must also have operational control of the entity. If the applicant is not the investor or the trader, he must be employed in an executive or supervisory capacity, or possess skills that are highly specialized and essential to the operations of the commercial enterprise. A college degree is helpful but not a requirement. Generally managers or highly professional positions within companies qualify for an E visa.

If the applicant is outside the U.S., he or she can apply directly at the Consulate. An application with the Immigration Service first is not necessary, as it is with some other visas. If the applicant is in the U.S., he or she can apply for a change of status without leaving the U.S.

## Christopher A. Kerosky

**WARNING:** The following is article discussing legal issues. It is not intended to be a substitute for legal advice. We recommend that you get competent legal advice specific to your case. If you would like such advice from our office, call (415) 777-4445 or (916) 349-2900 or (408) 993-9737.

**CHRISTOPHER A. KEROSKY** of the law firm of **KEROSKY & ASSOCIATES** has practiced law since 1984 and has handled over 1000 immigration cases. He graduated from University of California, Berkeley Law School and was a former counsel for the U.S. Department of Justice in Washington D.C. His offices are in San Francisco and Santa Rosa.