Legal Fees:

E-2 Non-Immigrant Treaty Investor Visa:

Fees for Regional Centers differ, as there are so many; thus, what follows is an average fee

E-2 Treaty Trader or E-1 Treaty Investor Visa Application

Form DS 156 / Form DS 156E: $12,000-$18,000

With preparation and presentation of supporting evidence and file maintenance; legal fees for international business formation is separate and apart.

L-1, Intra-company Transferee, New Company

Form I-129; Form I-156: $15,000-20,000

With preparation and presentation of supporting evidence and file maintenance; legal fees for international business formation is separate and apart.

Government filing and medical examination fees are not included with legal fees.

JEGLAW, LTD

NON-IMMIGRANT INVESTOR OPTIONS

LAW OFFICE OF JON ERIC GARDE ESQ

4455 S. Pecos Rd. Ste B, Las Vegas, NV 89121
Phone: (702) 898-9540 • Fax: (702) 898-6980
Email: justice@jeglaw.com
Website: www.jeglaw.com

NON-IMMIGRANT INVESTOR OPTIONS

There are many reasons why a foreign investor seeking to establish a business in the United States would not want to immigrate as a permanent resident. Perhaps the investor does not want to worry about the need to mitigate taxation by the US federal government on worldwide income, (not that this isn't possible). Perhaps the investor simply wants to set up a business in the United States, spend most of his time in his country of origin, and have easy unrestricted access to the United States, as his or her nation of investment, without concern for a pathway to US citizenship. Whatever the reason may be, this brochure addresses three kinds of non-immigrant status that are commonly relied upon by foreign investors for admission to the United States for a much longer time than is permitted as a tourist. These are E-2 Treaty Traders, E-1 Treaty Investors, and L-1 Intra-company Transferees, which are discussed, in turn:

TREATY INVESTORS

An E-2 non-immigrant treaty investor visa is granted only to citizens of countries that have entered into a bilateral investment treaty with the United States, which includes NAFTA. A treaty investor visa is granted to non-immigrants for the purpose of making a "substantial investment" in the United States. A "substantial investment" is a "non-marginal" investment of sufficient size to support more than the investor and his or her family, a goal which, when a visa is applied for, must be projected to be realized within two to five

E-2 treaty investor visa. Once the INS is satisfied that the new company will be solvent, scrutiny is directed towards the L-1A visa holder's function as an executive, managerial or employee with specialized knowledge. This makes the L-1A visa usually more cost effective to many investors than the E-2 visa in terms of capital invested where start-up investment costs can be controlled. However, L visas and L status is extended for a maximum of 5 or 7 years, unlike the E-2 visa, which can be re-issued indefinitely, with E-2 status being extended indefinitely, so long as the business enterprise remains in operation at an equal or greater level then when first applied for.

The spouse and children of the L-1 non-immigrant visa holder may accompany the principle visa holder in L-2 derivative status. The L-2 spouse may apply for and be granted employment authorization. Although not authorized for employment under this status, derivative children may attend any public or private school without the restriction. Moreover, where multinational corporations have established operations both within the U.S. and Mexico, then, several managers or executives performing the same kind of employment may by sponsored for entry into the United States on the same petition, called a blanket petition, saving time, legal fees, and filing fees.

The relationship between US and foreign business entities may be close, as exemplified by a single multi-national corporation conducting business in both countries, or, affiliated companies may be loosely connected, as exemplified by one individual playing an executive role over two different sole proprietorships. Furthermore, the affiliated business entities need not be in the same line of business, nor do they need to conduct international trade or commerce with each other, as is required for treaty trader visas.

L-1 transferees have always been able to adjust status where US and corporate operations and relationships are well established. For new US companies or new divisions or operations within existing operations, eligibility is established by growth of ongoing business operations, allowing the L-1 intra-company transferee to adjust to permanent resident status under an EB-1 visa classification. Immigrating through a new US business or a new division of an existing US company is highly unadvisable, absent a sizable investment, as new enterprises and corporate expansions or reorganizations are highly scrutinized by adjudicators within the US Citizenship and Immigration Services, CIS, within the United States, and US consular officers at United States Embassies.

Moreover, so long as the business is entirely solvent, fully pays its taxes in the United States, and directly hires enough employees or indirectly uses the labor of subcontractor employees, so as to warrant true executive capacity or two levels of managerial capacity, start-up costs for an L-visa may be less than that required for the E-2 visa. This is because the amount of capital invested is not directly at issue, as is the case with the years, depending upon the size and nature of the investment.

There is no number that defines "substantial" and "non-marginal", other than that the investment can be less than the $1,000,000 sum that is generally required or the $500,000 sum that is required for regional centers, high unemployment enterprise zones or rural communities.[1] Generally, a US consulate will apply stricter scrutiny over investments below $200,000, and a $250,000 investment is suggested.

Treaty investor enterprises must be entrepreneurial in character, and the investor applies for a treaty investor visa in order to be admitted to and remain within the United States in order to develop and direct his or her investment enterprise. Non-immigrant treaty investors must provide, directly or indirectly, employment for American workers. American workers are defined as those who permanently reside in the United States with unrestricted employment authorization, which include, for example, US citizens, lawful permanent residents, refugees, asylees, family unity beneficiaries, etc. The investor's spouse may apply for and be granted unrestricted right to work in the United States, unlike the investor, who must be employed solely to develop and direct the investment enterprise.

The treaty qualified investor should have a controlling interest in the enterprise, meaning that he or she can partner with US

---

[1] For a more detailed explanation of investment requirements for immigrants, please review the analysis within the companion brochure of JEGLAW LTD which explains immigrating through investment.

citizens or permanent residents or persons from non-treaty countries who will need to rely on another kind of status. An interest of less than 50% usually will mean that the applicant does not have the requisite qualifying control, particularly with smaller business. While much larger investments will allow less than 50% ownership to constitute functional control, investments that are this large usually qualify for immigrant investment. Of course, more than 50% ownership is a clear indication of control.

Non-immigrant treaty investor job creation is a much simpler issue than for immigrant investment. The requirement to provide employment to United States workers is distinguished from job creation within the United States economy, as required of immigrant investors. A business plan with a regional market analysis is helpful to prove the viability of investment for the non-immigrant treaty investor, but need be used to establish job creation within the regional and national economy, as is required for immigrant investors. Moreover, there is no set number of jobs that must be created to measure the sufficiency of the entrepreneurial enterprise that the treaty investor must develop and direct. However, an informal guideline is that at least two or three jobs must be created in the smallest contemplated treaty investment enterprise.

As with investment based immigration, funds must be irretrievably invested. Funds would include those secured by personal assets, personal funds, other unencumbered assets, a mortgage with the alien's personal dwelling used as collateral, or some similar

as managers must be functional or divisional managers also responsible for complex oversight and policy functions within their company unit or division. Managers of non-supervisorial or highly technical employees, (front-line managers), will not qualify. Intra company transferees must have worked outside of the United States for one continuous year with the related company within the three year period prior to entry into the U.S. under L-1 status. The foreign company where the L-1 applicant worked the qualifying year must be a parent, a branch, a subsidiary, or an affiliate, as defined under the Federal Internal Revenue Act. The one year of continuous employment outside of the US prior to admission as an L-1 intra-company transferee need not occur in the same country.

An L-1A non-immigrant intra-company transferee visa is granted for up to seven years to managers and executives, and an L-1B intra-company transferee visa is granted for five years for employees with specialized knowledge. L-1 visas are initially granted for one to three years, typically depending upon the quantity of capital invested in the US Company. Extensions are granted for periods of two years so long as operations and the qualifying corporate relationship are maintained by, both, the US and the overseas parent, branch, subsidiary, or affiliate. Extensions of L1A status differ little from the initial application; however, L-1B visas are carefully scrutinized for efforts to find or develop a US employee as a replacement. At time of application, the L visa applicant need demonstrate that if he or she does not immigrate, he or she will depart from the United States for at least a year before being allowed to re-enter again in L-1 status.

INTRA-COMPANY TRANSFEREES.

An L-1 non-immigrant intra-company transferee visa is temporarily issued for a period of five to seven years, and is commonly used by non-immigrant investors where their nation of origin does not have a qualifying treaty with the United States. This visa and its corresponding status focuses not merely on capital invested, but more so, it reviews the intending L-1 non-immigrant using a personnel analysis of the applicant's role within the international business entity, before and after coming to the United States. The L-1 is a flexible non-immigrant visa that is useful either to multi-national corporations wishing to transfer key personnel to the United States or to international entrepreneurs and owners of sole proprietorships in different countries, who wish to start up a new businesses or associate existing businesses in the United States with operations outside of the United States that pre-existed an application for L-1 status.

An "intra-company transferee" performs one of three kinds of occupational business functions: a manager, an executive, or an employee with specialized knowledge (i.e. proprietary knowledge of a product or production process). The intra-company transferee is admitted to the United States as a transferee within a multi-national company situated in this country and abroad or is transferred between two or more affiliated companies in the United States and another country. L-1 non-immigrant intra-company transferees, who are admitted for employment as executives, must work in a manner that requires complex oversight and policy making functions in the US Company. Those admitted

personal liability. A reasonable amount of cash, held in a business bank account or similar fund to be used for routine business operations, may be credited as investment capital. The E-2 investment must be close to the start of actual business operations, not simply in the stage of signing contracts, which may be broken. Uncommitted funds in a bank account do not represent an active investment, unless they are used in the routine operation of the business. An irrevocable escrow account may be created through the release of funds stipulated upon a E-2 treaty investor visa or status being granted, identifying capital reserves to be invested, and explained by a detailed business plan.

A non-immigrant treaty investor visa is granted for a five year period, and permits admission into the United States as a non-immigrant treaty investor in two year intervals. Both the visa and the two year admission can be extended indefinitely so long as the investment enterprise remains in existence as a real company with continued business activity and employment of workers. A treaty investor need not have an unabandoned foreign residence and ordinarily need have only an unequivocal intent to return to his or her country of nationality any time in the future while their enterprise remains intact or immediately after ceasing business activity. Moreover, the nationality of a spouse or child of an E-2 treaty investor is not material to the family member's classification.

E-2 treaty investors can be accompanied by E-2 employees, whose duties are executive, managerial or supervisory in character, or who possess "special expertise" that is "essential" to the firm's operation in the US, such as degree of proven expertise, uniqueness of specific skills, and length of experience with

the firm. Their presence is considered for a period of training for like US workers, and their salary should reflect their value to the investment enterprise. The employee must intend to depart US after upon the expiration of E status, and extensions of status are closely scrutinized.

TREATY TRADERS

E-1 non-immigrant treaty trader visas are to facilitate import/export, and are granted only to citizens of countries that have entered into a treaty of friendship and commerce with the United States, which includes NAFTA. Treaty trader visas are granted to non-immigrants to be admitted to the United States to either establish a new trading enterprise or to work within a pre-existing trading enterprise that conducts "substantial trade" between the United States and the non-immigrant's country of origin. Substantial trade is defined as encompassing over 50% of gross sales between the trade enterprise in the United States and the treaty country of the non-immigrant. While E-1 status is conceptually more straightforward than E-2 status, the documentation to evidence eligibility must be equally extensive.

Persons admitted to the United States with E-1 treaty trader status are not required to hire U.S. workers. The treaty trader's activity need be sufficient to support him or her and his or her family solely through the qualifying trade between the United States and the treaty country without need for outside employment, notwithstanding that his or her spouse may apply for and be granted unrestricted employment authorization within the United States. E-1 derivative children are entitled to attend any public or private school in the United States.

For newly formed trading enterprises, applicants should have a track record of trade between the United States and the treaty country, with six months being the optimum minimum period of review to determine if sufficient income can be derived by the trader to justify granting the visa. Trade may be in the form of tangible and intangible goods and services that are either imported to the United States from the treaty country or exported from the United States to the treaty country. Moreover, ample documentation of the trading enterprise's business formation in the United States and abroad, and documentation of ongoing qualifying trade must be provided and must also prove that the trade is not illegal and that funding sources are from only legal activity and not from criminal activity.

As with an E-2 investor, an E-1 non-immigrant treaty trader visa is granted for a five year period to permit admission to the United States as a non-immigrant treaty trader for a period of two years. Both the visa and the two year admission can be extended indefinitely so long as the trading enterprise remains in existence as a real company with continued trading activity sufficient to sustain the non-immigrant and his or her family. A treaty trader need not have an un-abandoned foreign residence and ordinarily need have only an unequivocal intent to return abroad any time in the future while their enterprise remains intact or immediately after ceasing business activity. Moreover, the nationality of a spouse or child of an E-1 treaty trader is not material to the family member's classification in E-1 non-immigrant treaty trader status.