



## **The United States Finalizes Its Welcome Notice to Israeli Investors: E-2 Visas Available in May**

By [John E. Exner IV](#) and [Frida P. Glucoft](#)

Pursuant to a recent announcement by the U.S. Embassy in Israel, E-2 Investor visas will be available to Israeli citizens starting May 1, 2019. While the bill granting Israeli citizens eligibility for the United States E-2 Treaty Investor visa was signed into law in 2012, the availability of visas was delayed by lengthy negotiations over the final terms of the reciprocal agreement between Israel and the United States. Fortunately, the terms of the reciprocal agreement between the two countries have now been finalized, allowing for the issuance of E-2 investor visas to Israel citizens starting in May.

The E-2 investor visa is available to citizens of qualifying countries who are actively engaged in the development and direction of a United States enterprise. In order to qualify for the E-2 visa, the foreign investor must have already invested, or be in the process of investing, a substantial amount of capital into the United States company. Although the list of qualifying nations for the E-2 visa includes over 70 countries, that list did not include Israel – until now.

### **THE E-2 TREATY INVESTOR VISA**

The E-2 visa allows a foreign investor, as well as foreign managerial, executive and essential employees of the company, to temporarily live and work in the United States in close proximity to the investment. The initial period of stay for E-2 visa holders depends largely on the reciprocal agreement between the United States and the foreign country, but may be issued for up to 5 years, and may be extended thereafter. Additionally, spouses and unmarried children under 21 years of age may join E-2 visa holders in the United States in derivative status, regardless of their nationality. Spouses of E visa holders are also eligible to apply for employment authorization in the United States and children are permitted to attend school.

There are several important criteria that must be met before the E-2 visa will be issued to a foreign investor and his or her employees. First, the qualifying investment must be “substantial.” This means that the investment must be sufficient to create an active business in the United States. The applicant for the visa must establish that the United States company is or will be financially capable of surviving in the industry in which it operates, and that it will create U.S. jobs for U.S. employees. Second, the investment cannot be “marginal.” This means that the investment cannot be a minimal investment made merely to support only the investor’s immediate family. Finally, the investment cannot be speculative or idle, but must be made into a new enterprise or the purchase of an existing enterprise. A significant percentage of the investment must be irrevocably committed to the development of the enterprise by the time that the E-2 visa application is submitted.

Nationality is also a critical element of E-2 visa eligibility. The investment must be made, and controlled by Israeli citizens. A partial investment in an ongoing enterprise in the United States may not qualify if majority owners of the company are not citizens of Israel. In setting these criteria, the U.S. government

aims to ensure that the investments associated with each new Israeli E-2 visa are likely to become direct, significant contributions to the development of a wide range of United States markets.

## THE MUTUAL BENEFITS TO ISRAEL AND THE UNITED STATES

The addition of Israel to the list of qualifying E-2 countries serves to greatly enhance the flow of Israeli innovation and investment into the United States, while providing Israeli-owned businesses and investors access to U.S. industries and markets. The United States also hopes to spawn further creative thinking and collaboration between the two nations, in an effort to stimulate both economies and foster critical information sharing.

For many years, Israel has been recognized throughout the world for its excellent service sector, as well as a world center for diamond cutting, polishing, and trade. In recent years however, Israel has also emerged as a world leader in software development, “high-technology electronic and biomedical equipment, metal products, processed foods, chemicals, and transport equipment.”<sup>1</sup> The U.S. State Department reports the following with respect to Israel’s expanding high-tech industry:

Israeli companies, particularly in the high-tech area, have in the past enjoyed considerable success raising money on Wall Street and other world financial markets; Israel has approximately the same number of companies listed on NASDAQ as the next three countries (Canada, Japan, and Ireland) combined. . . . Almost 45% of Israel’s exports are high tech. Most leading players, including Intel, Motorola, IBM, and Cisco have a presence in Israel.

## CONCLUSION

It is critical that the temporary E-2 visa not be confused with the immigrant visa program. The E-2 visa is a temporary U.S. work visa, and is not meant to be permanent. An application for an “immigrant visa” is an application for a permanent resident status, and has been the subject of significant attention in the past several years.

Effective May 1, 2019, E-2 visa applications may be filed for citizens of Israel who are principal investors, company executives and managers, and other essential company personnel, but require specific documentation and a keen eye for detail. For these reasons, Israeli nationals who plan to invest in, and establish businesses in the United States are encouraged to seek counsel from qualified and experienced U.S. immigration attorneys who are prepared to assist with the preparation and filing of E-2 visa applications.

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<sup>1</sup> See U.S. Department of State: Bureau of Near Eastern Affairs, Background Notes: Israel (Feb. 22, 2012), available at <http://www.state.gov/r/pa/ei/bgn/3581.htm#econ>.