Foreign Investors – Immigration through Investment

With our global economy, combined with favorable exchange rates, there is a growing demand by foreign nationals to acquire a business in the United States. In addition, many business owners are beginning to look beyond the U.S. borders as they search for suitable buyers of their businesses. One avenue to align foreign national buyers and U.S. sellers lies within the visa laws. Certain “business acquisition” visas allow business buyers to effectively short-cut the long immigration process if they invest in a U.S. business. There are several visa classifications to explore, but the most discussed is the E-2, Treaty Investor visa.

E-2 - Non-Immigrant “Treaty Investor” Visas: The E-2 visa is a non-immigrant, long-term, temporary visa that is issued to a person who makes a substantial investment in a business that will be directed and managed by the foreign buyer. “Substantial” is not defined by any minimal dollar amount but the State Department has published an illustrative scale that begins at a $50,000 cash investment level. As the cash investment increases, so does the allowable financing amount. For example, a business costing $100,000 may require a 75% cash investment, a business costing $1,000,000 would demand a cash investment in the 50-60% range and a business costing $10,000,000 may only require a 30% cash investment.

The investment must be active in nature and the buyer must not be investing in a marginal business solely for the purpose of creating a job for the buyer. Also, the buyer-investor must demonstrate that there is income from other sources to support the investor; or alternately, the investor must demonstrate that the business will expand job opportunities locally or have a significant impact on the local economy.

The E-2 visa has several advantages:

- Unlike many countries, there is no requirement that a U.S. citizen own any interest in the business;
- The investor may continue the E-2 visa status indefinitely by maintenance of the status of the business;
- The E-2 visa allows the investor to be actively employed in the business;
- Dependent spouses may also be permitted to work in the business;
- Spouses and dependent children may request visas;
- Additional E-2 visas may be available to key managerial employees who are determined to be necessary for the operation of the business;
- The investor, key employees and dependents may attend school on their E-2 visa status;
- E-2 visa holders may purchase homes and other real estate.

The application is not without pitfalls. For example, there is a requirement that the investor be legally committed to purchase the business by paying a deposit before the E-2 visa will be approved. To lessen exposure of loss in the event the visa is denied, the use of escrow accounts is recommended so the deposit is not released to the seller before the visa is approved.

Because the E-2 visa is a nonimmigrant visa, it must be renewed periodically. The E-2 visa is initially issued for a five-year period. Thereafter, the investor can obtain extensions for up to two years at a time. Since there is no limit on the number of extensions the investor may obtain, the “temporary” visa effectively becomes “long term.” Each of the requirements for obtaining the visa must be maintained throughout the visa’s term.

Before applying for a treaty investor visa, it is important to have a well constructed and documented business plan that outlines the investor’s knowledge and the background in the industry, as well as the strategic approach that will be followed. Because the laws are very complex and advance planning is required, it is recommended that all “Treaty Investors” seek legal advice before attempting to qualify for this visa status.

Please note that the above visa information is general information only and should not be acted upon without professional legal advice.