

JANUARY 2010

**US EMBASSY IN ROME, ITALY'S ANSWERS TO
AILA LIAISON QUESTIONS REGARDING
THE E-2 INVESTOR VISA**

Special considerations for E visa processing?

Embassy's Answer: E visa processing in Italy has been consolidated at the Consulate General in Milan and the Consular Section of Embassy Rome. Applicants for E visas that are resident in the consular districts of Florence or Naples must forward their application packets to Embassy Rome for processing. All E visa application packets must be mailed or couriered. For the Rome Consular Section E visa application packets should be mailed to the following address:

E Visa Processing
c/o Non-Immigrant Visa Unit
Consular Section
U.S. Embassy Rome
via V. Veneto, 121
00187 Roma

Applicants in the Milan Consular district should direct their application packets to:

E Visa Processing
c/o Non-Immigrant Visa Unit
U.S. Consulate General Milan
Via Principe Amedeo, 2/10
20121 Milano

Special procedures, documents and scheduling at post?

Embassy's Answer: All E visa applicants will be notified when the application packet is received. Processing time is currently 5 weeks. Following review of the documentation contained in the E visa packet, the visa applicant is scheduled a visa interview (usually within the 5 weeks processing time). In the event the application is refused for insufficiency of information, any resubmissions will be placed in the general processing queue in the order received, regardless of the original application date.

Most common preparation omission/error of counsel for E visa cases?

Embassy's Answer: One of the more common problems we encounter in E-visa applications is incomplete and/or poorly organized documentation (usually tax documents, bills of lading, photos of the business, applicant's resume, etc.) We encourage E visa applicants to submit their applications in a binder divided into sections clearly separated by lettered or numbered tabs, in order to ensure efficient and effective processing (a clear explanation is provided on our website). Applications not complying with this format will be accepted but may experience additional processing delays.

Inquiries regarding pending E visa applications or questions regarding E visa processing in Rome or Milan can be directed to RomeEvisas@state.gov or MilanEvisas@state.gov.

The Treaty Trader/Treaty Investor Section of the Visa Office will only respond to requests for the status of a pending application that has elapsed the standard five weeks processing time.

Outlook of “substantiality” at post?

Embassy’s Answer: A qualifying enterprise must either conduct “substantial trade” (E-1) primarily with the treaty country or must have been established through a “substantial investment” (E-2) by treaty country nationals.

Investment.

Embassy’s Answer: A prerequisite for establishing E-2 Treaty Investor eligibility is that the qualifying foreign national or company must have made a “substantial” investment in the United States or be actively in the process of making such an investment. Investment means the treaty investor’s placing of capital, including funds and other assets, at risk in the commercial sense with the objective of generating a profit. The treaty investor must be in possession of, and have control over, the capital invested. The “substantiality” of an investment is a flexible concept which requires no absolute minimum dollar amount. The Visa Section will evaluate whether the investment is “substantial” on the basis of the relationship to the total cost of either purchasing an established enterprise or creating the type of enterprise under consideration. For the investment to be considered “substantial” it must be sufficient to ensure the treaty investor’s financial commitment to the successful operation of the enterprise and of a magnitude to support the likelihood that the treaty investor will successfully develop and the direct the enterprise.

How is post looking at “marginality” at a time of economic crisis?

Embassy’s Answer: In addition to being “substantial,” a qualifying E-2 investment must not be in a “marginal” enterprise solely for the purpose of an individual investor’s earning a living. An investment generally will qualify as more than marginal if it will expand U.S. job opportunities, if it will generate income over and above the level of income needed to support the E-2 investor and his family. The visa

applicant may not overcome the “marginality requirement” by having substantial income from other sources, such that he need not rely on the investment enterprise to provide basic living expenses. To evaluate whether the E visa company overcomes this requirement, the Visa Section will consider the company’s projected future capacity, which should generally be realizable within the five years from the date the alien commences normal business activity of the enterprise. When dealing with real estate companies that reflect a loss on income taxes, the Visa Section will consider the fact that depreciation of an asset would not necessarily be indicative of the enterprise’s income, which is particularly true of assets like real property which are subject to market changes (especially during time of economic crisis).

However, if even discounting depreciation, the business is still operating at or near a loss, and not generating sufficient income to support more than the applicant, the investor would not be eligible for an E visa.

Rome Embassy’s attitude toward communication regarding a case *prior* to interview. Under what circumstances, if any, would post prefer to be notified regarding an upcoming interview?

Embassy’s Answer: Post requires, on standard basis, to receive E visa application packages prior to interviews for screening and reviewing purposes.

Are there any specific issues for or at the Embassy in Rome you would like to share or address with our members?

Embassy’s Answer: Post encourages all inquiries to be submitted to our public email Romevisa@state.gov. For E visa cases please direct inquiries to RomeEvisas@state.gov. Post kindly requests that questions from Post are responded to promptly to ensure that E visas are processed within our standard processing time. Companies that are applying for an E visa should be advised that just because a company is

incorporated in Italy this does not mean the company fulfills the nationality requirement of 9 FAM 41.51 as in complicated corporate structures where the company is sold on the international market, lawyers need to demonstrate that at least fifty percent of the company is Italian owned.