

E-2 Visa Status for Multiple Employers

Dear (attorney):

This is in response to your letter of October 24, 1995 regarding E-2 visa status for multiple employers. Specifically, you ask whether a nonimmigrant currently in the United States to develop and direct his own investment enterprise, may request consistent with his valid E-2 visa classification, classification as an E-2 employee of Company A, a separate treaty enterprise. I apologize for the delay in this response and hope that it has not incurred any inconvenience.

Section 101(a)(15)(E) of the Immigration and Nationality Act does not specifically prohibit an investor from seeking E-2 classification as the employee of another investment enterprise simultaneously. Neither does the statute specifically reference treaty employee classifications, which are creations of regulation, but appropriate given Congressional intent to facilitate trade and investment in this country. The statute simply authorizes admission "solely to develop and direct the operations of an enterprise" in which and E-2 has invested or is actively in the process of investing a substantial amount of capital.

Additionally work within the investor classification is consistent with the commercially-based nature of the E classification. However, your client must obtain prior Service approval to change the terms and conditions of his current E-2 classification to authorize work for multiple employers by filing Form I-129, with the E Supplement, with the appropriate Service Center. This Form I-129 application must demonstrate your client's ongoing eligibility within the original terms and conditions of E-2 employment authorized pursuant to admission or a request to change classification, as well as eligibility for E-2 employee classification with the new company.

In making this request to change the terms and conditions of E-2 classification, you should state clearly that your client intends to maintain the terms of his original E-2 classification, i.e., that he will continue to direct and develop his own management consultancy business in the United States (Company B). Any changes to, or impact on, his original E-2 investment activity should be noted. The application must also provide evidence demonstrating eligibility for the second E-2 activity that is the basis of the request, i.e., employment with Company A, and state clearly that the addition of this work is the basis for the request.

I note that Service Center officers will adjudicate a request for multiple employment within E classification on a case-by-case basis. Your letter asks the Service to assume that your client would work as an E-2 employee for Company A for 35-40 hours per week. Such a factual scenario raises a number of issues which may need to be examined in the adjudication process, e.g., is the E-2 continuing to actively develop and direct his own initial investment in Company B (as is required by the statute) or has he become simply a passive investor; will the E-2 employment for Company A interfere with the E-

2's active development and direction of Company B? The answers to such questions may be determinative of the decision on the request.

If your client's request is approved, the Service Center will issue Form I- 797, Notice of Approval, specifically authorizing multiple employment. Of course, if your client leaves the United States, you should ascertain whether the Department of State will require that the terms and conditions of the visa be changed to reflect the change in employment. Alternatively, he may present the Form I-797 approval notice with a valid, unexpired visa as evidence of Service approval of the change in the terms and conditions of the E-2 classification.

I hope this information is useful.

Sincerely,

/s/ Katharine A. Lorr
Acting Chief, Business and Trade Branch
Benefits Division