

**ALL ABOUT Es: THE NUTS AND BOLTS OF THE
E-1 TREATY TRADER AND E-2 TREATY INVESTOR VISAS**

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CHAPTER 10.2

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ALL ABOUT ES: THE NUTS AND BOLTS OF THE E-1 TREATY TRADER AND E-2 TREATY INVESTOR VISAS

This paper discusses research tools and information available to prepare and file an E-1 and E-2 petition or application. The E visa process requires a thorough understanding of the applicable law and regulations, and the current practice with the applicable consulate (assuming consular processing) or USCIS.

I. TOPICS COVERED

1. Practice Pointers
2. Legal research for E visas
3. Useful websites for law firm newsletters
4. Setting up a case

II. PRACTICE POINTERS CONCERNING E-1 AND E-2 VISAS

1. Assuming filing at a consulate or embassy, carefully review the post websites at the start of the case and prior to filing. If filing with USCIS review the current form and USCIS Policy Manual.
2. Check the reciprocity schedule.
3. Prepare a checklist for the submission.
4. Prepare a checklist / instruction memo for the client(s) visa interview.
5. After the visa interview or change of status, provide a close out memo which discusses in detail future actions and the effect of changes on current and future eligibility.
6. Develop a strategy for future U.S. immigration benefits concerning the employer, principal, principal's spouse and children, including any age out issues.
7. Discuss impact on current and future eligibility concerning "substantive changes" including changes in ownership and the impact on nationality.
8. Discuss impact on current and future eligibility concerning "substantive changes" in trade.
9. Discuss the possible benefit to enter the U.S. as a B-1 nonimmigrant prior to opening a business to conduct market research for 6 months on a B-1 or 3 months on visa waiver.
10. Develop a team of trusted advisors concerning the E visa project – corporate, real estate, intellectual property, U.S. and international tax/ CPA and business plan.

III. LEGAL RESEARCH CONCERNING E-1 AND E-2 VISAS

1. Statutes and Regulations - See *Kurzban Immigration Law Sourcebook Seventeenth Edition*, pages 1299-1310
2. Kurzban Immigration Law Sourcebook Seventeenth Edition, page 2367 - <https://ailalink.aila.org/file.aspx?id=84954-appendix6-treatytraderinvestorcountriespdf>
3. USCIS Policy Manual - <https://www.uscis.gov/policy-manual/volume-2-part-g> - Part G - Treaty Traders and Treaty Investors (E-1, E-2)
4. 8 CFR 214.2(e) - <https://www.ecfr.gov/current/title-8/chapter-I/subchapter-B/part-214/section-214.2>
FAM E visa notes - <https://fam.state.gov/FAM/09FAM/09FAM040209.html>
5. US Visa news from the U.S. Department of State - <https://travel.state.gov/content/travel/en/News/visas-news.html> and <https://travel.state.gov/content/travel/en/us-visas/Visa-Reciprocity-and-Civil-Documents-by-Country.html>
Visa Reciprocity Schedule to check on availability for E status
6. Embassy websites – See the website which covers the place(s) where you will apply. London have very good information – See - <https://uk.usembassy.gov/news-events/>
7. Check AILA Infonet concerning the following:
 - A. Recent developments
 - B. Practice Alerts
 - C. Practice Pointers
 - D. Resources by topic - <https://www.aila.org/infonet/topics>
 - E. Review the literature on AILAlink – see <https://ailalink.aila.org/login.html> (there is an annual fee, but this is a comprehensive immigration library on the web). See items 8 – 16 below

8. AILA's Immigration Law Practice & Procedure Manual: A "Cookbook" of Essential Practice Materials [© 2021], Chapter 4: E-1 and E-2 Visas, [Chapter 4 Text: E-1 and E-2 Visas](#), pp. 329-340, <https://ailalink.aila.org/#documents/95368>
[Sample Workflow for E-1 or E-2 Change of Status or Extension of Status](#)
[Sample Workflow for Consular Petition for E-1 or E-2 Change of Status or Extension of Status](#)
[Sample Eligibility Screening Assessment Tool for E-1 Treaty Trader and E-2 Treaty Investor Cases](#)
[Chart of E-Visa Countries](#)
[Sample Memorandum to Client Explaining E-1 and E-2 Visa Requirements](#)
[Sample Intake Questionnaire for E-1 and E-2 Nonimmigrant Visas](#)
[Sample Checklist of Documents for Client for E-1 or E-2 Visa Application](#)
[Sample Checklist of Documents for Client for E-1 Visa Application](#)
[Sample Template for a CEO Job Description](#)
[Sample Template for Letter Showing Gift of Funds](#)
[Sample Statement of Intention to Depart the United States](#)
[Sample Cover Letter for E-2 Extension of Status](#)
[Sample Index of Documents for E-1 Nonimmigrant Visa Application Packet](#)
[Sample Cover Letter for E-1 Nonimmigrant Visa Application](#)
[Sample E-1 Trade Summary Chart](#)
[Sample Index of Documents for E-2 Nonimmigrant Visa Application Packet](#)
[Sample Cover Letter for E-2 Nonimmigrant Visa Application](#)
[Sample Cover Letter for E-2 Derivative Spouse EAD](#)
[Sample E-1 Interview Preparation Instructions for Client](#)
[Sample E-2 Interview Preparation Instructions for Client](#)
[Instructions and Tips for Completing Petitions for Change of Status or Extension of Status for E-1 or E-2 Nonimmigrant Workers: Forms G-28, I-129, and I-129 E Supplement](#)
[Sample Forms for Extension of Status of E-2 Nonimmigrant Status: G-28, I-129, and I-129 E Supplement](#)
[Instructions and Tips for Completing Form for E-1 or E-2 Nonimmigrant Visa: DS-160](#)
[Sample Forms for Application for E-2 Nonimmigrant Visa: G-28, DS-160, and DS-156E](#)
9. AILA Conference Publications / Annual Conference Publications / Immigration Practice Pointers [© 2010-21] / Immigration Practice Pointers, 2021–22 / **Consular Nuances in Processing E-1 and E-2 Visa Applications** by Cindy Azoulay, Ian E. Scott, and Dominique Pando Bucci
<https://ailalink.aila.org/#search/result/view/95281>
10. AILA Conference Publications / Annual Conference Publications / Immigration Practice Pointers, 2018-19 / Business Immigration / **The Minefield of the E-1/E-2 Multi-Jurisdictional Practice** by Cindy Azoulay, Leigh N. Ganchin, Michael Ryvin and Ian E. Scott
<https://ailalink.aila.org/#search/result/view/78279>
11. AILA Conference Publications / Annual Conference Publications / Immigration Practice Pointers, 2017-18 / Business Immigration / **The E-1 (Treaty Trader) and E-2 (Treaty Investor) Visas: Real or Fake News?** by Amanda Shipley, Terry Feiertag, Charles H. ("Chuck") Kuck, and Kripa Upadhyay
<https://ailalink.aila.org/#documents/66413>
12. AILA Conference Publications / Annual Conference Publications / Immigration Practice Pointers, 2016-17 / Business Immigration / **Expert E-1/E-2 Application Preparation** by Jared C. Leung, Allen Orr, and Kathleen Campbell Walker
<https://ailalink.aila.org/#documents/64373>
13. AILA Conference Publications / Immigration Practice Pointers, 2016-17 / Business Immigration / **E Visa Processing Update – Mission Mexico** by Kathleen Campbell Walker
<https://ailalink.aila.org/#search/result/view/64374>
14. AILA Conference Publications / Immigration Practice Pointers, 2016-17 / Other Issues / **"Do's" And "Don'ts" for Attorneys Representing Visa Applicants** updated by Liam Schwartz, Kehrela Hodkinson, Poorvi Chothani and Gary Chodorow
<https://ailalink.aila.org/#search/result/view/64437>
15. AILA Conference Publications / Immigration Practice Pointers, 2015-16 / Business Immigration / **E-1 Treaty Traders and E-2 Treaty Investors** by Yeu Hong, Paul Samartin, and Terry Weir
<https://ailalink.aila.org/#documents/52008>
16. AILA Conference Publications / Immigration Practice Pointers, 2015-16 / **Business Immigration / My Ever Changing Employment: Material Change As It Relates to H-1B, L-1, E, TN**, by Michael P. Nowlan, Atessa Chehrazi, Romy Kapoor, and Sarah Buffett

<https://ailalink.aila.org/#search/result/view/52017>

17. **Practice Alert: E-1 and E-2 Processing at Consular Posts**
<https://www.aila.org/infonet/practice-alert-e-1-e-2-processing-consular-posts>
Practice Alert: E-1 and E-2 Processing at Consular Posts
 AILA Doc. No. 18122612 | Dated December 25, 2018
 By AILA's Department of State Liaison Committee [1]
 The E-1 and E-2 visa application process varies by consular post, with differences evident even in posts located in the same country. For example, in Ciudad Juarez, applications are submitted in hard copy binders with complex page number limits. In Mission Australia, processes vary by post with Perth accepting only hard copy submissions and Sydney and Melbourne accepting only electronic copies. The variety in E-1 and E-2 processing procedure extends also to size limits for electronic document submissions and appointment scheduling. Some posts, such as those in the <https://jp.usembassy.gov/visas/nonimmigrant-visas/e1-e2-visas/apply-step-1/e2/> and <https://jp.usembassy.gov/visas/nonimmigrant-visas/e1-e2-visas/apply-step-1/e2/>, have E-2 registration programs, while most other posts do not.
 During the October 18, 2018 liaison meeting with the Department of State Visa Office (DOS), AILA's DOS Liaison Committee raised these differences, and inquired about the possibility of harmonizing procedures for application submission, interview scheduling, and E-registration across posts.
 DOS explained that due to challenges encountered by posts on several fronts (such as post resources/size, workload, infrastructure, and security requirements), each embassy and consulate has discretion to determine its own procedures for E visa applications, including whether to implement an E-2 registration program and scheduling systems. While DOS encourages posts to share best practices and is always working with embassies and consulates to achieve uniformity, each post ultimately determines its own processes. With respect to registration, State further explained that most consular posts receiving E visa applications are small and do not have sufficient volume to benefit from a company registration program.
 [1] Thanks to AILA DOS Liaison Committee member Nikki Dryden for preparing this alert.
18. **Practice 9 FAM 402.9-4(D) Physical Office Space**
 (CT:VISA-1111; 07-17-2020)
 An applicant does not necessarily need a physical office space to qualify for an E visa. Although having physical office space may be relevant in determining whether the requirements for an E visa have been met, it is not a requirement to qualify for the visa.
<https://fam.state.gov/FAM/09FAM/09FAM040209.html>
 See <https://www.aila.org/infonet/aila-dos-liaison-qas-3-5-20> **AILA DOS Liaison Q&As (3/5/20)**
 AILA Doc. No. 20031030 | Dated March 5, 2020 | File Size: 672 K
19. **AILA Rome Chapter Listserve - <http://www.aila-rdc-emea.org/>**
<http://www.aila-rdc-emea.org/committee/consular-liaison/> which includes multiple web links with useful information. For example FAQs from the field on multiple European consular posts.
https://www.dropbox.com/s/yup0apq7fnt8o2b/GMT20210602-170140_Recording_1920x1080.mp4?dl=0 - 52 Tips in 52 minutes webinar with Ian Scott, Marco Mazzeschi, John Khosravi and Greg Siskind
<https://www.dropbox.com/s/7v01b6sgefmzvjuw/CLC%20Practice%20Roundtable%207%20May%202021.mp4?dl=0> - webinar consular practice liaison roundtable on May 7, 2021
[AILA RDC-EMEA Annual Chapter Meeting \(Featuring London Visa Chief – June 2021\)](http://www.aila-rdc-emea.org/agency-resources/)
<http://www.aila-rdc-emea.org/agency-resources/>
20. AILA Latin America Chapter Listserve - <https://ailalacc.org/>
 Webinars have up to date practical information. Note the webinars are not recorded.
21. **Asia Pacific Chapter- website at <https://www.aila.org/membership/communities/chapters/bangkok-district>**
<https://www.aila.org/membership/communities/chapters/bangkok-district/meeting-minutes>
<https://www.aila.org/membership/communities/chapters/bangkok-district/bangkok-district-chapter-webinars-presentations>
<https://www.aila.org/membership/communities/chapters/bangkok-district/resources> - Consular Post Contact & Other Information (2018 and before)
22. **AILA mentor directory for E visas - <https://www.aila.org/mentor-directory/results/133>**

IV. DEVELOP A THEORY OF THE CASE.

1. At the outset of the case, stop and spend time to create a macro and micro vision of the case. Align your case facts with the regulatory requirements for the benefit requested.

2. Given the complexities of the pandemic, we often recommend the attorney prepare a strategy memo to discuss the potential issues and scenarios which may play out, and to consider the multiple remedies/ options available to present to the client(s), including the potential risks and consequences. This is important because if you skip over this step, it is possible to overlook a significant obstacle that should be addressed and brought to the client's attention at the outset of the representation.
3. In terms of the end result, by focusing on the theory of the case, you will focus on the case's weaknesses, strengths, and plan for the uncertain.
4. Conduct a thorough initial client interview and be sure to request a complete copy of the paper and digital file from the alien and his/ her prior employer(s).

V. USEFUL WEBSITES FOR LAW FIRM NEWSLETTERS.

1. BAL - <https://go.balglobal.com/newsf>
2. Klasko Immigration Law Partners LLP – <https://www.klaskolaw.com/contact-us/subscribe-updates/> ; <https://www.klaskolaw.com/news-category/client-alerts/> ; <https://www.klaskolaw.com/blog/> ; and <https://www.klaskolaw.com/site-map/>
3. Dickinson-Wright - <http://immigration.dickinson-wright.com/>
4. Fragomen- <https://www.fragomen.com/insights/alerts> and <https://www.fragomen.com/insights/podcasts>
5. Greenberg Traurig- <https://www.gtlaw.com/en/insights?keyword=immigration>
6. Immigration Daily - <https://www.ilw.com/immigrationdaily/>
7. Murthy Law Firm - <https://www.murthy.com/about-us/online-services/enewsletter/>
8. Maggio Kattar – <https://maggio-kattar.com/sign-up-for-news-alerts/>
9. Miller Mayer LLP– <https://millermayer.com/news-and-insights/> - go to sign up for our newsletter
10. Mintz - <https://www.mintz.com/subscribe>
11. Seyfarth – <https://www.bigimmigrationlawblog.com/>
12. Shusterman - <https://www.shusterman.com/>
13. Siskind's Immigration Law Bulletin - <https://www.visalaw.com/immigration-resources/bulletin/>
14. Wolfsdorf Rosenthal – https://wolfsdorf.com/client_alert/ ; <https://wolfsdorf.com/blog/> ; [Wolfsdorf Rosenthal LLP - YouTube](#)
15. U.S. Embassy London - <https://uk.usembassy.gov/news-events/>
16. The Insightful Immigration Blog - <http://blog.cyrusmehta.com/>

Practice Pointer – Be thorough and cautious concerning your dependence upon that which is found on internet postings, blogs, newsletters, etc. Treat all information as a means to an end. Carefully review information as published and made available on the public domain alongside the relevant statute and regulations and utilize in the best manner that will support your claim(s). Where there is negative information that can be distinguished from your particular fact pattern, indicate the distinction as needed and lay out the manner in which your case facts are unique and should prevail.

This outline of E visa resources is certainly not an exhaustive list, but rather an outline to explore and to become familiar with (if not already). Understanding the statutory and regulatory requirements and the related processes is key to the application/ petition preparation, strategy and submission.