

How E visas help Canadian companies expand into the U.S.

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Canadian company that has expanded or plans to expand into the U.S. should consider the E visa as a vehicle for movement of workers. There are two types of E visa, the E-1 Treaty Trader and E-2 Treaty Investor. Both are available under the North American Free Trade Agreement.

The E-1 is the only type of work visa for the U.S. that can be issued to work for a non-U.S. company. The requirements are few. A Canadian company that is majority Canadian-owned with substantial trade between the U.S. and Canada, where the U.S.-Canada trade is at least 50 per cent of the total international trade of the Canadian company, can qualify. While the standard of “substantial” may look daunting, one-person consulting companies have been successful in achieving E-1 status.

An E-1 can also be obtained for a Canadian to work for a U.S. company. The company must be majority Canadian-owned with substantial trade between the U.S. and Canada, where the U.S.-Canada trade is at least 50 per cent of the total international trade of the U.S. company.

The E-2 Treaty Investor visa has a few more requirements. In addition to the U.S. company being majority Canadian-owned, it must have a substantial Canadian investment determined by value of funds, and in proportion to the total value of the company. As with the E-1, the standard by which substantiality is measured is quite generous and facilitative. In addition, while some of the investment can constitute working capital, at least half should be at risk, which can be described as already spent. The company must be active, meaning it must have provided a good or service. It also cannot be marginal, meaning it expects to employ at least one U.S. worker in the next five years.

As the longest working visa available, the E visa facilitates growing trade with the U.S., or an investment into a corporate entity in the U.S. for five years at a time. Once a visa is approved for one foreign national, the company is registered, and the application process is streamlined for subsequent employee applicants during the five-year registration period. Each applicant during those five years will receive a full five-year visa. For companies bringing in workers as executives, managers, supervisors and specialized employees, the E visa can be quite efficient.

A decade ago, the E visa was unpopular, largely due to the extensive time it took to obtain. A full year was not unusual. Now, with the improved U.S. consular process, a foreign national can have a visa in his passport within weeks. It may be somewhat inconvenient for out-of-town company applicants to send their first applicant to Toronto for an interview, where all company first-time applicants for Canada are processed. After the first visa approval, additional applicants can visit U.S. consular offices across Canada to complete the application process.

Consular officers tend to be facilitative of these applications, with the understanding that trade and investment are good for the United States. They do require that each element of every application be evidenced through specific documentation, and they expect applicants to be able to describe the way in which the company meets the requirements of the treaty, and how the employee applicants qualify based on the U.S. federal regulations.

There is a good deal of trepidation about the NAFTA renegotiations, and how it will affect the availability of E-1 and E-2 visas. Since the E visa is for the purpose of increasing trade and investment, both of which are good for the U.S. and increase job opportunities, I hold great hope that it will survive the renegotiations.

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