

How U.S. Government is Facilitating Trade and Investment



By [Eileen M. Martin](#)

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Under the North America Free Trade Agreement and more recently under the United States-Mexico-Canada Agreement, many businesses have been able to take advantage of a wonderful program for obtaining work authorization to the U.S. through the U.S. Department of State's Canada E Visa Program. This program grants up to five years of U.S. work authorization at a time to eligible applicants who can qualify again and again, indefinitely.

During the pandemic, the E Visa program that runs through the U.S. Consulate in Toronto became very backlogged. While the business community pivoted to Zoom, consular officers paused the program because applicants could not attend required in-person interviews due to safety concerns. The program has caught up since pandemic restrictions were lifted and is now an effective means by which Canadian citizens can access the U.S. to direct or manage an investment and expand trade.

Canadians are generally visa-exempt to the U.S., but the E Visa is an exception. The five-year validity period of E Visas is the longest available period of all work-authorized non-immigrant options granted by the U.S. government, providing a significant benefit to the recipients. The requirements for qualification are also quite broad, providing significant room for applicants to exercise creativity in demonstrating how they can qualify. E Visas are a great way

to facilitate business travel, permitting a broad range of activities.

The E-1 visa is for Treaty Traders, which references trade in goods and/or services. Maybe the most exciting and unusual aspect of the E-1 is that the applicant can get a visa to work for a U.S. company, or to work on behalf of a Canadian company and its clients in the U.S. Some industries that have found success are consulting in various fields, providing sales for one or more U.S. clients, chiropractic services and equestrian services - to name a few. We have also used imports of goods from the U.S. as the basis for obtaining E Visas for Canadians to be able to provide services legally in the U.S.

The E-1 visa can be obtained on the basis of past or prospective trade by a U.S. or Canadian business, including sole proprietors. Unlike some other statuses available to Canadians, there is no requirement that you have a business with employees already operating in Canada, have been operating for any specific period of time, have a designated level of education, or have been working in a specific field.

The E-1 only requires establishment of two factors. Firstly, the business - whether a public company, a sole proprietorship or something in between - must be majority Canadian-owned. This requirement holds for U.S.- or Canadian-based businesses. The other requirement is substantial cross-border trade, defined by multiple transactions and most of the business' international trade flowing between the U.S. and Canada. Substantial trade is not related to a specific dollar amount. For example, we have assisted clients in obtaining E-1s for past trade of as little as \$11,000 or prospective trade of a mere \$29,000.

There are more requirements for the E-2 for Treaty Investors, which is why, when given a choice, the E-1 is an easier application. Like the E-1, the E-2 company must have majority Canadian ownership. Unlike the E-1, the E-2 company must be a U.S. business. The substantial investment should be no less than US\$50,000 and have a Canadian source. Additionally, the company should enter into commerce before filing the application. If the company does not already have a U.S. worker, it must report a plan whereby it will begin to employ at least one U.S. worker during the validity period of the E Visa, five years.

The adjudicating officers generally recognize that trade and investment between the U.S. and Canada are of great benefit to the U.S., and they want to facilitate these visas to benefit the U.S. Once the first visa is issued and the company is registered, any subsequent visa applications for the same registered company become quicker and easier, as the questions relate only to the qualifications of the person, not the company. Visas are available for executives, managers, supervisors and essential employees.

A business owner who wishes to work in the U.S. or to send workers to the U.S. on the basis of investment, trade in goods or trade in services should confer with U.S. immigration counsel to determine eligibility and likelihood of success in filing an E Visa application.

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