

Immigration Pathways for Entrepreneur Employment in the United States



Immigration Blog

By [Elizabeth M. Klarin](#)

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Working in a foreign country as an entrepreneur can be challenging, particularly when you are an early-stage start-up business. While the United States has a long history of prospering from the ingenuity and innovations of entrepreneurs, the immigration path forward for those wishing to start and/or operate businesses in the United States is not always clear. Many employment-based immigration benefits are only available to individuals with a U.S. sponsor organization or based on a specific skill set or educational background.

Multiple options exist, however, to start and/or expand a business into the United States - regardless of your education, experience or nationality.

Firstly, we look at the E visa category. E visas are available to individuals from countries that have a certain kind of "qualifying" treaty with the United States, including treaties of Friendship, Commerce and Navigation and Bilateral Investment. The most visible one of these in the Northern Hemisphere is the United States-Mexico-Canada Agreement (abbreviated as USMCA

or CUSMA).

If, for example, you already have been operating your own business in Canada and happen to have been doing work for U.S. clients, you could potentially qualify to enter the United States using an E-1 Treaty Trader visa. This visa is available to any citizen of the more than 50 countries that hold a qualifying treaty with the United States permitting E-1 status, who has accrued multiple instances of trade in goods or services with the United States over time. "Trade" can be buying or selling goods and/or services to or from either Canada or the United States, from the other country, in this example. Although this is a strictly nonimmigrant option, visas generally are good for up to five years (depending on the citizenship country of the foreign national) and can be renewed indefinitely.

Secondly, we turn to the E-2 visa category. These visas are available to any national of the 80 countries holding a qualifying treaty permitting E-2 status. To obtain E-2 status, you have to jump through many hoops - the most notable being establishing a U.S. business and making what is considered a "qualifying" investment. The amount of investment required to obtain one of these visas varies by country. In Canada, it can be as low as US\$50,000. One can either establish their own U.S. legal entity to start the process from scratch or purchase an existing business to own and run. Once the minimum threshold amount has been spent, one can apply for an E-2 visa. There are a number of other requirements, including that the business must not be considered a "marginal" one and the investment must be "proportionate" to the business's value (i.e., whether the investment is substantial compared to the total cost of either purchasing an existing business or creating a new business from the ground up), and requires the applicant to also show that the investment came from a legitimate source. Again, this is a strictly nonimmigrant option granting multiple entry visas for up to five years at a time but can be renewed indefinitely.

Other options include applying for International Entrepreneur Parole, which is available to foreigners whose start-up businesses in the United States have garnered the interest of U.S. investors and who are poised to create jobs and benefit the nation as a whole through their business activity. Parole is fully discretionary - meaning there is no "right" to the status and the individual assessment of the adjudicating officer decides whether you are eligible for it. But for qualifying entrepreneurs, it may just be the answer you've been waiting for to obtain work authorization in the United States.

Options for obtaining permanent residence may also be available, particularly in the EB-5 immigrant investor category, if you are able to successfully start a U.S. business. However, immigrant options for entrepreneurs can be complex and expensive. That said, a green card may be available where a substantial investment is made in a successful U.S. enterprise, or, for example, the individual has extraordinary ability or brings something valuable to the United States that is in the national interest.

Entrepreneurs are known for being determined and relentless in their pursuit of what they want to achieve. This can only help you as you seek a path to the United States to work. To help sort out what option is best for you, you should reach out to the Lippes Mathias Immigration team to speak to a qualified immigration lawyer to discuss.

Elizabeth M. Klarin, eklarin@lippes.com, is a partner at Lippes Mathias LLP and a member of the firm's immigration practice and Canada-U.S. cross border teams.

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Partner



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(Jagtiani)**
Partner



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Leader - Immigration
| Team Leader -
Canada-U.S. Cross
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