

E-1/E-2 Non-Immigrant Visas Open up Possibilities For Dependents and Employees

By Attorneys Bruce A. Coane and James P. McCollom, Jr.,

Under strict guidelines, certain foreign nationals can obtain an E-1 or an E-2 non-immigrant visa to trade or invest in the United States. Family members and employees can also be classified as E-1 or E-2 but do not have to meet the same requirements as the principals.

The Philippines is included in the list of countries that has a treaty with the United States so that Philippine nationals are eligible for the E-1 and E-2 classification.

Family members of an E-1 or E-2 principal can also receive the classification of E-1 or E-2 so long as that family member is admissible to the United States. A family member only includes a spouse and a child. It does not matter if the nationality of the family member is different from that of the principal.

As the holder of an E-1 or E-2 non-immigrant visa, the family member is entitled to study in the United States and to tour the United States. The spouse of an E-1 or E-2 is entitled to apply for a work permit.

An employee of an E-1 or E-2 must be a national of the same country as the traders or investors who control the enterprise that has gained E-1 or E-2 classification. However, an employee does not have to already work for the company in order to be eligible for E-1 or E-2 status. That is, the employee can be a “new hire.”

An employee must generally be an executive or a supervisor in order to be granted E-1 or E-2 status. In the alternative, an employee might be granted E-1 or E-2 status if he or she has special qualifications to be considered an “essential” employee.

The Immigration Service decides whether an employee qualifies as an “essential” employee on a case by case basis. The company must demonstrate the need for the “essential” employee.

The Immigration Service will allow a start-up company to hire an “essential” employee for one or two years, for example, if there is a short-term need for that person. Although the Immigration Service believes that the E-1 or E-2 classification is designed for specialists, in the case of a start-up company, an ordinary skilled worker may be allowed in some circumstances.

In other cases, a company might be able to demonstrate the need for an “essential” employee on a long term basis. In such a case, the Immigration Service will analyze the experience and training necessary to achieve the skills that the company requires and whether the applicant possesses that experience and training.

Although the principal applicants for the E-1 or E-2 classification face many stringent requirements, their family members and employees have possibilities open to them.

An E-1 or E-2 employee might be able to achieve such a non-immigrant classification through the E-1 or E-2 principal by qualifying in a multitude of ways.

Bruce A. Coane is Board Certified in Immigration and Nationality Law by the Texas Board of Legal Specialization. The law firm of Coane & Associates has offices at 407 Lincoln Road, Suite 306, Miami Beach, Florida 33139, Tel. (786) 457-VISA (8472). The law firm website is www.coane.com. The law firm email is immigrantlaw@aol.com. James P. McCollom, Jr. is an associate attorney at the firm