

# Citizenship by Investment and E-2 Visas: *A U.S. Immigration Strategy for High Net Worth Individuals*

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# About the Investment Migration Council

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The IMC is the worldwide association for investment migration and citizenship-by-investment, bringing together the leading stakeholders in the field and giving the industry a voice. The IMC sets the standards on a global level and interacts with other professional associations, governments and international organisations in relation to investment migration. The IMC helps to improve public understanding of the issues faced by clients and governments in this area and promotes education and high professional standards among its members.

# About Klasko Immigration Law Partners

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Klasko Immigration Law Partners is a law firm dedicated solely to providing industry-leading employment-based, investment-based, and litigation immigration services to its clients. We help our clients achieve their goals by providing high-quality comprehensive immigration legal services. We have earned a reputation for finding creative and comprehensive solutions to difficult immigration problems through cutting-edge and industry-leading strategies. The firm has earned a reputation for solving complex problems with creative thinking and finding paths toward our clients' immigration goals where other lawyers have seen no way forward.

**Ron Klasko** was Chairman of the EB-5 Investor Committee of the American Immigration Lawyers Association (AILA) for five terms. He currently chairs AILA's Administrative Litigation Task Force. He was lead attorney on Matters of Walsh and Pollard, which established precedent for E-2 visas. He is the only attorney honored twice with the AILA Founders Award for his contributions to immigration jurisprudence. Ron is ranked in *Chambers and Partners* Global and USA guides as a Band 1 attorney and has been selected for *Best Lawyers in America*© since 1991.



H. Ronald Klasko  
Managing Partner



**Jessica** is an Associate in the firm's New York office and a member of the firm's investment-based immigration practice. Jessica has significant experience representing investors who seek to use foreign investment capital under the E-2 program. Her EB-5 experience encompasses representation of both investors and developers in direct and regional center investments. Prior to practicing immigration law, Jessica worked as a tax and business attorney. Jessica earned an M.A. in Near Eastern Studies from the University of Arizona. Jessica received her J.D. from Tulane University Law School and an LL.M. in taxation from the University of Washington School of Law.



Jessica A. DeNisi  
Senior Associate

**Oliver** is an Associate in the firm's Philadelphia office and a member of the firm's investment-based immigration practice. He manages the firm's China E-2 investor practice and has extensive experience in assisting clients in getting E-2 visas through a third-country CBI program. Oliver received his LL.B. from Renmin University of China Law School, where he served as the captain of the debate team. He obtained his Juris Doctor from the University of Virginia School of Law, where he was a member of the Extramural Moot Court team and served on the Editorial Board for the Journal of Law & Politics.



F. Oliver Yang  
Senior Associate

# Background of Increased Focus on E-2 Visas

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- Issues with EB-5
  - Increased investment amount to \$900,000/\$1.8 million
  - Increased processing times
  - Quota backlogs
- E-2 is not new
  - Over 80 treaty countries
  - CBI combined with E-2 is new for nationals of other countries

# Comparing E-2 and EB-5

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- E-2 is a visa; EB-5 leads to a green card (permanent residence)
- E-2 can be obtained quickly; EB-5 takes more than two years (plus quota backlog)
- EB-5 results in taxation on worldwide income; E-2 may not
  - Depends on time spent in U.S.
- EB-5 has exact investment and jobs requirements; E-2 does not

# Comparing E-2 and EB-5 (cont'd)

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- E-2 is filed at U.S. consulate; EB-5 is filed at USCIS
- EB-5 is available for all countries; E-2 is only available for nationals of countries with investment treaties with U.S.
- E-2 requires at least 50% ownership of business; EB-5 does not
- E-2 investment can be applied to direct EB-5 investment

# Advantages of E-2 Visa

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- 5-year visa with unlimited extensions
- Can obtain in approximately 2 months
- Includes investors, spouse and children under age 21
- Child can study in public or private school

## Advantages of E-2 Visa *(cont'd)*

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- In state tuition may be possible in some states
- Can live in U.S. as much, or as little, as you want
- Can avoid taxation on worldwide income
- Spouse can work anywhere

# Advantages of E-2 Visa *(cont'd)*

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- Active management of business possible, but not required
- No application to USCIS required
- No quota
- Investment can be used toward direct EB-5

# Requirements

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- National of country with investment treaty with U.S.
- U.S. business must be owned 50% or more by investor
- “Substantial” investment in a U.S. business
  - No definite amount
  - Issue is how much investment is necessary for business to be successful
  - Can be new business or purchase of existing business
  - Can be franchise

# Requirements

*(cont'd)*

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- Business cannot be “marginal”
    - Job creation important
    - No exact amount of jobs
  - Investor must “develop and direct” the business
    - Does not require day-to-day management
    - Investor can manage the business or oversee the manager

# Filing Procedures

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- Application filed at U.S. Consulate
  - Barbados
  - Country of citizenship
  - Country of residence
  - 3rd country
- Interview important

# Hot E-2 Issues

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- Source of funds
- Investment in escrow - - “irrevocably committed”
- Is business operational - - “close to the actual start of business”
- Intent to leave U.S.
  - OK to have pending immigrant petition
- Develop and direct if not active management

# Issues Relating to CBI Investors

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- English language ability
- Choice of Consulate
- “Nexus” with CBI country
- Lack of experience in business in U.S.
- Issues if EB-5 petition filed
- Investment made before obtained CBI

# Choosing CBI Country

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- Length of visa
- U.S. consulate for visa application
- Investment amount
- Required presence in the country
- Passport processing time
- Stability of the program
- Visa free travel
- Family members entitled to passport
- Permanence of passport

# Questions?

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# For Further Information

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