

Consul Advises on E-2 Visa for Physician

Dear Mr. Porter:

Ms. Gochnauer has asked me, as the consular officer now responsible for adjudicating E-2 Treaty Investor visas, to respond to your letter of January 4 concerning the desire of a Canadian physician to invest in a medical practice in the United States. The question is whether such a physician would qualify as a nonimmigrant investor as defined in Section 101(a)(15)(E)(ii) of the U.S. Immigration and Nationality Act.

The Department of State concurs with the Immigration and Naturalization Service in finding that, if the consular officer determines that the investment meets the tests for substantiality and proportionality (see discussion below) and if the consular officer is satisfied that the physician will be the sole manager of the enterprise, then said physician can be issued an E-2 visa. If the applicant is to engage in patient care, he must also provide to the consular officer proof that he has a license from the state in which he intends to practice.

Qualifying funds for E-visa purposes must be more than half of the total value of the enterprise if investing in an existing business, or the amount normally considered necessary to establish a new enterprise.

Marginality, on the other hand, is a separate test that the applicant must overcome to establish entitlement to E-2 status irrespective of how much he has invested.

Two alternate means by which an applicant can demonstrate that the enterprise will not return only enough income to provide for him and his family are: (1) to demonstrate that the U.S. investment will expand employment in the locality of his business or (2) prove that he has substantial income from other sources. If purchasing an ongoing enterprise, he should provide us with its previous and most recent U.S. Corporate Tax audited financial statements, review engagements, payroll register, W-2 and W-4 tax forms. If starting a new venture, he must submit a personal statement of net worth prepared by a certified account accompanied by evidence of other income such as his last personal tax return or the corporate tax returns of his other businesses (if any); investment certificates, bank account balance confirmations, etc.

I trust this has been responsive to your inquiry.

John K. Schlosser