PROTECTING GUESTWORKERS UNDER E-2 INVESTOR VISAS

What are “investor visas” or “E visas”? 

There are two categories of investor visas. The first, *EB-5 visas*, are better known: they allow non-citizens who invest $1 million in the U.S. and create 10 U.S. jobs to apply for a green card.

The *E-2 Treaty Investor visas* allows for the temporary entry and employment of non-citizens who have invested “a substantial amount of capital in bona fide enterprise in the United States.” E-2 visas can also be granted to such an investor’s employees if they have “duties of an executive or supervisory character” or “special qualifications that make the services to be rendered essential in the efficient operation of the enterprise.”

The employees and investor must be of the same nationality, enter under a treaty between the United States and their country of nationality (79 countries have such a treaty), and both parties must maintain treaty investor status (i.e. if an investor loses or abandons E-2 status, so would his employees).

U.S. consuls abroad are generally in charge of receiving and adjudicating applications for E-2 visas. Initial admission is for up to two years with unlimited extensions. E-2 visa applicants are not subject to labor market certifications or attestations (which are meant to ensure that there are no qualified U.S. workers available to fill the jobs), and the U.S. Department of Labor is not involved in the E-2 process. There is no cap on the number of E-2 visas that can be issued.

What are the problems with E-2 visas, especially for E-2 guestworkers?

Like other guestworkers, E-2 visa holders are dependent on their employers to maintain legal status, with virtually no protections against employer exploitation or retaliation for asserting workplace rights. The lack of U.S. Department of Labor or USCIS involvement in the E-2 process means that U.S. labor and immigration enforcement agencies do not know about the locations of employment or even the existence of most E-2 workers.

How many E-2 workers are there in the U.S.? ¹

Based on publicly available information, it is not possible to know how many E-2 workers are in the country at any one time. The U.S. State Department only publicly tracks what visas are issued per year, not how many people actually use the visas to enter the U.S. or how long they stay.

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>New E-2 visas issued</th>
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<tbody>
<tr>
<td>2013</td>
<td>35,272</td>
</tr>
<tr>
<td>2012</td>
<td>31,942</td>
</tr>
<tr>
<td>2011</td>
<td>28,245</td>
</tr>
<tr>
<td>2010</td>
<td>25,500</td>
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<tr>
<td>2009</td>
<td>24,033</td>
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¹[http://travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2013AnnualReport/FY13AnnualReport/TableXVI.pdf](http://travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2013AnnualReport/FY13AnnualReport/TableXVI.pdf)
What should be done to help E-2 guestworkers access their rights?

Worker Protections: At a minimum, DHS and the State Department should extend to all E-2 workers the same basic immigration status protections currently provided to guestworkers in H classifications who are in labor disputes involving a work stoppage. The State Department should also give all E-2 visa applicants the “information pamphlet on legal rights and resources for aliens applying for employment- or education-based nonimmigrant visas” required under the TVPRA of 2008, and update it to include the rights of E classification workers. Further, E-2 workers should be authorized to work for another employer during a labor dispute, as workers cannot meaningfully exercise their rights without access to independent means of subsistence.

Transparency: The State Department should ensure that all E-2 workers have access to their E-2 application and can request a copy after their arrival in the U.S. without having to make a FOIA request. The State Department and Department of Homeland Security (DHS) should annually publish on their web sites the names and contact information of all E-2 employers.

How do changes needed in the E-2 program relate to immigration reform?

The changes needed to the E-2 program reflect the broader changes all guestworkers need, such as those included in the Power Act and as passed in Senate Bill S.744 (see Sec. 3201 - Protections for Victims of Serious Violations of Labor and Employment Law or Crime). These include employment authorization and protection from removal for workers in civil or labor rights disputes, as well as access to U-visa protection for workers who are victims of a serious violation of civil or labor rights.

President Obama’s November 2014 executive action on immigration included an Interagency Working Group For The Consistent Enforcement of Federal Labor, Employment and Immigration Laws, which could improve guestworker protections. The Interagency Working Group identified as one of its objectives “strengthen[ing] processes for staying the removal of, and providing temporary work authorization for, undocumented workers asserting workplace claims and for cases in which a workplace investigation or proceeding is ongoing.”

In working toward this goal, the Working Group should urge USCIS to clarify its process for allowing workers in labor disputes to access Deferred Action, which protects from removal and allows for employment authorization. Workers need these protections to be able exercise their rights. Whether undocumented or on a guestworker visas such as E-2, a worker needs to know that defending their rights does not mean risking deportation or losing the means to support themselves.

For more information, please contact Jan Collatz at (504) 309-5165, jcollatz@nowcrj.org, or visit www.guestworkeralliance.org

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2 http://www.dol.gov/dol/fact-sheet/immigration/interagency-working-group.htm