

# SCOTT LEGAL SERVICES, P.C.

The Law Firm For Entrepreneurs, Business Owners & Investors

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## **Want to Start a Business in the U.S. and Obtain an E-2 Visa? What Does the Marginality Requirement Mean for an E-2 Visa**

An E-2 Visa is a Visa that is available for entrepreneurs, investors and business owners who wish to live in the U.S. to develop and direct the operations of a business. The business can be large or small and in order to qualify for the Visa, applicants must meet specific requirements. The full set of requirements for an E-2 Visa are outlined in an [article you can access by clicking here](#).

One of the requirements is that the business cannot be “marginal,” and the question often arises of exactly what that means. In essence, this means that the business cannot be set up so that it provides a means of living just for the investor and his/her family. The marginality requirement also addresses the viability of the business and the examiners are trying to answer the question of whether or not the business makes sense and whether it will survive in the long run.

Assessing the marginality requirement usually has to be based on forward looking information as often when an investor applies for an E-2 visa the applicant is not in the United States and the business often has not yet been started. As such, United States Citizenship & Immigration Services (USCIS) or the Consulate is trying to make a determination of whether or not the evidence you have provided suggests that the business is going to benefit the U.S. economy, create jobs and have long term viability. While this may sound like it is not an insurmountable task to prove, marginality is often the reason that E-2 visas are not approved. Here are a few practice pointers to address the marginality requirement.

- You can demonstrate a business is not marginal by putting together a comprehensive business plan that shows growth of the business over a 5-year period. A business plan must be comprehensive and include both financial and non-financial information. For example, you are required to pull together projections for five years as well as describe your product/service, assess your competitors, document your marketing strategy, summarize your start-up expenses and provide comprehensive projected balance sheet and income statement information for 5 years. To find out more about [how to make an effective business plan click here](#).

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- You can also address the marginality requirement by showing that you plan to hire employees in the future. This addresses the requirement as it shows the government that your business is going to help the economy and will provide benefit for more than just you and your family. A detailed description of who you plan to hire, their positions and when you plan to hire them should be included in your business plan.
- You do not have to hire employees immediately and they can be hired over the years. That being said, your business plan projections and working capital on-hand should be sufficient to support the assertion that you plan to hire people in the future
- If you are buying a business, the marginality requirement can also be addressed by looking at the past performance of the business and this is particularly the case if the business has supported employees in the past.
- A comprehensive cover letter that addresses how the applicant meets each of the elements of an E-2 visa and describes exactly how the applicant will address the marginality requirement is essential. An E-2 visa is a document intensive visa and the adjudicator is not going to sift through hundreds of pages of documents to find out if you qualify for the visa. This is one of the areas where a qualified immigration attorney is essential.
- Your business plan is an essential document in an E-2 application and the most significant document to address the marginality requirement. As such, if you are not familiar with business plans, you should have it prepared by a professional. USCIS has very stringent and specific expectations regarding what a business plan should contain and your application will likely be rejected if your plan is not comprehensive.

If you are considering an E-2 Visa, contact Scott Legal Services, P.C.. For more information on this and other immigration Visas click [here](#). You can also call us at 212-223-2964 or email us at [iscott@legalservicesincorporated.com](mailto:iscott@legalservicesincorporated.com).

Also, click [here](#) for your free **White Paper** that summarizes the top 10 Immigration Questions and Answers.

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