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Visa Comparisons EB-5, E-2, L-1A and EB-13

Classification	EB-5	E-2
Treaty	No	Yes ¹
Capital	\$500,000+ to \$1+million – will likely increase by December 9, 2017.	Substantial for the type of business ² .
Physical work at business	Not needed if director or limited partner.	Full or part time/intermittent.
U.S. employees	At least 10 full time permanent employees.	Some- sufficient to support daily operations, usually 3+.
Processing Time	Currently about 2½ years ³	Generally 30 to 60 days.
Dependents	Spouse and unmarried children under 21, but children may be protected by CSPA if over 21 after filing the application (I-526).	Spouse and unmarried children under 21.
Can Dependents work?	No, until receipt of conditional green card or have a work permit via Adjustment of Status (AOS).	Spouse only, but work permit must applied for and approved by USCIS.
Validity	2 years conditional, followed with I-829 application at the end of 2 year period for permanent resident status.	Usually 5 years at each application but will be less depending on reciprocity schedules (see note 1); can be extended if business still qualifies ⁴ .
At risk investment	Substantial for the type of business; recommends \$100,000+ spent for direct investment. Regional Center	Need to spend some funds to initially establish and/or develop a startup business. For purchase of business,

¹ U.S. has E-2 treaties with certain countries, see: <https://travel.state.gov/content/visas/en/fees/reciprocity-by-country.html> , e.g. there are no E-2 treaties with China and India.

² For small businesses, it is recommended between \$100,000 to \$250,000.

³ With China quota retrogression, there's currently about a 10-year wait for the issuance of the conditional immigrant visas.

⁴ Visa validity is 5 years, each admittance to the U.S. is for 2 years.

	(RC), total investment funds can be placed in escrow or in project is considered at risk.	money can be placed in an irrevocable escrow to be disbursed upon issuance of E-2 visa.
Direct capital investment	Needed for direct investment and RC projects.	Yes
Purchase of existing Business	Yes, must be a New Commercial Enterprise (NCE) and expanded to create 10 jobs.	Yes, may acquire existing business or establish new business.
Source of funds	Yes	No, but some U.S. Consulates may ask for it.
New commercial enterprise	Yes, must be after 11/29/1990 or business restructure.	No
Investment from other tangible assets	No for RC; possible for direct investment ⁵ .	Yes (see footnote 5)
Borrowed capital	Yes, if U.S. business is not collateral and purpose of the loan is for EB-5.	Yes, but cannot be secured with the U.S. entity.
Visas for domestic staff	No	Yes, domestic helpers can apply for B visa
Intent to Depart	No	Yes

Classification	L-1A (Intracompany transfer visa)	EB-13 (Intracompany transfer Green Card)
Treaty	No, but required qualifying intra-corporate relationship – (see below).	Same as L-1A.
Capital	Can provide for purchase of business or establishment of new business.	Same as L-1A.
Physical work at business	Yes, but can perform intermittent executive or managerial work in U.S. as long as other work times are with qualifying entities.	Yes, must be coming to the U.S. entity to perform full time executive or 2 nd level or above managerial work/position.
U.S. employees	Some, enough to support the operations. For start-up entity, can provide business	Yes, substantial number of 2 nd level and 1 st level managers, executives and other support

⁵ For non-cash investment, must provide proof of the values of the tangible assets.

	plan to demonstrate prospective income and employees. For 3 year visa or extension, must have enough employees to qualify as executive or manager.	employees to demonstrate applicant does not perform daily non managerial work – USCIS takes a much more stringent view on requirement of number and levels of employees and income on this type of application.
Processing Time	Regular - 4+ months; premium process – 15 days for petition approval.	Currently about 6 months for the adjudication of the I-140 petition and another 6+months to get the Green Card.
Dependents	Spouse and unmarried children under 21.	Spouse and unmarried children under 21; children’s age may be protected under CSPA if turns 21 after filing of I-140.
Can Dependents work?	Spouse can work upon approval of a spousal work permit; no work permit for children.	Spouse and children can work upon receipt of permanent resident status or receipt of work permit under AOS.
Validity	1 year for new entity; 3 years for established entity doing business for more than 1 year with extensions of up to 7 years. Can capture out of U.S. time to increase time over 7 year cap. Intermittent L-1A (less than 50% time in U.S.) is exempted from the 7-year cap ⁶ .	Permanent.
At risk investment	Not required.	Not required.
Direct capital investment	Not required.	Not required.
Purchase of Business	Can purchase existing business as subsidiary or affiliate; or establish new subsidiary or affiliate.	Must be existing business having qualifying relationship (subsidiary or affiliate).
Profitability	Recommended.	Must show substantial income/profit and operations.
Source of funds	Not required.	Not required.

⁶ For intermittent L-1 to extend beyond the cap period, spouse and children must not remain in the U.S. on a full time continuous manner. See 9FAM402.12-16E

Qualifying entity	Yes – must be either subsidiary or affiliate to a foreign entity.	Same as L-1A.
Foreign Employment	Must have been continuously employed with the related foreign entity for at least one year within the last three years before filing in an executive or managerial position ⁷ .	Must have been continuously employed by the related foreign entity for at least one year within the last 3 years period in an executive or 2 nd level or above managerial capacity.
U.S. employment	Must be coming to the U.S. to work in an executive or managerial capacity, be it full time or intermittent.	Must be coming to the U.S. to work in a full time, permanent executive or 2 nd level (or above) managerial position.
Visas for domestic staff	Yes, domestic helpers can apply for B visas.	No.

Conclusion:

The key element of EB-5 (RC cases) is the documentation on the legal source and paths of funds. E-2 companies may also qualify as L-1 companies if the L-1 requirements are met. Same, L-1 companies can also be qualified as E-2 companies if the E-2 requirements are met. L-1 and EB-13 focus on the intra-corporate relationship and the one-year employment abroad. E-2 emphasizes investments made by treaty country nationals and the investors/employees nationality and experience. Applicants for L-1 and E-2 do not have to be “owners”, but can be employees. One does not have to have an L-1A to apply for the EB-13, however, it is highly recommended to secure the L-1A before applying the EB-13 as this will fulfill all the EB-13 requirements. In view of the China quota retrogression, it may be a good route, if qualified, to secure the L-1A before or after the I-526, then during the 10 years waiting period, the applicant and his/her family can be in the U.S. legally with spouse free to seek lawful employment in the local job market and children going to public schools.

⁷ Employment refers to having worked for the entity and be on payroll. Merely by owning the entity does not constitute the requirement of “employment” and thus, will not qualify as L-1 and/or EB-13