



Immigration Law Tampa Bay

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SUBSTANTIALITY

The U.S. State Department's FOREIGN AFFAIRS MANUAL ("FAM") governs Visa regulations and adjudications, including the E-Visas.

When specifically addressing concerns of "substantiality" (of the investment), the basic requirement / element is stated here, as follows:

9 FAM 402.9-6(D) Investment Must Be Substantial
(CT:VISA-569; 04-06-2018)

*"a. **General:** The purpose of the requirement is to ensure to a reasonable extent that the business invested in is not speculative but is, or soon will be, a successful enterprise. The rules regarding the amount of funds committed to the commercial enterprise and the character of the funds, primarily personal or loans based on personal collateral, are intended to weed out risky undertakings and ensure that the investor is unquestionably committed to the success of the business. Consequently, you must view the proportionate amount of funds invested, as evidenced by the proportionality test, in light of the nature of the business and the projected success of the business.*

*b. **Interpretations of "Substantial":** No set dollar figure constitutes a minimum amount of investment to be considered "substantial" for E-2 visa purposes. Investment of a substantial amount of capital for E-2 visa purposes constitutes an amount that is:*

(1) Substantial in a proportional sense, as determined through the application of the proportionality test outlined below;

- (2) Sufficient to ensure the treaty investor's financial commitment to the successful operation of the enterprise; and*
- (3) Of a magnitude to support the likelihood that the treaty investor will successfully develop and direct the enterprise.”*

As with most other elements of E-Visa requirements, the issue of what is considered a “substantial” investment from case to case, has caused much back-and-forth during the adjudications process. The government is very subjective on this as there is no certain measurement or Dollar amount.

You can read and re-read the FAM section above and STILL, you need to try and present your E-Visa application in such a way as to persuade the adjudicator that your case does in fact have an investment, or series of investments, which is amounts to “substantial”.

PRACTICE TIP: In my E-Visa applications, I cannot rely on the adjudicator’s education or background experience to “know” what is substantial and what not, when it comes to investments. The “how much do I need to invest for my E-Visa?” question comes up ALL the time with clients. It comes down to “what is substantial” and “how much is enough?”.

In my experience, “Substantial” investments are of such magnitude that the potential pain of losing the invested funds is so high, that the client will use every resource available to him to go to great lengths to ensure the probable success of his business venture. He will remain committed to the enterprise and prevent its failure "at all costs".

SAMPLE FACT PATTERN:

(1) Client A invests \$55,000 in a new U.S. business, but he is a seasoned entrepreneur and has multi-million dollar wealth to his name.

(2) Client B and his family have scraped together their entire life savings, also investing \$55,000 in a U.S. business, essentially starting over in life.

Both investors invest the equal sum for purposes of an E-Visa application, \$55,000. Not a very high or large sum, and typically on the lower end of the typical E-Visa case spectrum.

On these facts ALONE which case would be MORE LIKELY to be approved for an E-2 on considerations of "substantial" investment?

-- ANSWER: Client B. Why? Because the adjudicator would view B's financial investment and resulting commitment to the success more highly, due to the much higher risk of financial loss/failure.

The U.S. government will never officially commit to a particular sum or threshold in terms of "how much" needs to be invested for purposes of an E-Visa.

There is no "one figure fits all" magic number. I have personally handled E-Visas successfully with as little as the low \$30,000s and some as high as over \$3 million.

Based on my 15+ years of handling hundreds of E-Visa cases, I can safely say that 80% of all cases have had investments between \$50,000 and \$250,000.

Think of "substantiality" in terms of:

- (1) Is the amount invested so high that the investor would have a hard time recovering from a potential business failure or loss of the money?
- (2) Is the amount invested sufficiently high to give the business enterprise the BEST possible chances at getting off the ground and succeeding?
- (3) Is the amount invested sufficiently high to make sure that the investor is truly committed to and interested in the success of the undertaking and not just considering it a "fun little investment venture" on the side?