

New Israeli Investor Visa To Woo Tech Startups

By **Nicole Narea**

Law360 (April 24, 2019, 7:38 PM EDT) -- The E-2 investor visa program opens up to Israelis starting next week, and attorneys anticipate the program will attract high demand among Israel's flourishing tech startup sector, which has had few reliable visa options until now.

Under the E-2 visa program, citizens of certain countries that have trade treaties with the U.S. can be conferred legal immigration status if they invest a certain amount in a U.S. business. The minimum level of investment depends on funds invested relative to the reasonable cost of the business, which varies based on industry and location.

The E-2 visa fills a major gap for Israeli tech companies, which have so far been relegated to the H-1B skilled worker and L-1 intracompany transfer visa categories, attorneys said. The process to obtain both of those visas can be cumbersome, with demand for H-1B's consistently outstripping supply under a statutory cap and L-1's requiring petitioners to have worked for their companies for at least one year.

"We've been waiting a long time for this," Nandini Nair, a partner in Greenspoon Marder LLP's immigration and naturalization practice group, said. "Israel is becoming a tech hub. They are extremely excited to have the flexibility to move personnel without waiting for the H-1B cap and without having to wait for one year before they can transfer them over."

Courtney Noce, an attorney at Greenberg Traurig LLP, noted that Israelis have been eligible to apply for the E-1 Treaty Trader visa, which is for individuals who conduct international trade, since 1954. In 2012, former President Barack Obama signed legislation also authorizing the E-2 visa classification.

After the proposal stalled for several years, Israel offered its final approval of the program and U.S. Citizenship and Immigration Services announced Monday that Israeli nationals will be eligible to apply for E-2 investor visas as of May 1. The agency said that Israelis already residing in the U.S. on nonimmigrant visas would be able to adjust their status, as well as those of their spouses and other dependents in the U.S.

Eric Bord, a partner at Morgan Lewis & Bockius LLP, said that attorneys and Israeli businesses alike have long been awaiting the E-2 visa.

"Given that this final approval by Israel is more than seven years in the making, there is presumably a

great deal of pent-up demand and excitement about the availability of Israeli companies and investors to use the E-2 program to invest in to grow businesses in the United States," he said.

Bord said the introduction of the E-2 visa will most likely affect industries that are thriving in Israel and looking to grow in the United States, including technology, life sciences, medical devices, communications and jewelry. He said the program will attract large, Israeli-owned multinational companies that want to hire Israelis to work in the U.S. as much as entrepreneurs and startups.

He said that his firm, for example, has been contacted by cybersecurity, telecommunications and life sciences companies that want to add E-2 to their existing immigration toolkit, as well as Israeli graduate students at leading U.S. universities who have received Israeli venture funding for IT startups.

Bord said that while the program "can be a great tool for the right situation," attorneys should look at whether it is appropriate for clients in the context of "alternatives, long-term business and individual goals, and how the visa fits into the overall investor's strategic plans."

"For example, a startup that is Israeli-owned today might lose its Israeli majority after different stages of funding and development, and that could compromise existing E-2 visas," he said. "This is just one example of why the E-2 needs to be looked at beyond the short-term visa needs."

Nair said she is counseling clients not to expect a "cookie cutter" application process for the E-2 visa. She said they must tailor the application to the individual investment and business plan. That process may not occur overnight, even though the Israeli consulate has projected approximately two- to three-week processing times for visa petitions, she said.

She said that having a comprehensive business plan is particularly critical for individual investors. They should be able to highlight how they will generate U.S. jobs, which has attracted substantial scrutiny from consulates under President Donald Trump's "Buy American, Hire American" executive order, she said.

Noce said the E visa program more broadly has come under more scrutiny under the Trump administration.

"There has been a very real impact on adjudications across the board resulting from BAHA," she said. "The Foreign Affairs Manual now formally includes BAHA language. Many consular posts also require companies to demonstrate they cannot find a U.S. worker to do the job."

Moreover, she said each consulate has adopted different ways of processing E visas. Some consulates have, for example, page limitations or fewer requirements for companies they have vetted, so the experience varies with location, she said.

Bord said, however, that E-2 adjudication at U.S. consular posts remains mostly reliable for strong applications and well-prepared applicants.

--Editing by Breda Lund.