BROKER REFERENCE GUIDE

E-2 Visa Transactions: What Business Brokers Need to Know

How early immigration planning can protect the buyer, the seller, and the deal

Prepared by Jessica Weiss, Esq.
Partner, Weiss & Moy, P.C.
Practicing U.S. immigration law since 1998

Arizona headquarters with a Florida location
jessicaw@weissiplaw.com • (480) 994-8888

The broker’s role in an E-2 transaction

An E-2 transaction can involve a strong buyer and a good business and still encounter problems if immigration requirements are considered too late. The parties may already have signed a purchase agreement, made deposits nonrefundable, moved money through the wrong accounts, or committed to a closing sequence that does not fit the visa process.

> **The broker finds and helps negotiate the deal. Immigration counsel determines whether the investor, the business, and the final transaction can support an E-2 visa.**

The broker’s value is recognizing issues early, preserving flexibility, and bringing immigration counsel into the transaction before the structure becomes difficult or expensive to change.

Start with the buyer, the funds, and the proposed role

Treaty nationality, ownership, and control

Treaty nationality is the first threshold question, but it is not the entire analysis. The buyer’s citizenship, ownership percentage, control rights, co-investors, holding companies, and proposed management role all matter. Residency, place of birth, or a spouse’s citizenship is not necessarily enough.

Structures involving multiple investors, a non-treaty co-owner, a trust, or a 50/50 arrangement should be reviewed before the letter of intent fixes the equity and control terms.

Source and path of funds

It is not enough to show a large bank balance. Counsel must generally trace how the money was lawfully earned or received and how it moved into the transaction.

- Salary savings or business income
- Sale of a business, real estate, or securities
- Inheritance or gifts
- Loans and the collateral securing them
- Cryptocurrency proceeds or family transfers

Brokers should avoid labeling funds as a gift, loan, or seller-financed equity before counsel reviews the structure. Last-minute transfers, unexplained cash deposits, or loans secured primarily by the purchased business can create serious problems.

Evaluate the business as an operating enterprise

A financially attractive business is not automatically a strong E-2 business. The enterprise should be real, active, and operating rather than a passive investment or paper entity.

Identify what is actually transferring

- Equipment, inventory, and operating assets
- Customer relationships, contracts, and goodwill
- Licenses, intellectual property, and operating systems
- Employees, managers, and transition support
- Contracts or licenses that may not be assignable

Look beyond the purchase price

There is no single purchase price that guarantees E-2 eligibility. The investment must be substantial in relation to the cost of purchasing or establishing the particular business and sufficient to support a credible operation.

The analysis may include inventory, deposits, equipment, build-out, insurance, licenses, payroll, marketing, professional fees, and reserves. A lower-priced business may work if properly capitalized; a higher-priced business may still present problems if the buyer contributes little cash, relies heavily on debt secured by the target assets, or lacks realistic working capital.

Make the financial story consistent

Historical payroll, current employees, projected hiring, margins, cash flow, and the buyer’s operating plan should tell one consistent story. Projections should be realistic and supported by the business’s actual performance and funded plans.

Structure documents, escrow, and closing carefully

The transaction documents must balance two concerns: the buyer needs meaningful commercial protection if the visa cannot proceed, while the investment must also be genuinely committed and at risk.

A sentence stating that the deal is “subject to visa approval” is not enough by itself. The letter of intent, purchase agreement, escrow instructions, deposit terms, denial or delay provisions, default remedies, lease obligations, and closing conditions should work together.

Escrow must match the transaction

Escrow can be useful, but it is not an automatic solution. If every dollar is freely refundable, the investment may appear insufficiently committed. If funds are released unconditionally before approval, the buyer may face unacceptable commercial exposure.

- Use consistent release conditions across all documents.
- Track each payment, source account, recipient, and purpose.
- Avoid re-wiring or relabeling funds at the last minute.
- Coordinate escrow timing with the filing and anticipated visa process.

Review financing and the seller’s continuing role

Seller financing, earn-outs, holdbacks, consulting agreements, and retained control rights require careful review. Counsel will need to understand the buyer’s cash equity, the collateral securing any loan, who controls the business, and whether the seller’s ongoing role is truly transitional.

The same coordination is needed for lease assignments, licenses, key contracts, staffing, and the date the buyer will take over operations. A shared calendar should align the immigration filing, deposits, escrow releases, closing, travel, license transfers, seller transition, and operational takeover.

A practical protocol for brokers

When an E-2 buyer becomes serious, make the referral early—ideally before the purchase agreement or escrow terms are finalized.

Information to organize for counsel

- Proposed ownership and control structure
- Source-and-use summary for the investment funds
- Financial statements, tax returns, and current profit-and-loss statement
- Payroll, headcount, and projected hiring
- Lease, licenses, key contracts, and asset list
- Financing terms and collateral
- Seller transition plan and proposed closing calendar

Maintain clear professional boundaries

- Do not promise visa approval.
- Do not advise the buyer on immigration status or work authorization.
- Do not represent that a particular business “qualifies.”
- Identify pressure points, document the referral, and let immigration counsel make legal determinations.

> **When the buyer, seller, broker, accountant, transaction counsel, and immigration lawyer work from the same structure and timeline, the parties can make informed decisions before capital and leverage become trapped.**

Important legal notice

This guide provides general information and is not legal, tax, investment, financial, or transaction advice. It does not create an attorney-client relationship. Every transaction is different, and immigration laws, procedures, processing times, and consular practices can change. Prior results do not guarantee a similar outcome. Buyers should consult qualified immigration, transaction, tax, and financial professionals about their specific deal.