

Omnibus Spending Bill Adds Portugal to List of E-1/E-2 Treaty Countries, New E Visa Requirement

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Portugal is designated an E-1/E-2 treaty country in the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023 (H.R. 7776/NDAA) passed by Congress on December 15, 2022. President Joe Biden is expected to sign the bill, providing Portuguese nationals E-1 and E-2 visa eligibility.

E-1 and E-2 visas are for treaty traders and investors who enter the United States under a treaty of commerce and navigation between the United States and the country of which they are a citizen or national. There are close to 90 countries that [qualify for E-1 visas, E-2 visas, or both](#). Once the bill has been signed, Portugal will be added to the list of E-1 and E-2 treaty countries.

The new legislation adds a new eligibility requirement for E-1/E-2 visas. Individuals who acquired the citizenship they are using to qualify for the E-2 visa (through investment) must show domicile in that country for “a continuous period of not less than 3 years at any point before applying for an E nonimmigrant visa,” limiting visa eligibility for those who acquire citizenship through investment, permitted by certain countries through immigrant investor programs, [including Portugal’s “golden visa” program](#). This eligibility requirement will not apply to individuals who have already been granted E-1/E-2 status.

The [general E-1 / E-2 eligibility requirements](#) are summarized below.

To qualify for an E-1 visa as treaty trader, the individual or company must be a national of an eligible treaty country, carry on substantial trade involving numerous transactions over time, and conduct principal trade between the United States and the relevant treaty country.

To qualify for an E-2 visa as a treaty investor, the individual or company must be a national of an eligible treaty country, have invested in or are in the process of investing a substantial amount of capital in a bona fide enterprise in the United States and be entering the United States solely to develop and direct the investment enterprise.

An individual also may enter the United States in E-1 or E-2 status as an employee of a treaty trader or treaty investor. Such an individual must also be the same nationality as the principal and be engaging in duties as an executive or supervisor or have special qualifications as an essential

employee.

The E-1/E-2 application process requires evidence of the investment or substantial and principal trade, including financial documentation, a five-year business plan, evidence of the enterprise's viability, and documentation regarding the applicant's proposed activities in the United States.

Immigration delays and limits of visas have plagued companies trying to fill key positions in the United States. Employers should not overlook the [powerful, but somewhat obscure, immigration tool – the E visa](#).

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