

# *Visa Options for Foreign Investors*

August 16, 2023

Presenters:

- Becki Young, Co-Managing Partner, Grossman Young & Hammond
- David Morris, Of Counsel, Grossman Young & Hammond  
Chair of AILA's National EB-5 Investor Visa Committee  
Co-Owner DC Regional Center LLC (DCRC)

# Becki Young



Becki Young, co-founder of Grossman Young & Hammond, is a seasoned business immigration attorney with over 20 years of experience in the field. She has facilitated the sponsorship of foreign professionals, trainees, interns and individuals of "extraordinary ability." She regularly provides immigration law advice to clients in a broad range of industries.

Ms. Young is an active member of the American Immigration Lawyers Association (AILA). She frequently speaks at legal, business and hospitality conferences, and regularly contributes insight through published articles and commentary. She is highly recommended by Chambers & Partners and recognized as a Leading Legal Practitioner in Corporate Immigration by Who's Who Legal. Grossman Young & Hammond is rated Tier 1 National and Washington, D.C. for Immigration Law by US News & World Report / Best Lawyers. She is also recognized as a "Best Lawyer" in immigration by Washingtonian magazine.

Becki Young  
Co-Managing Partner  
Grossman Young & Hammond  
[byoung@grossmanyouth.com](mailto:byoung@grossmanyouth.com)

# David Morris



David Morris  
Of Counsel  
Grossman Young & Hammond  
[dmorris@grossmanyouth.com](mailto:dmorris@grossmanyouth.com)

David Morris has practiced exclusively in immigration law since 1992. For the past 20 years, he has represented foreign investors and regional centers in all aspects of the EB-5 visa program.

David currently (2023-2024) serves as Chair of *AILA's National EB-5 Investor Visa Committee*, a role he has held for each of the past four years. David is the Senior Editor of the leading EB-5 legal book in the field, “*AILA Immigration Options for Investors & Entrepreneurs*” for both the 3rd Edition (2015) and the most recent 4<sup>th</sup> Edition (2019). David has also served as an Expert Witness on EB-5 legal issues in state and federal court.

In addition to being one of the leading EB-5 immigration lawyers in the field, David created and co-owns the DC Regional Center LLC (DCRC), a regional center entity designated by USCIS in 2011. Through his work at DCRC, David has raised and deployed more than \$400 million of EB-5 funds from 800 investors to help finance large commercial real estate development projects in the DC region.

# Agenda

- **What is the E-2 visa category? Which countries / citizens qualify? Minimum investment?**
- **How to create a successful E-2 business plan.**
- **How to prepare for the E-2 visa interview.**
- **What are the tax benefits of E-2 status?**
- **The basics of the EB-5 program, process, and overall timeline.**
- **What funding sources are allowed?**
- **Q&A**



# E-2 Basics

*The application must show that:*

1. The requisite treaty exists: see <https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/fees/treaty.html>.
2. The individual and/or business possesses the nationality of the treaty country.
3. The applicant has invested or is actively in the process of investing.
4. The enterprise is a real and operating commercial enterprise.
5. The applicant's investment is substantial.
6. The investment is more than a marginal one solely for earning a living.
7. The investor applicant is coming to the U.S. to “develop and direct” the enterprise.
8. The employee applicant is destined to an executive/supervisory position or possesses skills essential to the firm's operations in the U.S.
9. The applicant intends to depart the U.S. when E-2 status terminates.

# E-2 Basics

1. The requisite treaty exists, see:

<https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/fees/treaty.html>



# E-2 Basics

2. The individual and/or business possesses the nationality of the treaty country.



# E-2 Basics



3. The applicant has invested or is actively in the process of investing.



# E-2 Basics

4. The enterprise is a real and operating commercial enterprise.



# E-2 Basics

5. The applicant's investment is substantial.



## E-2 Basics

6. The investment is more than a marginal one solely for earning a living.

*Job creation for US workers is an important consideration.*



# E-2 Basics



7. The investor applicant is coming to the U.S. to “develop and direct” the enterprise.

# E-2 Basics



8. The employee applicant is destined to an executive/supervisory position or possesses skills essential to the firm's operations in the U.S.

# E-2 Basics

9. The applicant intends to depart the U.S. when E-2 status terminates.



# E-2 Business Plans



# It's ALL about the audience!



Immigration Officers (USCIS) and Consular Officer (U.S. Consulates) review business plans AND approve/deny visas

The top 3 college majors are...

- Criminal justice
- Homeland security
- International law



Immigration/Consular Officers ARE NOT:

- CPAs
- Bankers
- Investors





# How the audience decides...

- 20-30 minutes to review cases!
- They DON'T care about complex financial projections
- They want to understand your business
- They want to make sure that your business meets the E-2 law

*"Great communicators make their audiences feel smart!"*



# What's a business plan?

Narrative

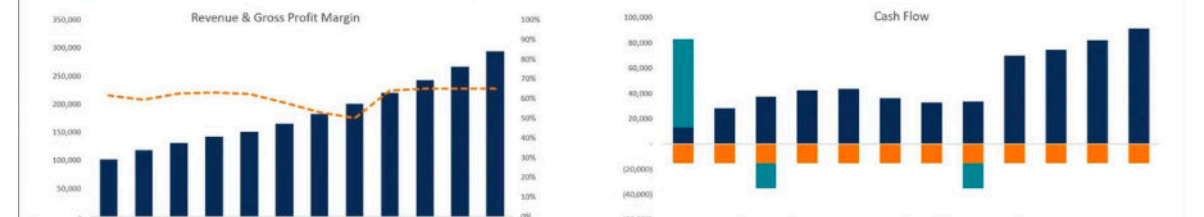


Financials



Cash Flow Statement												
<b>Operating Cash Flow</b>												
Net Earnings	2,474	11,791	21,075	26,713	28,227	26,543	24,401	25,209	52,749	61,839	70,146	79,323
Plus: Depreciation & Amortization	19,500	18,150	17,205	16,544	16,080	13,132	13,786	14,211	14,487	14,667	14,783	14,859
Less: Changes in Working Capital	9,003	1,702	775	903	827	3,175	5,062	5,768	(2,613)	2,041	2,664	2,931
<b>Cash from Operations</b>	<b>12,971</b>	<b>28,239</b>	<b>37,505</b>	<b>42,354</b>	<b>43,480</b>	<b>36,500</b>	<b>33,125</b>	<b>33,652</b>	<b>69,649</b>	<b>74,464</b>	<b>82,265</b>	<b>91,251</b>
<b>Investing Cash Flow</b>												
Investments in Property & Equipment	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000
<b>Cash from Investing</b>	<b>15,000</b>	<b>15,000</b>	<b>15,000</b>	<b>15,000</b>	<b>15,000</b>	<b>15,000</b>	<b>15,000</b>	<b>15,000</b>	<b>15,000</b>	<b>15,000</b>	<b>15,000</b>	<b>15,000</b>
<b>Financing Cash Flow</b>												
Issuance (repayment) of debt	-	-	(20,000)	-	-	-	-	(20,000)	-	-	-	-
Issuance (repayment) of equity	70,000	-	-	-	-	-	-	-	-	-	-	-
<b>Cash from Financing</b>	<b>70,000</b>	<b>-</b>	<b>(20,000)</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>(20,000)</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
Net Increase (decrease) in Cash	67,971	13,239	2,505	27,354	28,480	21,500	18,125	(1,348)	54,849	59,464	67,265	76,251
Opening Cash Balance	-	67,971	81,210	83,715	111,069	139,550	161,050	179,175	177,827	232,676	292,140	359,405
<b>Closing Cash Balance</b>	<b>67,971</b>	<b>81,210</b>	<b>83,715</b>	<b>111,069</b>	<b>139,550</b>	<b>161,050</b>	<b>179,175</b>	<b>177,827</b>	<b>232,676</b>	<b>292,140</b>	<b>359,405</b>	<b>435,657</b>

Charts and Graphs												
Revenue	102,007	118,086	131,345	142,341	150,772	165,849	182,434	200,678	220,745	242,820	267,102	283,812
Gross Profit Margin (%)	62%	59%	63%	63%	62%	58%	53%	50%	64%	65%	65%	65%
Operating Cash Flow	12,971	28,239	37,505	42,354	43,480	36,500	33,125	33,652	69,649	74,464	82,265	91,251
Investing Cash Flow	(15,000)	(15,000)	(15,000)	(15,000)	(15,000)	(15,000)	(15,000)	(15,000)	(15,000)	(15,000)	(15,000)	(15,000)
Financing Cash Flow	70,000	-	(20,000)	-	-	-	-	(20,000)	-	-	-	-

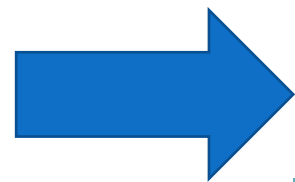


# What's an IMMIGRATION business plan?

(Basic)  
Financials

**Income Statement (\$)**

Line Item	2020
Sales	\$35,000
Cost of Sales	\$23,000
Gross Profit	\$12,000
Operating Expense	\$5,000
EBIT	\$7,000
Interest Expense	\$2,000



Narrative



# Marco Scanu



Marco Scanu  
Founder & CEO  
Visa Business Plans  
[info@visabusinessplans.com](mailto:info@visabusinessplans.com)  
888-657-3515

Since 2004, Mr. Scanu has been writing customized and effective business plans used for raising capital and immigration purposes. Drawing from his own experience as an immigrant and recipient of an O-1 visa in entrepreneurship and management of entrepreneurial ventures, Mr. Scanu has established himself as a successful consultant and business plan writer with international experience assisting clients across Asia, Europe, Africa, Latin America, and the United States.

Mr. Scanu is a business and executive coach with a globally-based practice coaching Fortune 1000 company executives, entrepreneurs, and professionals in 4 different countries and 10 different professions. He is a results-oriented consultant concentrating on effective strategic execution and management in high-growth companies. Mr. Scanu was Honorary Consul of the Republic of Italy (2001-2004) and is fluent in Spanish, Italian and English, and conversationally fluent in Portuguese.

# E-2 Consular Considerations



# E-2 Consular Considerations

1. Consular Processing vs. Change of Status
2. Matters related to inadmissibility
3. Status of Consulates



# E-2 Consular Considerations

## *Consular Processing vs. Change of Status*

There are two ways to file for the E-2 – either through a change of status in the US or through E-2 visa consular processing. What are the pros and cons of each?

# E-2 Consular Considerations

## *Process for applying before consulates:*

Post-specific and treaty-specific.

- Review each consulate's submission instructions carefully.
- Know the differences between treaties.
- Prepare for the interview.





# E-2 Consular Considerations

## *DS-160 Questions & Inadmissibility Concerns*

- Potential Inadmissibility Concerns:
  - Have you ever been refused a US visa?
  - Do you have a social media presence?
  - Do you have any communicable diseases/physical disorders etc.?
  - Have you ever been arrested or convicted for any crime or offense?
  - Do you have any charges or arrests related to money laundering/drug trafficking?
    - Are you, your spouse, or child an individual who has violated any controlled substance trafficking law, and knowingly benefited from trafficking activities in the last five years?
  - Applicants are subject to LEA background checks and the “**Google test**”

# E-2 Consular Considerations

## *Visa Validity vs. Period of Admission*

- How long will the visa be valid for? Varies by country – see <https://travel.state.gov/content/travel/en/us-visas/Visa-Reciprocity-and-Civil-Documents-by-Country.html>.
- Consulate has discretion to limit the validity period.
- E-2 visa holders get a 2-year admission every time they enter the U.S.

# E-2 Consular Considerations

## *Status of Consulates*

- Posts provide interview capacity depending on category. Cases are transferred to post on a first-in, first-out manner based on the date the applicant became documentarily qualified.
- Many posts still experiencing backlogs related to the pandemic.
- Expedited appointments available at the consulate's discretion.

# E-2 Taxation



# E-2 Taxation

## *E-2 Visa Holders – Tax Residence / Substantial Presence Test (SPT)*

- SPT is met if the sum of the following exceeds 182 days:
  - # of days in U.S. in current year, plus
  - 1/3 of days in U.S. in prior year, plus
  - 1/6 of days in U.S. in 2nd prior year



# E-2 Taxation

## *Implications of Tax Residence / Non-residence*

- U.S. residents are taxed on worldwide income.
- U.S. nonresidents are taxed only on U.S. source income. Salaries and wages are sourced where the services are rendered.
  - E-2 visa holders who do not meet the SPT (i.e. nonresidents) are taxed on salaries and wages earned for all days they provide services in the U.S. unless exempt by treaty.

# E-2 Taxation

## *Treaty Exemptions for Salaries and Wages*

- Treaties apply to taxpayers who are tax residents of a country with which the U.S. has an Income Tax Treaty.
- Treaties typically provide for exemption from U.S. taxation if:
  - Taxpayer is present in the U.S. <184 days during the tax year (or any 365 day period in some Treaties), and
  - Taxpayer's salary is paid by foreign (non U.S.) employer and not "borne by" U.S. permanent establishment of foreign employer.
- . . . But must check specific Treaty

# Len Wolf



Len Wolf, CPA  
Director  
The Wolf Group, P.C.  
[L.wolf@thewolfgroup.com](mailto:L.wolf@thewolfgroup.com)  
(703) 502-9500 x 111

As the founder of The Wolf Group, P.C., Len oversees the strategic direction the firm and provides guidance to the leadership team, working closely with both staff and clients. Since establishing the Firm in 1983, Len and his team have built a best-in-class, forward-looking international tax practice responsive to our clients and committed to success.

In his early years at The Wolf Group, Len focused the practice on serving the needs of the international community, including organizations such as The World Bank, International Monetary Fund (IMF), OAS, United Nations, NATO, and others. As a result, The Wolf Group has been the premier provider of tax services for international organization employees and retirees for nearly four decades.

In addition, Len has guided the firm in providing high-quality specialty expat and international tax services for individuals and privately held companies with international interests for more than 35 years.



EB-5



# EB-5 Immigrant Investor Visa (Green Card)

EB-5 Program gives Green Cards to Investor, Spouse & Children (unmarried & under 21 yrs) IF:

- Make min. capital investment (\$800,000 or \$1,050,000 USD)
- Into new U.S.-based company
- From investor's lawfully sourced funds
- That then creates 10 full-time jobs for U.S. workers
- Engage in some management role (active or as limited partner)

# Example: Italian restaurant entrepreneur to open new DC restaurant

## **E-2 Temporary Investor Visa**

- Apply for visa to US Embassy in Rome
- Process time approx. 3 months (varies)
- If approved, Investor gets visa and enters US to run business
- Spouse gets visa and work card
- 5-year visa with option to extend status

**VS**

## **EB-5 Investor Visa (Green Card)**

- File I-526 application with USCIS
- Process time approx. 55 months (varies)
- If approved, Investor goes to US Embassy for immigrant visa
- Investor, spouse & Children get 2-yr Conditional Green Cards
- File I-829 Petition to convert to full Green Card (show investment sustained & jobs created)

# Example: Italian restaurant entrepreneur to open new DC restaurant

## **E-2 Temporary Investor Visa**

- No min capital investment amount (but we urge at least \$200,000 USD)
- Capital used to buy an existing business (easier) or start new business
- No min job creation rule (but needs to have some employees)
- Investor needs to be active operator

VS

## **EB-5 Investor Visa (Green Card)**

- Req's \$800,000- or \$1,050,000-min capital investment
- Capital used to start new business (expansion of existing business hard)
- Must create 10 full-time jobs (W-2)
- Investor can be active or passive

# Quiz: EB-5 or E-2 ?

1. Italian national seeks to passively invest \$1M to help Italian chef to open new DC restaurant ?
2. Swiss national seeks to actively invest \$1M to help Italian chef to open new DC restaurant ?
3. Italian chef to personally invest \$200,000 with “family & friends” loan of \$800,000 to open new DC restaurant ?
4. Italian chef to personally invest \$100,000 to buy and renovate existing DC restaurant ?

Questions?

