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Looking beyond the E-2 to start a business in the U.S.

By **David Wilks and Erica Chiodo**

Law360 Canada (March 13, 2025, 11:16 AM EDT) -- Navigating the U.S. immigration system can be daunting for Canadian companies and entrepreneurs looking to establish a presence in the United States. Particularly challenging is knowing which visa classification best aligns with business goals and ensures a smooth transition into the U.S. market.

David Wilks

While many Canadian companies are familiar with the E-2 visa, the E-2 may not always be the best place to start depending on the time and funds available. The E-2, by its very nature, requires a substantial amount of capital to be placed at risk before the visa is granted. For some companies and entrepreneurs, placing substantial funds at risk prior to having the visa in hand goes beyond their risk tolerance.

In such cases, companies and entrepreneurs can look to alternative visa categories. In particular, those with existing Canadian businesses can consider expansion through the L-1 visa. Through the "New Office L-1," existing Canadian businesses can expand into the United States through an affiliated U.S. company or branch. The New Office L allows for up to one year of work authorization for managers, executives and specialized knowledge employees to commence operations and execute a business plan. While the New Office L does require a physical leased or owned worksite in the United States, it does provide a faster path to working in the United States, without requiring the same level of funds to be at risk prior to obtaining work authorization. Additionally, the L-1 also lends itself to a pathway to U.S. permanent residence more so than the E-2.

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The L-1 also has advantages in that it accommodates more types of ownership structures and a more diverse pool of employees. E-2 companies must be owned by nationals of a "Treaty Country." Canada is a Treaty Country. This means that Canadian companies qualifying for an E-2 must be primarily owned by Canadians, not including dual U.S.-Canadian citizens. This can be a problem for companies that seek international investors or have Americans in their ownership structure.

Additionally, the E visa itself is only available to employees that share the nationality of the company. For majority Canadian-owned companies, this means that the E can only be used to sponsor Canadian employees. This does not include permanent residents of Canada. The L-1 has no restrictions on the nationality of a company's owners or employees.

Still, with its initial term of only one year, a seven-year maximum extension and often demanding U.S. Citizenship and Immigration Services (USCIS) extensions, the L-1 may not be the ideal visa for every company. However, over the course of working in the United States on L-1 visa status, it is entirely possible that just by operating the company in the United States the company or entrepreneur would have made an investment large enough to qualify for an E-2 visa in the future. In other words, the first visa does not always have to be the final visa.

When considering how to get your start in the United States, it is important to begin thinking about immigration early in the process and not presuppose which visa will serve you best. Setting up an immigration plan early will help to ensure that you have a visa status that fits your company's structure, employees, risk tolerance and ultimate expansion goals.

David J. Wilks co-leads the immigration practice group at Hodgson Russ LLP. He represents a wide variety of business immigration and cross-border clients. He currently serves as an elected director of the American Immigration Lawyers Association's (AILA) National Board of Governors. His articles have appeared in Bender's Immigration Bulletin, ILW.com, National Law Review and in various AILA publications, including Immigration Options for Investors and Entrepreneurs, 4th Ed. He is also the recipient of AILA's President's Commendation, AILA's Joseph Minsky National Young Lawyer Award and the AILA Upstate New York Chapter's Mark T. Kenmore Mentor of the Year Award. Erica Chiodo is an associate at Hodgson Russ and, as a member of the immigration practice, works with multinational corporations in the preparation of nonimmigrant petitions in the H-1B, E-1/E-2, L-1, O-1, and TN categories.

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