



July 2019

NONIMMIGRANT INVESTORS

Actions Needed to Improve E-2 Visa Adjudication and Fraud Coordination

GAO Highlights

Highlights of [GAO-19-547](#), a report to the Chairman of the Joint Economic Committee

Why GAO Did This Study

Foreign nationals from 82 countries may obtain E-2 nonimmigrant investor status in the United States. The E-2 nonimmigrant classification allows an eligible foreign national to be temporarily admitted to the United States to direct the operations of a business in which they have invested a substantial amount of capital, or to work in an approved position (e.g., manager or essential employee). To obtain E-2 status, a foreign national can apply through State for an E-2 visa abroad, or if already in the United States, by petitioning USCIS to extend or change to E-2 status.

GAO was asked to review State's and USCIS' E-2 adjudication process. This report addresses: (1) outcomes and characteristics of foreign nationals who sought or received E-2 status from fiscal years 2014 through 2018, (2) policies and procedures for ensuring that individuals meet E-2 eligibility requirements, and (3) efforts to assess and address potential E-2 fraud. GAO analyzed State and USCIS data on E-2 adjudications, generalizable samples of E-2 visa applications and petitions, and relevant documents. GAO interviewed officials at 14 State posts abroad, selected based on E-2 application volume and other factors, and observed E-2 adjudications at four of these posts and USCIS's California Service Center.

What GAO Recommends

GAO is making five recommendations, including that State provide more E-2 training or resources to consular officers, and that State and USCIS establish a regular coordination mechanism to share information on E-2 fraud risks. State and USCIS concurred with all five recommendations.

View [GAO-19-547](#). For more information, contact Rebecca Gambler, 202-512-8777, GamblerR@gao.gov, or Jason Bair, 202-512-6881, BairJ@gao.gov

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What GAO Found

The Department of State (State) and U.S. Citizenship and Immigration Services (USCIS) annually adjudicated about 54,000 visa applications or petitions from fiscal years 2014 through 2018 for foreign nationals seeking E-2 nonimmigrant status, over 80 percent of which were approved. About eighty percent of E-2 adjudications were for State visa applications, and the remaining 20 percent were for USCIS petitions to extend or change to E-2 status. Generally, about half of the foreign nationals seeking E-2 status were investors, managers, or essential employees of an E-2 business, and the other half were their spouses or children.

State and USCIS have guidance, procedures, and training intended to help consular and immigration officers ensure foreign nationals meet E-2 eligibility requirements; however, officials GAO interviewed from both agencies identified challenges in the E-2 adjudication process.

- **State.** Consular officers noted that E-2 visa adjudications are complicated and resource-intensive, often requiring more documentation and time to complete than other visas. For example, the requirement that the investment in the business be substantial does not prescribe a minimum capital amount. Rather, the investment must be large enough to support the likely success of the business, among other criteria. Consular officers at 10 of 14 posts GAO interviewed indicated that determining the investment's substantiality is difficult for newly encountered business types. Providing additional E-2 training or related resources would help ensure that consular officers and locally employed staff have the necessary knowledge and abilities to carry out their responsibilities.
- **USCIS.** Officials identified similar challenges with respect to E-2 adjudications. However, officials stated that collocating immigration officers who adjudicate E-2 petitions helps to mitigate the challenges because the officers can communicate with each other on how USCIS has typically adjudicated such cases.

State and USCIS have resources to address E-2 fraud, which includes submitting falsified documents or making false statements material to the adjudication; however, coordination on E-2 anti-fraud efforts is limited. State has anti-fraud efforts in place for all nonimmigrant visa types, but State officials stated that they consider E-2 visa fraud to be lower risk compared to other visas because the large amount of complex paperwork required for the E-2 visa discourages malicious actors. USCIS officials consider E-2 fraud to be a significant issue and have taken steps to identify fraud, such as using fraud assessment technology to determine if a business is financially viable and conducting site visits if fraud is suspected. Both State and USCIS collect information that could be useful to each other's anti-fraud efforts, but interagency coordination on E-2 fraud issues is ad hoc and relatively rare. For example, the main formal mechanism of coordination on E-2 visa issues—a quarterly teleconference—was cancelled 7 out of 8 times in fiscal years 2017 and 2018. Coordinating regularly on fraud issues, which is a best practice from GAO's Fraud Risk Framework, will help both entities to better identify emerging E-2 fraud trends and areas for potential resource sharing.

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Abbreviations

ARSO-I	Assistant Regional Security Officer-Investigators
CBP	Customs and Border Protection
DHS	Department of Homeland Security
FAM	Foreign Affairs Manual
ICE	Immigration and Customs Enforcement
INA	Immigration and Nationality Act
LES	Locally Employed Staff
State	Department of State
USCIS	U.S. Citizenship and Immigration Services
VIBE	Validation Instrument for Business Enterprises

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July 17, 2019

The Honorable Mike Lee
Chairman
Joint Economic Committee
United States Congress

Dear Mr. Chairman:

According to the Department of Commerce, foreign direct investment contributed over \$4 trillion to the U.S. economy in fiscal year 2017.¹ One source of foreign direct investment is from foreign nationals of 82 countries (treaty countries) who may obtain E-2 nonimmigrant status in the United States.² The E-2 nonimmigrant classification allows a foreign national of a treaty country (investor) to be temporarily admitted to the United States solely to develop and direct the operations of a U.S. business in which he or she has invested a substantial amount of capital. E-2 status may also be available to other individuals who share the investor's treaty country nationality and are working for the business, such as an employee in an executive or supervisory position (manager) or an employee having special qualifications essential to successful or efficient business operations (essential employee). Furthermore, the spouse and children (dependents) of an E-2 investor, manager, or essential employee are also eligible for E-2 status.³

There are two pathways for an individual to obtain E-2 status: (1) by applying through the Department of State (State) for an E-2 visa at a U.S. embassy or consulate abroad (posts) and then being inspected and admitted at a U.S. port of entry by the Department of Homeland Security's

¹U.S. Department of Commerce, *Foreign Direct Investment: United States*, accessed April 10, 2019, <https://www.selectusa.gov/FDI-in-the-US>.

²Beginning May 1, 2019, Israeli nationals became eligible to apply for E-2 visas or petition to change to E-2 status. Similarly, New Zealand nationals became eligible to apply for E-2 visas or petition to change to E-2 status beginning June 10, 2019. Because our data analysis covered fiscal years 2014 through 2018, Israel and New Zealand were not identified in our data set as treaty countries.

³There is no nationality requirement for the spouse or children of an E-2 nonimmigrant. Qualifying family members, or dependents of an E-2 principal (i.e. investors, managers, or essential employees) are eligible to be admitted to, and remain in the United States under E-2 status, provided the principal retains E-2 status.

(DHS) U.S. Customs and Border Protection (CBP), or (2) if already in the United States in E-2 or another nonimmigrant status (e.g., business visitor or student), by petitioning for a change to, or extension of, E-2 status through DHS's U.S. Citizenship and Immigration Services (USCIS).⁴ As with other immigration benefits, State consular officers and USCIS immigration officers are tasked with ensuring that E-2 status is not granted to ineligible individuals, including those engaging in fraud, such as using counterfeit identity documents or making false claims material to the adjudication process.⁵ Additionally, CBP is responsible for inspecting all E-2 visa holders at U.S. ports of entry to determine their admissibility for an authorized period of stay.

Consistent with the Immigration and Nationality Act (INA), prospective E-2 nonimmigrants must meet several eligibility requirements.⁶ For example, the E-2 investor, manager, and essential employee must be a national of a country with which the United States maintains treaties of commerce and navigation.⁷ Further, although there is no prescribed minimum investment amount, the investor must place a "substantial" amount of capital "at risk" (i.e., subject to total or partial loss).

You asked us to review State's and USCIS's oversight and implementation of the E-2 adjudication process. This report examines (1) the outcomes and characteristics of foreign nationals who have sought or received E-2 status during fiscal years 2014 through 2018, (2) State and USCIS policies and procedures to ensure that individuals meet E-2

⁴For the purposes of this report, we refer to the USCIS forms that foreign nationals complete to change to or extend their E-2 status—the I-129 and I-539 forms—as petitions. E-2 principal investors, managers and essential employees are to complete the I-129, Petition for a Nonimmigrant Worker, while dependents are to complete the I-539, Application To Extend/Change Nonimmigrant Status. USCIS officials indicated that although the I-129 is currently labeled a petition, this form is considered an application, such as the I-539.

⁵E-2 fraud is a type of immigration benefit fraud that involves the willful or knowing misrepresentation of material facts for the purpose of obtaining E-2 nonimmigrant status, for which the person committing fraud is therefore ineligible. Such misrepresentations may involve a specific intent to deceive. We provide more information on E-2 fraud later in this report.

⁶We discuss the eligibility requirements in more detail later in this report.

⁷An E-2 manager or essential employee must have the same nationality as the employing investor, whether an individual or business organization.

eligibility requirements, and (3) State and USCIS efforts to assess and address potential fraud in the E-2 adjudication process.

To determine the outcomes and characteristics of foreign nationals who have sought or received E-2 status, we analyzed data from State's Bureau of Consular Affairs and USCIS on E-2 visa applications and petitions adjudicated from fiscal years 2014 through 2018.⁸ To assess the reliability of the E-2 data, we interviewed State and USCIS officials who maintain the data and checked the data for missing information, outliers, and obvious errors, among other actions. On the basis of these steps, we determined that the data were sufficiently reliable for the purposes of our reporting objectives, including providing summary statistics on E-2 adjudications, outcomes, and the characteristics of those seeking E-2 status. We also analyzed generalizable stratified random samples of E-2 visa applications from State and E-2 petitions from USCIS adjudicated in fiscal year 2018 to gather additional information, such as information on types of businesses and investment amounts. Specifically, we reviewed 120 E-2 visa applications and 124 E-2 petitions from USCIS for E-2 investors, managers, and essential employees.⁹ We chose sample sizes to achieve precision levels for a percentage estimate of plus or minus 10 percentage points for important sub-populations, such as denied petitions and role (e.g., investor, manager, and essential employee).

To assess State and USCIS policies and procedures to ensure that individuals meet E-2 eligibility requirements, we reviewed relevant provisions of the Immigration and Nationality Act and implementing regulations, and State and USCIS guidance, such as State's Foreign Affairs Manual (FAM) and USCIS's E-2 standard operating procedures. We also interviewed officials from State's Bureau of Consular Affairs and Foreign Service Institute, and USCIS on their respective agencies' E-2

⁸Our analysis includes applications or petitions that were adjudicated in fiscal years 2014 through 2018. Such petitions and applications may have been received in prior fiscal years.

⁹We did not review applications and petitions for E-2 dependents because the forms for such dependents did not include information we needed for our analysis, such as amount of capital invested and type of business, as such information is not required to assess the eligibility requirements for dependents.

processes and procedures, as well as training.¹⁰ Further, we assessed State's and USCIS's policies and procedures for ensuring that individuals meet E-2 eligibility requirements against control environment, control activities, and monitoring internal control standards in *Standards for Internal Control in the Federal Government*, as well as documentation retention requirements in agency guidance.¹¹

E-2 Adjudication Definitions

Prescreening: The review of a visa application by consular officers and locally employed staff prior to the applicant's interview. It can include processing steps, such as reviewing applicant documentation for completeness, as well as more analytical tasks, such as developing interview questions and summary notes and conducting research on the applicant and business using available databases and resources. However, only consular officers can adjudicate visa applications.

Source: GAO. | GAO-19-547

We conducted site visits to State and USCIS locations that adjudicate E-2 visa applications and petitions, respectively. For State, we conducted site visits from October through December 2018. For our site visits, we selected four posts that (1) were among the 10 highest E-2 adjudicating posts by volume in fiscal year 2017, (2) had different staffing models for E-2 visa adjudications, and (3) were geographically dispersed.¹² During these visits, we observed the processing, prescreening (see sidebar), and adjudication of E-2 applications, and interviewed consular officials and locally employed staff (LES), among others, about E-2 visa adjudication policies, procedures, resources, and training.¹³ Our observations from these site visits provided useful insights into State's E-2 adjudication procedures, but are not generalizable to all posts that adjudicate E-2 visas. For USCIS, in November 2018, we visited the California Service Center in Laguna Niguel, California—which is the only USCIS service center that adjudicates E-2 petitions—to observe E-2 adjudications and interview USCIS officials. In addition to our site visits, we conducted telephone interviews with State consular officers and LES responsible for prescreening and adjudicating E-2 visa applications at the remaining 6 of the top 10 posts in terms of E-2 annual adjudications, as well as 4

¹⁰The Foreign Service Institute is State's primary training institution for employees of the U.S. foreign affairs community, preparing American diplomats as well as other professionals to advance U.S. foreign affairs interests overseas. Foreign Service Officers are U.S. diplomats stationed at any of the more than 270 embassies, consulates and other diplomatic missions.

¹¹GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: September 2014).

¹²These posts are London, United Kingdom; Seoul, South Korea; Tokyo, Japan; and Toronto, Canada.

¹³LES are employees hired under the local compensation plan at a U.S. post overseas, which includes foreign service nationals, U.S. citizens residing abroad, third country nationals, and eligible family members of State employees.

randomly selected low-volume posts.¹⁴ Further, we reviewed written responses from consular managers at these 14 posts to a set of questions regarding E-2 adjudication processes and procedures, challenges, E-2 company registration programs, and E-2 training.¹⁵

E-2 Adjudication Definitions

E-2 fraud: E-2 fraud is a type of immigration benefit fraud that involves the willful or knowing misrepresentation of material facts for the purpose of obtaining E-2 nonimmigrant status, for which the person committing fraud is therefore ineligible. Such misrepresentations may involve a specific intent to deceive. Immigration benefit fraud is often facilitated by document fraud and identity fraud. Immigration-related document fraud includes forging, counterfeiting, altering, or falsely making any document, or using, possessing, obtaining, accepting, or receiving such falsified documents in order to satisfy any requirement of, or to obtain a benefit under the Immigration and Nationality Act. Identity fraud refers to the fraudulent use of others' valid documents.

Source: GAO. | GAO-19-547

To determine the efforts that State and USCIS take to assess and address potential E-2 fraud, we reviewed relevant State and USCIS standard operating procedures and guidance. We interviewed headquarters officials from State and USCIS, including those from State's Fraud Prevention Program and USCIS's Fraud Detection and National Security Directorate, on how both agencies identify and address potential E-2 fraud and what, if any, coordination or information sharing occurs between State and USCIS. During our four site visits abroad, we interviewed officials, such as State's fraud prevention managers and assistant regional security officer-investigators (ARSO-I), on anti-fraud efforts for E-2 visas at their posts, including potential fraud trends.¹⁶ Similarly, we interviewed immigration officers at USCIS's California Service Center on their anti-fraud efforts for E-2 petitions. We obtained data from State and USCIS on fraud referrals—that is, cases sent to fraud experts for additional research and review—and the results of fraud site visits from fiscal years 2014 through 2018.¹⁷ To assess the reliability of these data, we interviewed State and USCIS officials who maintain the data and checked the data for missing information, outliers, and obvious

¹⁴The other six posts with the highest E-2 processing volume in fiscal year 2017 are: Ciudad Juarez, Mexico; Frankfurt, Germany; Madrid, Spain; Osaka, Japan; Paris, France; and Rome, Italy. The four low-volume E-2 adjudicating posts in fiscal year 2017 selected were: Bogota, Colombia, Copenhagen, Denmark; Santiago, Chile; and Santo Domingo, Dominican Republic. The 4 low-volume posts were selected at random from a list of posts that had adjudicated at least 100 E-2 visa applications in fiscal year 2017, according to State data.

¹⁵An E-2 company registration program is a process by which posts assess companies against E-2 eligibility requirements. Companies that meet eligibility requirements are placed on an approved or registered companies list. Companies on the registered list do not have to be reassessed for eligibility each time one of their employees seeks an E-2 visa.

¹⁶State's Bureau of Diplomatic Security's ARSO-I's are to assist consular officers by investigating suspected passport and visa fraud detected through the consular officers' reviews of visa applications and supporting documents. State's Bureau of Consular Affairs' fraud prevention managers investigate fraud cases, conduct fraud training for consular officers, and provide information on fraud trends to consular officers.

¹⁷The primary purpose of site visits is to verify information provided in the petition, including the petitioner's existence, operational status, eligibility, and business viability, and to determine the validity and compliance of the beneficiary's employment.

errors. We determined that the data were sufficiently reliable to provide summary statistics on fraud referrals and the results of fraud site visits. Further, we assessed State's and USCIS's anti-fraud efforts against best practices for fraud coordination found in *A Framework for Managing Fraud Risks in Federal Programs*.¹⁸ Additional details regarding our objectives, scope, and methodology are provided in appendix I.

We conducted this performance audit from July 2018 to July 2019 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

¹⁸GAO, *A Framework for Managing Fraud Risks in Federal Programs*, [GAO-15-593SP](#) (Washington, D.C.: July 2015).

Background

Roles and Responsibilities for State and DHS Components

Several State and DHS components have roles and responsibilities in the E-2 adjudication process, as shown in Table 1.

Table 1: E-2 Adjudication-Related Roles and Responsibilities for the Department of State (State) and Department of Homeland Security (DHS)

Department	Component	Roles and responsibilities related to E-2 Adjudication
State	Bureau of Consular Affairs	The Bureau of Consular Affairs and consular officers stationed at posts abroad are responsible for adjudicating visa applications, including E-2 nonimmigrant visa applications. Further, fraud prevention managers at each post are to investigate fraud cases, conduct fraud training for consular officers, and provide information on fraud trends to consular officers.
	Bureau of Diplomatic Security	Bureau of Diplomatic Security’s assistant regional security officer- investigators are to assist consular officers by investigating suspected passport and visa fraud detected through the consular officers’ reviews of visa applications and supporting documents, among other responsibilities.
DHS	U.S. Customs and Border Protection (CBP)	CBP officers are responsible for inspecting persons entering or applying for admission into the United States, including E-2 nonimmigrant travelers. If admitted, the CBP officer sets the amount of time that the E-2 nonimmigrant is permitted to remain in the United States, known as the authorized period of stay, which for E-2 status is typically a fixed 2-year period.
	U.S. Citizenship and Immigration Services (USCIS)	USCIS is responsible for adjudicating petitions for individuals seeking E-2 status on their own behalf or through an employer from within the United States. Such beneficiaries can be foreign nationals seeking a 2-year E-2 extension, or a change of status to E-2 from another nonimmigrant category (e.g. F-1 academic students).

Source: GAO analysis of State and DHS information. | GAO-19-547

Depending on which agency (State or USCIS) is conducting the E-2 adjudication, as well as the foreign national’s role in relation to the E-2 business, foreign nationals are described using various terms, as shown in table 2.

Table 2: Terminology Used to Describe Foreign Nationals Seeking E-2 Status

	Term	Definition	
Based on the adjudicating agency	Applicant	A foreign national abroad filing an E-2 visa application with the Department of State.	
	Petitioner	The employing U.S. enterprise filing a petition with U.S. Citizenship and Immigration Services (USCIS) on behalf of an employee (i.e., beneficiary), or a foreign national investor or dependent filing a petition or application with USCIS on their own behalf.	
	Beneficiary	A foreign national already in the United States who is seeking to change to or extend E-2 status with USCIS.	
Based on their role	Principal	Investor	A foreign national who has committed funds to a U.S. enterprise and is in a position to develop and direct the operations of the enterprise in which he or she has invested substantial capital.
		Manager	A foreign national employee in an executive or supervisory position.
		Essential employee	A foreign national employee, in a lesser capacity than a manager, but having special qualifications essential to successful or efficient business operations.
	Dependent	Spouse or qualifying child of an investor, manager, or essential employee.	

Source: GAO analysis of Departments of State and Homeland Security information. | GAO-19-547

Note: For the purposes of this table, we consider the USCIS forms that foreign nationals complete to change to or extend their E-2 status—the I-129 and I-539 forms—to be petitions because the form used by the E-2 principal (the I-129) is labeled as a petition.

E-2 Eligibility Requirements

Both the business and foreign national seeking E-2 status must meet specific eligibility requirements, as shown in table 3. The E-2 eligibility requirements for nationals of treaty countries and their qualified family members (i.e., dependents) are defined in the INA, as amended, as well as in federal regulation.¹⁹ Foreign nationals seeking E-2 status must provide evidence and supporting documentation to State’s consular officers or USCIS’s immigration officers showing that they and their related business meet these requirements.

¹⁹See 8 U.S.C. § 1101(a)(15)(E). The regulations are codified at 8 C.F.R. § 214.2(e) (DHS), and 22 C.F.R. § 41.51 (State). See appendix II for a list of treaty countries.

Table 3: Summary of E-2 Eligibility Requirements For Businesses and Foreign Nationals

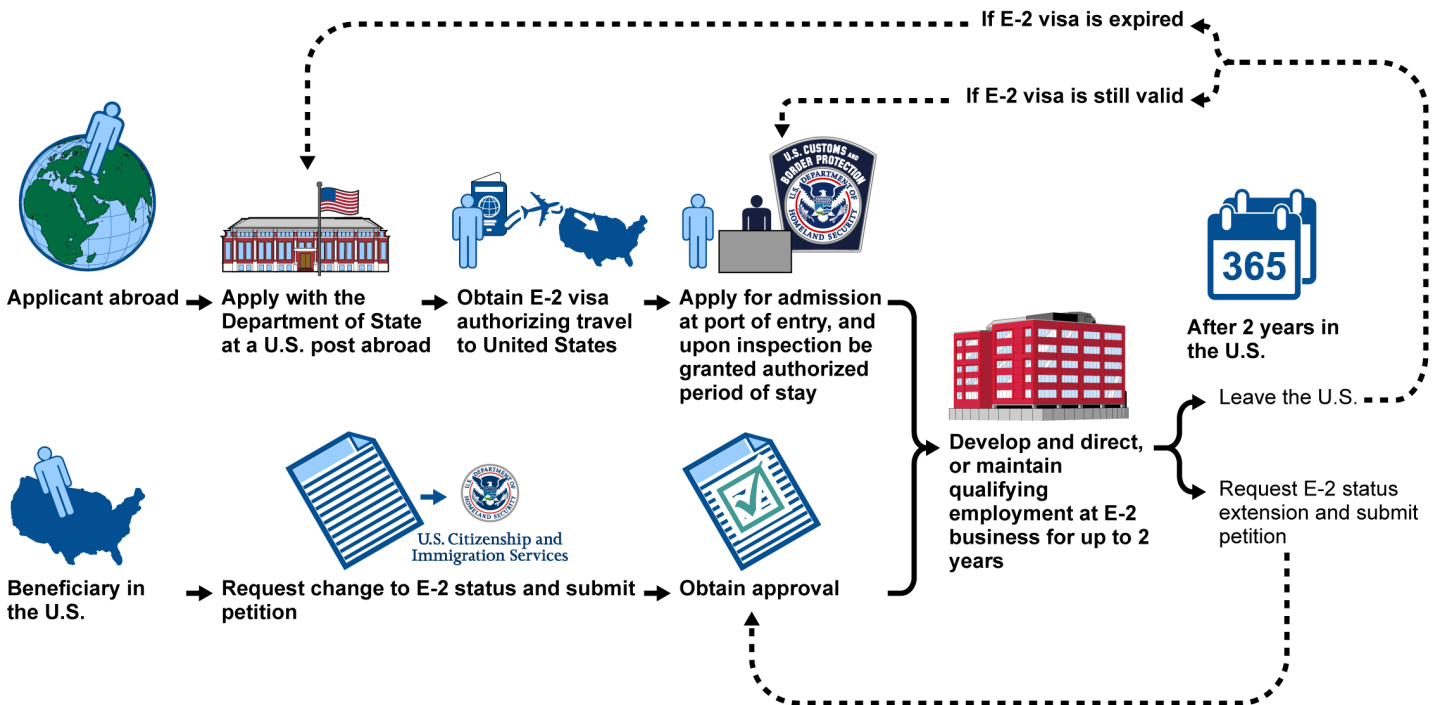
E-2 Eligibility Requirements		Description
For the business:	Business nationality	More than 50 percent of the ownership of the company must belong to nationals of the treaty country.
	Active investment	Investor or employing business has invested or is actively in the process of investing assets that are committed irrevocably to the investment and have not been obtained directly or indirectly through criminal activity.
	Real and operating enterprise	The business is a real and operating commercial enterprise producing a service or commodity, and meets applicable legal requirements for doing business in the particular jurisdiction of the United States.
	Substantial investment	No prescribed minimum amount of capital, although it must be substantial in proportion to the cost of the business. Sufficient to ensure the investor’s financial commitment to the successful operation of the business. Large enough to ensure the likelihood of success of the business.
	More than marginal enterprise	The investment must be made in a business that has the capacity to generate enough income to provide more than a minimal living for the treaty investor or employee and family, or has the present or future capacity (within five years) to make a significant economic contribution.
For the foreign national:	Treaty country nationality	The investor possesses the nationality of the treaty country, and managers or essential employees share the individual or business investor’s nationality. This requirement does not apply to dependents.
	Role-specific requirements	Investor: The individual is in a position to develop and direct the operations of the enterprise in which her or she has substantially invested. Manager: The individual is an employee in an executive or supervisory position. Essential employee: The individual is employed in a lesser capacity than a manager, but possesses skills essential to the business’s operations in the United States. Dependent: The individual is a child or spouse of an E-2 investor, manager, or essential employee.
	Intent to depart	Individuals express clear intent to depart the United States upon termination of E-2 status.

Source: GAO analysis of the Code of Federal Regulations, 8 CFR 214.2(e) and 22 CFR 41.51. | GAO-19-547

E-2 Nonimmigrant Adjudication Processes

There are two pathways for an individual seeking E-2 status: (1) applying for an E-2 visa through State at a post abroad, and then being inspected and admitted at a U.S. port of entry by CBP, or (2) filing with USCIS to extend, or change to E-2 status if already in the United States in E-2 or other nonimmigrant status, as shown in figure 1.

Figure 1: Pathways for Foreign Nationals Seeking E-2 Nonimmigrant Status



Source: GAO analysis of Department of State and Department of Homeland Security data; Art Explosion (clip art). | GAO-19-547

Note: E-2 principals include investors, managers, and essential employees. E-2 dependents generally follow similar pathways to obtain E-2 nonimmigrant status; however, they are not required to invest in or work at the E-2 business, as their status depends on the E-2 foreign national maintaining their investment or employment qualifications. An E-2 visa is typically valid for 5 years, meaning that the visa can be used for entry into the United States during that 5-year period. E-2 nonimmigrants are typically granted an authorized period of stay of 2 years upon admission at a U.S. port of entry under a valid E-2 visa. Individuals approved to change to E-2 status are also typically granted an authorized period of stay of 2 years. There is no limit to how many times one can obtain or extend E-2 status.

Prior to the expiration of the 2-year period typical for E-2 nonimmigrants, a foreign national seeking to remain in E-2 status must either petition USCIS for an E-2 extension; or depart the country, reapply for an E-2 visa with State at a U.S. embassy or consulate, and seek entry at a U.S. port of entry. However, if the E-2 visa is still valid after having departed, the foreign national may present that visa to apply for admission again at a U.S. port of entry.

If applying through State, consular officers are responsible for adjudicating E-2 visa applications at one of State’s 220 posts. Although all posts can adjudicate E-2 visas, approximately 140 posts adjudicated at least one E-2 visa in fiscal year 2018.

State and USCIS Adjudicated About 54,000 E-2 Visa Applications or Petitions Per Year From Fiscal Years 2014 through 2018; Roles, Business Sectors, and Countries Varied

Taken together, State and USCIS adjudicated an annual volume of E-2 visa applications or petitions of more than 50,000 from fiscal years 2014 through 2018. State accounted for over 80 percent of these adjudications. About 90 percent of State's E-2 visa applications were issued, and about 83 percent of USCIS's E-2 petitions were approved. See appendix III for additional State and USCIS data on the characteristics of foreign nationals seeking E-2 status, including annual statistics, the relatively low number of E-2 nonimmigrants who remain in the United States beyond the conclusion of their authorized period of stay (i.e., overstay), and other post-adjudication outcomes.²⁰

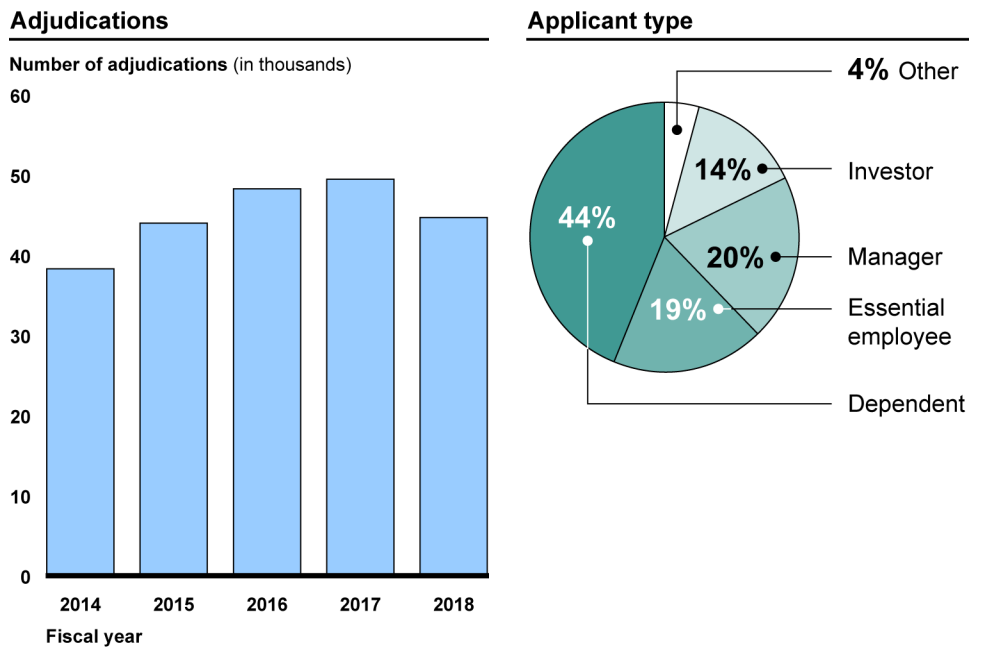
State Adjudicated About 45,000 E-2 Visas Annually, About 90 Percent of Which Were Issued

The volume of State's E-2 visa adjudications increased from fiscal years 2014 through 2017, and decreased slightly in fiscal year 2018, as shown in figure 2. During this time period, State consular officers adjudicated an average of about 45,000 E-2 visas per year. Also during this time period, 44 percent of adjudications were for dependents, and a combined 53 percent were for principals, including 14 percent for the investor, 20 percent for managers, and 19 percent for essential employees.²¹

²⁰Overstays are nonimmigrants who remain in the United States beyond the expiration of their authorized period of stay by: (1) failing to depart by the status expiration date or completion of qualifying activity (plus any time permitted for departure) without first obtaining an extension or other valid immigration status or protection, or (2) violating the terms and conditions of their nonimmigrant status at any point during their stay. The authorized period of stay is the fixed or variable amount of time for which a nonimmigrant is admitted to the United States upon inspection by a CBP officer at a U.S. port of entry. See 8 U.S.C. §§ 1101(a)(15), 1184(a), 1185, 1202(g), 1225; and as for CBP's customs inspection authority, see 19 U.S.C. §§ 1461, 1467.

²¹In addition, 4 percent of adjudications were for applicants who self-identified as another applicant type—potentially in error—although they were applying for an E-2 visa. Percentages may not sum to 100 due to rounding.

Figure 2: E-2 Visa Adjudications, Fiscal Years 2014 through 2018



Source: GAO analysis of Department of State E-2 visa data. | GAO-19-547

Note: Four percent of adjudications were for applicants who self-identified as another applicant type—potentially in error—although they were applying for an E-2 visa. Percentages do not sum to 100 due to rounding.

E-2 Visa Refusal Rate Compared to Other Nonimmigrant Visas

Refusal rates for all nonimmigrant visas, including E-2 visas increased from fiscal years 2014 through 2017. However, the refusal rate for E-2 visas has been lower than for other types of nonimmigrant visas. For example, we reported in August 2018 that the refusal rate for all nonimmigrant visas increased from 15 percent to 22 percent for fiscal years 2014 through 2017, while for E-2s it increased from 7 percent to 11 percent. Department of State officials believe the lower E-2 refusal rates may be due in part to the large amount of complex paperwork required for the visa, which may discourage unqualified applicants from applying.

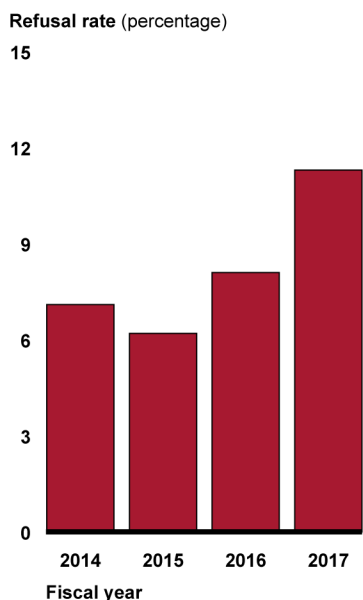
Source: GAO-18-608 and Department of State data. | GAO-19-547

From fiscal years 2014 through 2017, the average E-2 visa refusal rate—that is, the number of refused visas divided by the total number of visas adjudicated during that time period—was about 8 percent, which is generally lower than for other types of nonimmigrant visas (see sidebar). We do not present the fiscal year 2018 refusal rate in figure 3 because that rate is subject to change until the end of fiscal year 2019. Specifically, an application adjudicated in fiscal year 2018 may require the applicant to submit additional information to demonstrate eligibility for an E-2 visa. In such cases, the application is refused under INA § 221(g).²² The applicant has one year after the date of refusal to overcome the refusal by, for example, providing missing or supplemental information. After one year, the applicant must reapply. As of November 2018, 8,184 of the 11,255 refusals in fiscal year 2018 were refused under INA § 221(g). Depending on the extent to which applicants refused in fiscal year

²²See 8 U.S.C. § 1201(g).

2018 under INA § 221(g) are able to overcome their refusals, State officials stated that they expected the fiscal year 2018 refusal rate to be similar to prior fiscal years.²³

Figure 3: E-2 Visas Refusal Rate, Fiscal Years 2014 through 2017



Source: GAO analysis of Department of State E-2 visa data. | GAO-19-547

Note: The refusal rate is the number of refused visas divided by the total number of adjudicated visas. We do not present the fiscal year 2018 refusal rate in this figure because that rate is subject to change until the end of fiscal year 2019.

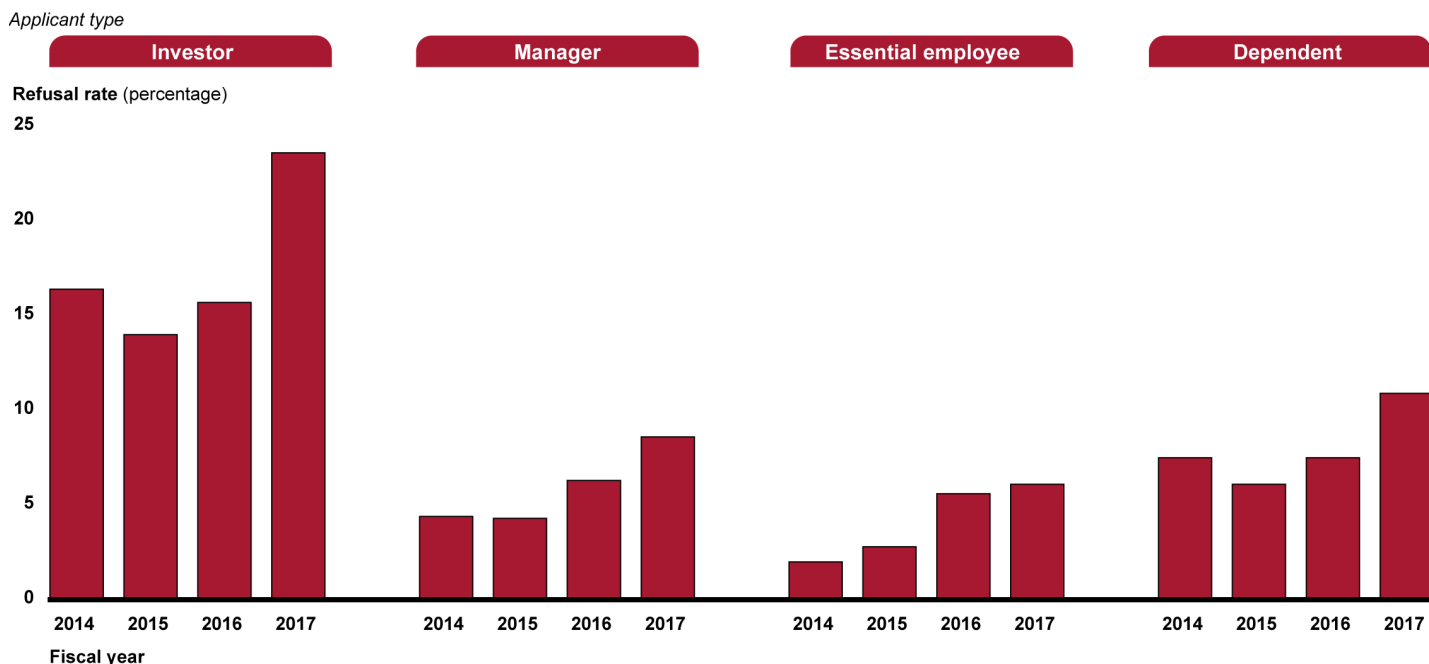
In addition to analyzing State data on adjudications and refusals, we also analyzed data to identify trends in refusal rates by applicant type, refusal reasons, nationality of applicants, and business sectors, and level of investment, as described below.

Refusal Rates by Applicant Type. Our analysis showed that for fiscal years 2014 through 2018, average refusal rates were highest for investors (24 percent), followed by dependents (12 percent), managers (9

²³According to State data, depending on the extent to which applicants refused in fiscal year 2018 under INA § 221(g) are able to overcome their refusals within a year of their application's adjudication, the refusal rate will fall between 7 percent and 25 percent.

percent), and essential employees (6 percent).²⁴ Figure 4 shows the refusal rates by fiscal year for each applicant type, and appendix III includes additional information on refusal rates for fiscal year 2018. According to State officials, refusal rates may be higher for investors because such applicants are typically the first in their company applying for an E-2 visa; if denied, then future E-2 applicants (e.g., manager or essential employee) would need to wait until such investor is approved or find another individual or business investor to form the basis for their E-2 employment status.

Figure 4: E-2 Visa Adjudications and Refusal Rate by Applicant Type, Fiscal Years 2014 through 2017



Source: GAO analysis of Department of State E-2 visa data. | GAO-19-547

Note: Four percent of adjudications were for applicants who self-identified as another applicant type—potentially in error—although they were applying for an E-2 visa. The refusal rate is the number of refused visas divided by the total number of adjudicated visas. We do not present the fiscal year 2018 refusal rates in this figure because that rate is subject to change until the end of fiscal year 2019.

²⁴The average refusal rate for the different applicant types in fiscal years 2014 through 2018 also includes refusals for applications that were refused under INA § 221(g) in fiscal year 2018 as of November 2018, when State provided this data to us. If all of the applications refused under INA § 221(g) in fiscal year 2018 are later overcome and issued, the average refusal rate across fiscal years 2014 through 2018 would be 17 percent for investors, 8 percent for dependents, 6 percent for managers, and 4 percent for essential employees.

Refusal Reasons. Our analysis showed that approximately 10 percent of E-2 visa adjudications from fiscal years 2014 through 2017 were refused.²⁵ The majority of E-2 visa refusals for fiscal years 2014 through 2017 (75 percent) were because the applicant did not meet eligibility requirements.²⁶ The next largest reason for refusal (22 percent) was INA § 221(g) for inadequate documentation.²⁷ Few E-2 visa applicants are refused for other reasons, such as prior immigration violations, fraud, or terrorist activities. For example, in total, less than 4 percent of all E-2 visa adjudications during this time period were refused for other reasons, such as security or criminal-related ineligibilities, fraud or misrepresentation, and immigration violations, among others.²⁸

Nationality. Our analysis showed that about 80 percent of E-2 visa adjudications from fiscal years 2014 through 2018 were for nationals from

²⁵INA §§ 214(b) and 221(g). We only include data for fiscal years 2014 through 2017 because refusals for fiscal year 2018 include refusals under INA § 221(g) for inadequate documentation, which may be overcome within a year of the refusal date. For most nonimmigrant categories, the applicant is presumed to be an intending immigrant under INA § 214(b) until the applicant establishes to the satisfaction of the consular officer that he or she is entitled to a nonimmigrant status. An applicant may be refused under this provision if, among other things, the consular officer determines the applicant lacks sufficient ties to his or her home country, or intends to abandon foreign residence; that evidence otherwise indicates an intent to immigrate to the United States permanently; or that the applicant is likely to violate the terms of the visa after being admitted. See 8 U.S.C. § 1184(b). In certain instances, a consular officer may determine under INA § 221(g) that the application requires additional documentation to establish eligibility for the visa classification. The applicant would not be found eligible for the visa, and no visa would be issued, unless and until satisfactory documentation is provided to the consular officer or after the completion of administrative processing, such as security advisory opinions. See 8 U.S.C. § 1201(g).

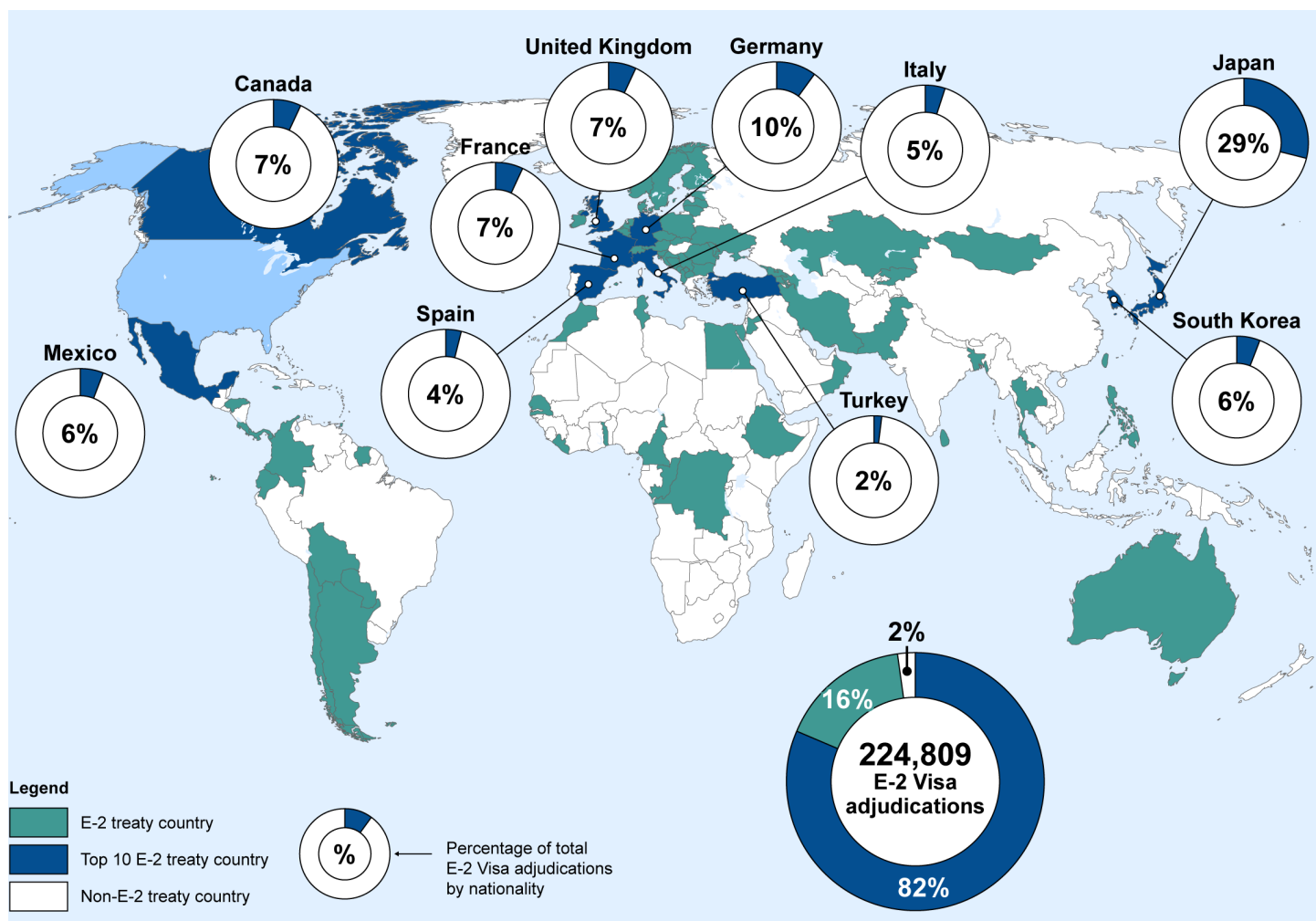
²⁶State data on refusal reasons does not allow us to determine which specific requirements for the E-2 visa were not met.

²⁷In such cases, the consular officer may have determined that the application required additional documentation to establish eligibility for the visa classification, or the application otherwise required additional administrative processing. INA § 221(g) (8 U.S.C. § 1201(g)).

²⁸Immigration-related ineligibilities include a prior U.S. presence without admission or parole, smuggling foreign nationals, abuse of student visas, failure to attend removal proceedings, fraud or willful misrepresentation to obtain an immigration benefit, among other conditions or activities. Criminal ineligibilities include conviction of certain crimes, controlled substance trafficking, prostitution, and money laundering, among other conditions or activities. Terrorism and other security-related ineligibilities include engaging in or inciting terrorist activity, being a member of a terrorist organization, participating in genocide, espionage, and committing torture, among other conditions or activities. See INA § 212(a)(2), (3), (6), (9) (8 U.S.C. § 1182(a)(2), (3), (6), (9)).

nine countries: five European countries (Germany, France, United Kingdom, Italy, and Spain), two Asian countries (Japan and South Korea), and two North American countries (Canada and Mexico). Japan was the largest country of nationality, with 29 percent, followed by Germany (10 percent), Canada (7 percent), and France (7 percent). Figure 5 shows the top ten countries by percentage of E-2 visa adjudications from fiscal years 2014 through 2018.

Figure 5: E-2 Visa Adjudications by Country of Nationality, Fiscal Years 2014 through 2018



Source: Department of State data and information; Map Resources (map). | GAO-19-547

Note: As of June 2019, nationals of 82 countries may be accorded E-2 status. Beginning May 1, 2019, Israeli nationals became eligible to apply for E-2 visas or petition to change to E-2 status. Similarly, New Zealand nationals became eligible to apply for E-2 visas or petition to change to E-2

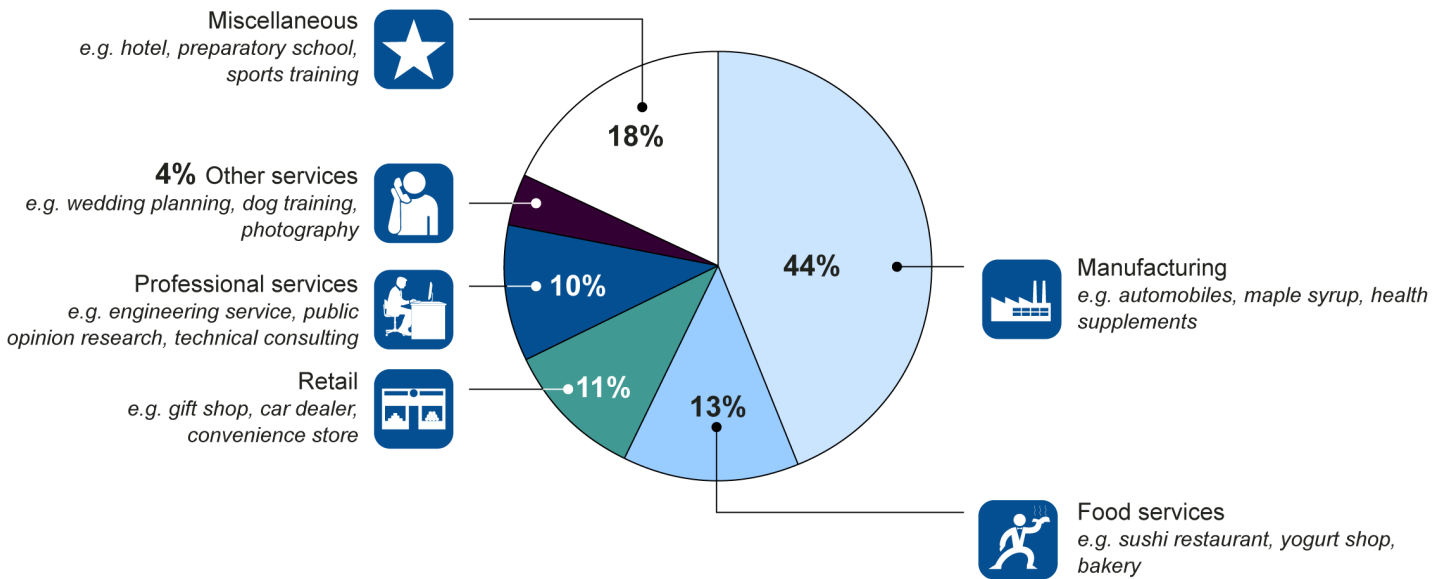
status beginning June 10, 2019. Because our data analysis covered fiscal years 2014 through 2018, Israel and New Zealand were not identified in our data set as treaty countries. Nationals of non-treaty countries can obtain E-2 visas if they are dependents of a principal E-2 applicant (e.g., investor, manager, or essential employee). Further, some foreign nationals of non-treaty countries may have applied for an E-2 visa and were denied because they did not meet the nationality requirement. Foreign nationals of treaty countries may apply to any post. Percentages may not sum to 100 due to rounding.

Business Sectors. To obtain information on additional characteristics of E-2 visa principal applicants (i.e., investor, manager, and essential employee), such as their business sector and investment amounts, we reviewed a generalizable sample of 120 fiscal year 2018 E-2 visa applications.²⁹ Based on our analysis, we estimate that about three-fourths of principal E-2 visa applicants were associated with 4 business sectors: manufacturing (44 percent), food services (13 percent), retail (11 percent), and professional services (10 percent).³⁰ Figure 6 includes examples of the businesses we found within each of these sectors.

²⁹We used standardized categories to classify businesses by sector. See appendix I for more information on our methodology.

³⁰Estimates are based on the results of our generalizable sample of fiscal year 2018 E-2 visa applications. All estimates presented in this report have a margin of error of +/- 9 percentage points, unless otherwise noted. Although the sample includes dependents, State does not collect the DS-156E form for dependents, which is what we used to determine the business sector and investment amount for the applicant. Further, 16 applicants in our generalizable sample did not provide information on the business in their application, and may have provided the information during the interview instead. Business sectors are based on our analysis of E-2 visa applications using the North American Industry Classification System. Professional services includes technical and scientific services, such as consulting.

Figure 6: Estimated Percentages of Business Sectors Represented in Fiscal Year 2018 Principal E-2 Visa Applications

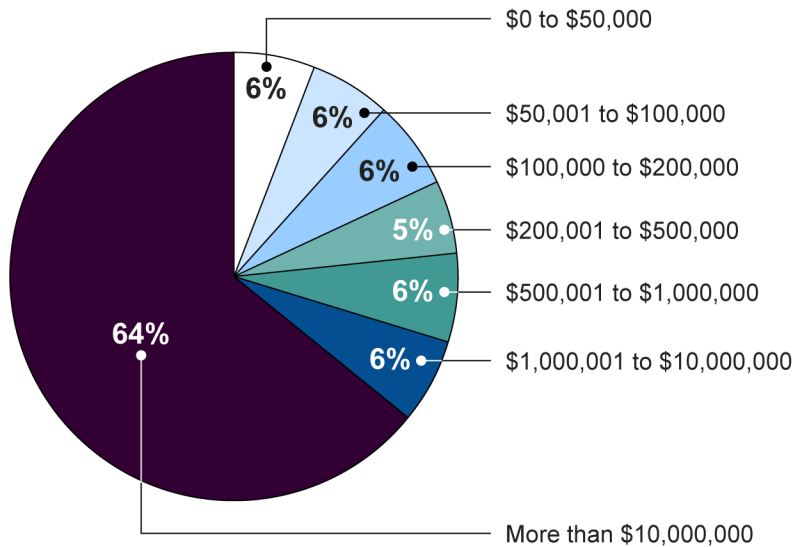


Source: GAO analysis of Department of State E-2 Visa applications; Art Explosion (clip art). | GAO-19-547

Notes: Estimates in this figure are based on the results of our review of a generalizable sample of fiscal year 2018 principal E-2 visa applications (i.e., investors, managers, and essential employees) and have a margin of error of +/- 9 percentage points or fewer. Professional services include technical and scientific services, such as consulting. Other services include services not included elsewhere, such as laundry and personal care. Miscellaneous includes other business sectors, such as accommodation, arts and entertainment, finance, education, construction, real estate, and transportation. Business sectors are based on our analysis of E-2 visa applications using the North American Industry Classification System. The figure does not include business sectors associated with dependent E-2 visa applicants because the Department of State does not collect such information, as it is not needed to determine E-2 dependent eligibility. Percentages may not sum to 100 due to rounding.

Investment. Based on information reported by fiscal year 2018 principal applicants in our generalizable sample of issued visas, we estimate 64 percent of applications were for principal applicants associated with investments reportedly over \$10 million, as shown in figure 7. Of these, 30 of 40 applications were for those in the manufacturing sector, particularly for the automotive sector, such as large automobile manufacturers.

Figure 7: Associated Financial Investments Reported by Principal Applicants in Our Generalizable Sample Who Were Issued E-2 Visas in Fiscal Year 2018



Source: GAO analysis of Department of State E-2 Visa applications. | GAO-19-547

Note: This figure is based on self-reported information from principal applicants (e.g., investors, managers, and essential employees) on the qualifying total investment in a U.S. enterprise. The investment may be associated with the applicant because the applicant may not have made the investment themselves, but the investment was made by a separate E-2 investor. Of the 89 E-2 applications in our sample that were issued, six applications had the investment information blank and 15 applications were missing the form (DS-156E) that contained the investment information. Estimates in this figure are based on the results of our generalizable sample of fiscal year 2018 E-2 visa applications and have a margin of error of +/- 10 percentage points or fewer. Percentages may not sum to 100 due to rounding. The figure does not include investment amounts reported by dependent E-2 visa applicants because the Department of State does not collect such information, as it is not necessary to determine E-2 dependent eligibility.

USCIS Adjudicated an Average of About 9,400 E-2 Petitions Annually, 83 Percent of Which Were Approved

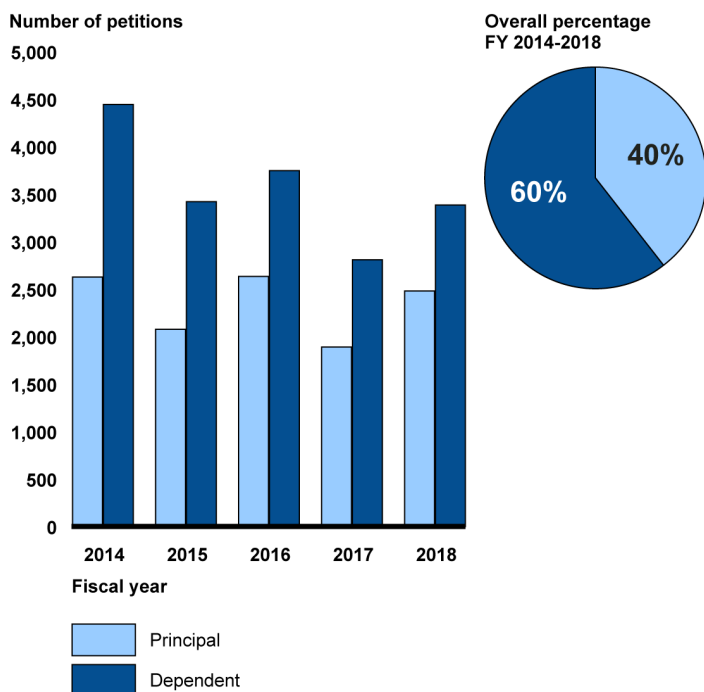
From fiscal year 2014 through 2018, USCIS adjudicated an average of about 9,400 E-2 petitions per year.³¹ During this time period, USCIS adjudicated petitions to extend E-2 status for an average of about 5,900 beneficiaries per year, about 60 percent of which were for E-2 dependents (i.e., an E-2 principal’s spouse or children). Also during the same time period, USCIS adjudicated petitions for an average of about 3,500 beneficiaries per year who were seeking to change to E-2 status

³¹For the purposes of this report, we refer to the USCIS forms that foreign nationals complete to change to or extend their E-2 status—the I-129 and I-539 forms—as petitions. E-2 principal investors, managers and essential employees are to complete the I-129, Petition for a Nonimmigrant Worker, while dependents are to complete the I-539, Application To Extend/Change Nonimmigrant Status.

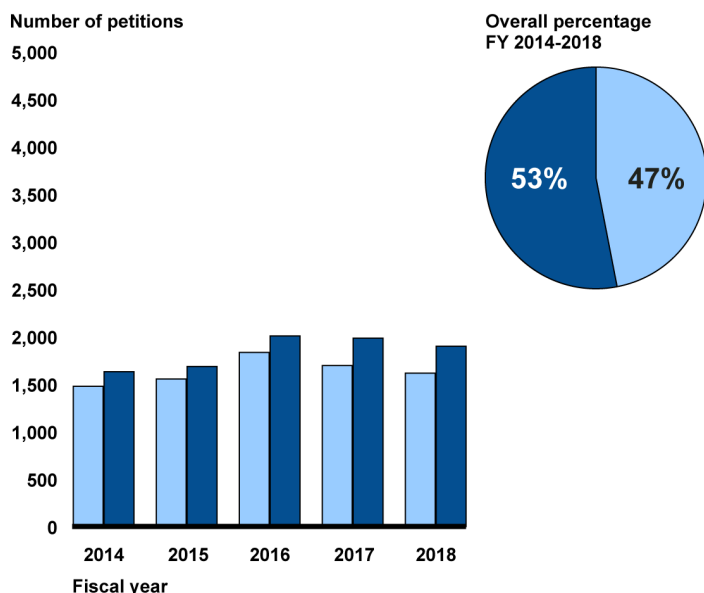
from another nonimmigrant category. Of these, about 47 percent of which were E-2 principal beneficiaries (i.e., investors, managers, and essential employees). Figure 8 shows the number of petitions to extend or change to E-2 status from fiscal years 2014 through 2018.

Figure 8: E-2 Status Extension and Change of Status Petitions, Fiscal Years (FY) 2014 through 2018

Status extension petitions



Change of status petitions

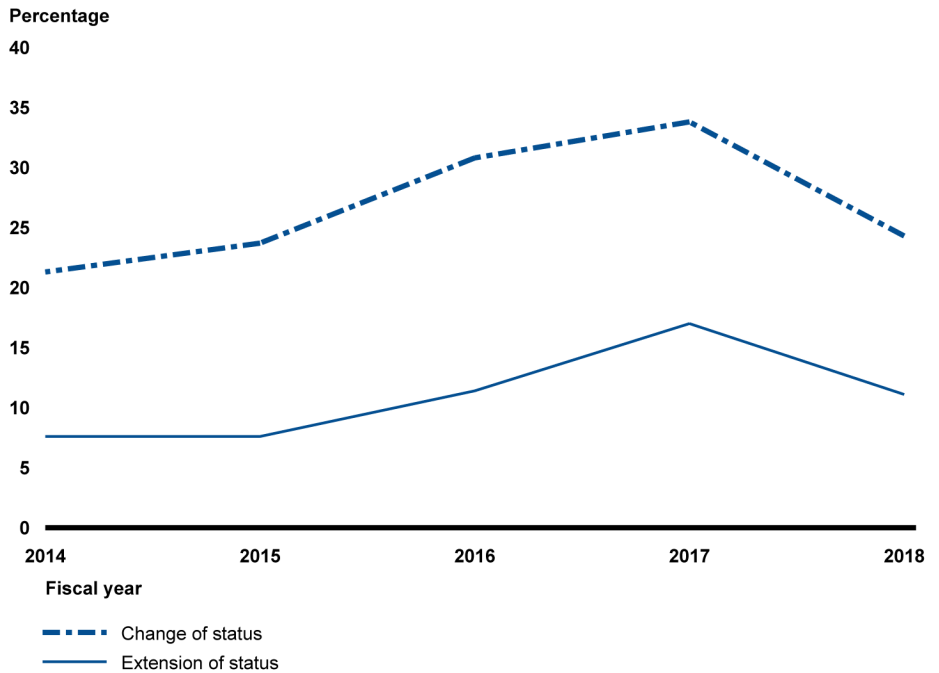


Source: GAO analysis of Department of Homeland Security E-2 petition data. | GAO-19-547

Note: Petitions are organized by the fiscal year during which the petition was adjudicated. Petitions may have been initially received in a prior fiscal year.

The average denial rate for E-2 petitions for fiscal years 2014 through 2018 was about 17 percent. Denial rates were higher for petitions to change status from another nonimmigrant category to E-2 (27 percent) than for petitions to extend E-2 status (11 percent), as shown in figure 9. Further, the denial rate for both extension and change of status petitions increased from fiscal years 2014 through 2017, but fell by several points in 2018.

Figure 9: E-2 Status Extension and Change of Status Petition Denial Rates, Fiscal Years 2014 through 2018



Source: GAO analysis of Department of Homeland Security E-2 petition data. | GAO-19-547

Note: Petitions are organized by the fiscal year during which the petition was adjudicated. Petitions may have been initially received in a prior fiscal year.

In addition to analyzing USCIS data on adjudications and denials, we also analyzed data to identify trends in country of birth, prior status, date of last U.S. entry, reasons for denial, business sectors, and level of investment, as described below.

Country of Birth. Our analysis showed that the top countries of birth for individuals seeking to extend their E-2 status from fiscal years 2014 through 2018 were South Korea, Mexico, and Japan, and the top countries of birth for those seeking to change to E-2 status from another nonimmigrant category were South Korea, Pakistan, and Turkey, as shown in table 4.³² Although there are similarities with the top countries of nationality for State E-2 visas (see previous figure 5), there are some

³²Although State maintains electronic data on the nationality of its E-2 visa applicants, USCIS does not maintain such data on its E-2 status beneficiaries. Instead, USCIS maintains data on the country of birth for E-2 status beneficiaries.

differences as well. For example, both Pakistan and Thailand are among the top countries of birth for petitioning with USCIS to extend or change to E-2 status, but are not among the top countries of nationality for State E-2 visas.

Table 4: E-2 Petitions Filed with U.S. Citizenship and Immigration Services (USCIS) to Extend or Change to E-2 Status by Top Countries of Birth by Volume of Adjudication, Fiscal Years 2014 through 2018

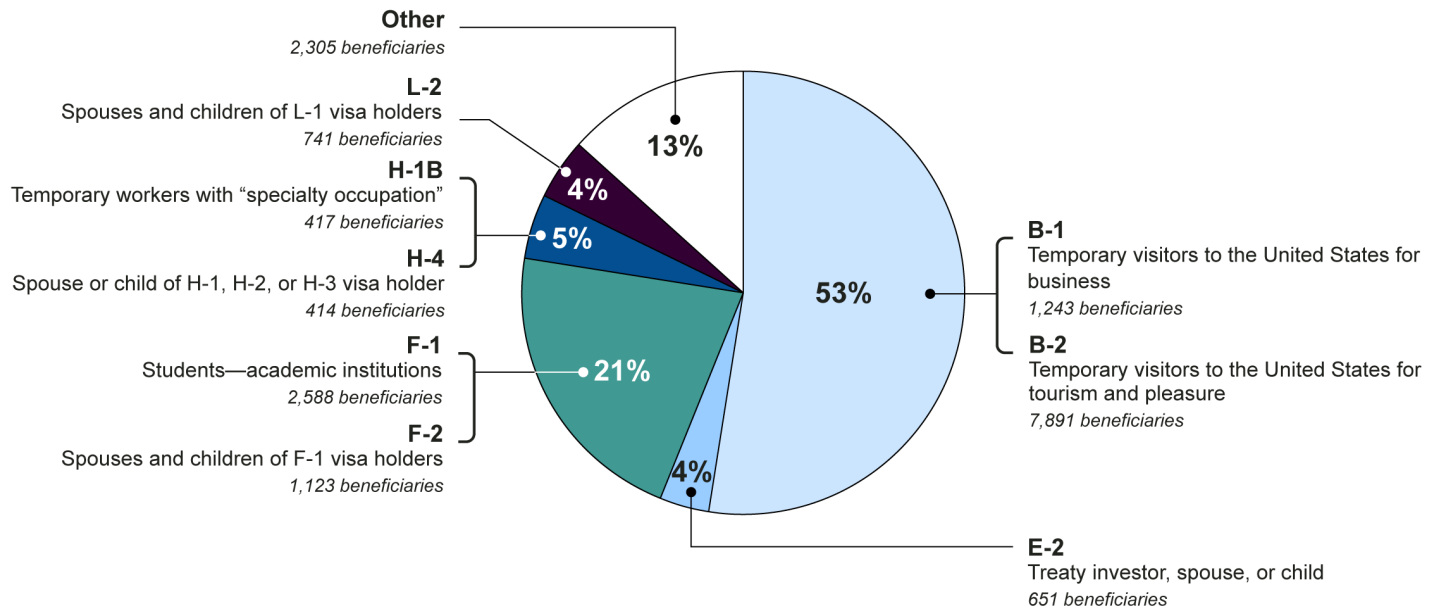
Country of Birth	Extension Petition		Change of Status Petition	
	Number of Beneficiaries	Percent	Number of Beneficiaries	Percent
Canada	952	3.2%	660	3.8%
Japan	1,953	6.6%	906	5.2%
Mexico	2,638	8.9%	1,190	6.8%
Pakistan	1,197	4.1%	1,724	9.9%
Thailand	936	3.2%	506	2.9%
Turkey	587	2.0%	1719	9.9%
South Korea	11,929	40.4%	2,860	16.5%
United Kingdom	1,834	6.2%	574	3.3%
Other countries	7,477	25.3%	7,232	41.6%
Total	29,503	100.0%	17,373	100.0%

Source: GAO analysis of Department of Homeland Security data. | GAO-19-547

Note: Beneficiaries include both principals (i.e., investors, managers, and essential employees) and dependents (i.e., spouses and children). Principals complete an I-129 petition and dependents complete an I-539 application.

Prior status. Our analysis showed that individuals seeking to change to E-2 status from another nonimmigrant category from fiscal years 2014 through 2018 were most often changing status from a tourist, business, or student visa, as shown in figure 10. For example, more than half (53 percent) of all petitions to change to E-2 status were for beneficiaries that were tourists (B-2) or business visitors (B-1). In addition, about 4 percent of beneficiaries were seeking to change status within the E-2 classification. For example, a child or spouse of an E-2 investor may later work at the company as a manager and therefore would need to petition to change from dependent to principal E-2 status as a manager.

Figure 10: Petitions Filed with U.S. Citizenship and Immigration Services to Change from Another Nonimmigrant Category to E-2 Status, Fiscal Year 2014 through 2018



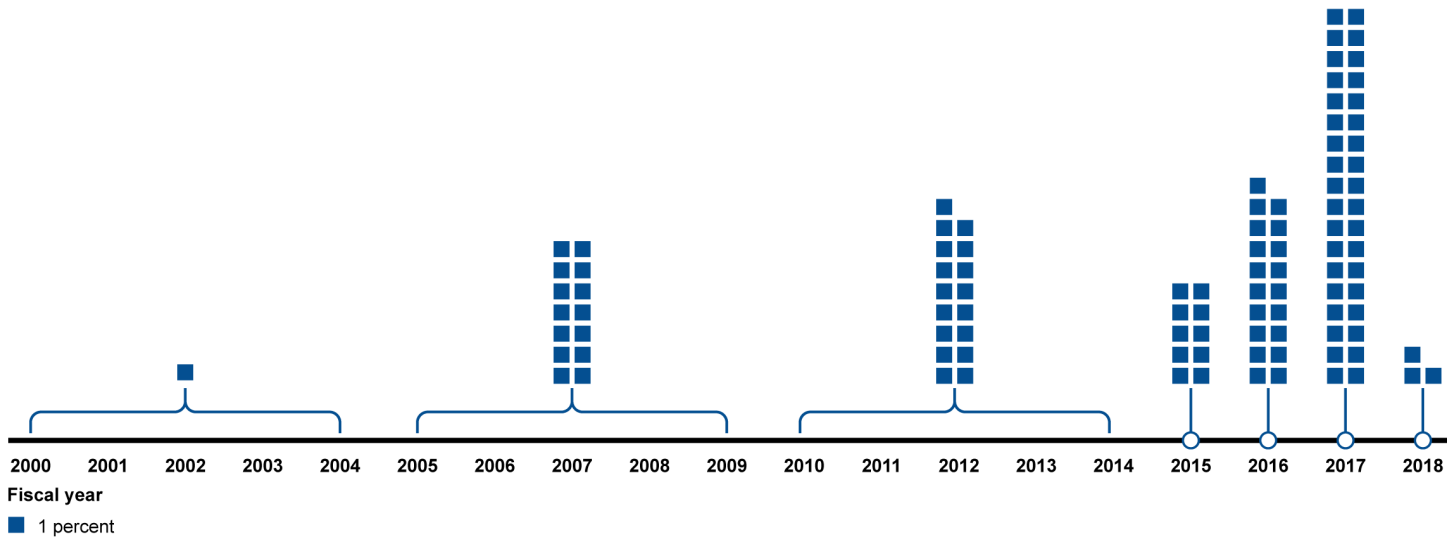
Source: GAO analysis of Department of Homeland Security data. | GAO-19-547

Note: Beneficiaries were seeking to change status within the E-2 classification include, for example, a child or spouse of an E-2 investor who may later wish to work at the company as a manager, and therefore would change their E-2 status from a dependent to a manager. L-1 visas are for intracompany transferees. H-1B specialty occupations require theoretical or technical expertise in certain fields, such as science, engineering or computer programming.

Date of last entry into the United States. On the basis of our review of a generalizable sample of petitions of E-2 principals (i.e., investors, managers, and essential employees), we estimate that one third of principal beneficiaries had been in the United States since 2014 or earlier at the time they sought to change to or extend E-2 status in 2018, some as long as 18 years, as shown in figure 11.³³ Such beneficiaries may have changed status from other kinds of nonimmigrant status, or may have requested to extend their E-2 status multiple times. There is no limit on the number of times a foreign national may request to extend their E-2 status.

³³To obtain information on additional characteristics, including the date of last entry into the United States, reason a beneficiary was denied, business sector, and investment amount, we reviewed a generalizable sample of 124 fiscal year 2018 E-2 petitions for principals, meaning investors, managers, or essential employees.

Figure 11: Date of Last Entry into the United States for E-2 Principals Seeking to Change to or Extend E-2 Status In Our Generalizable Sample of Fiscal Year 2018 Petitions



Source: GAO analysis of Department of Homeland Security Fiscal Year E-2 petitions. | GAO-19-547

Note: Estimates in this figure are based on the results of our generalizable sample of fiscal year 2018 petitions and have a margin of error of +/- 9 percentage points or fewer. Percentages may not sum to 100 due to rounding.

Reason for denial. On the basis of our review of a generalizable sample of fiscal year 2018 denied petitions for E-2 principals, we estimate that the top reasons petitions were denied included (1) the enterprise was not real and operating, and (2) the investment was not substantial, as shown in table 5. Of the denied petitions in fiscal year 2018, about one-third were either withdrawn by petitioner or abandoned, meaning that the petitioner did not respond to USCIS requests for additional evidence.³⁴

³⁴Estimates of denied petitions are based on the 49 denied petitions in our sample and have a margin of error of +/- 14 percentage points or fewer.

Table 5: Top Reasons for Denial in Our Sample of Fiscal Year 2018 U.S. Citizenship and Immigration Services (USCIS) Principal E-2 Petitions

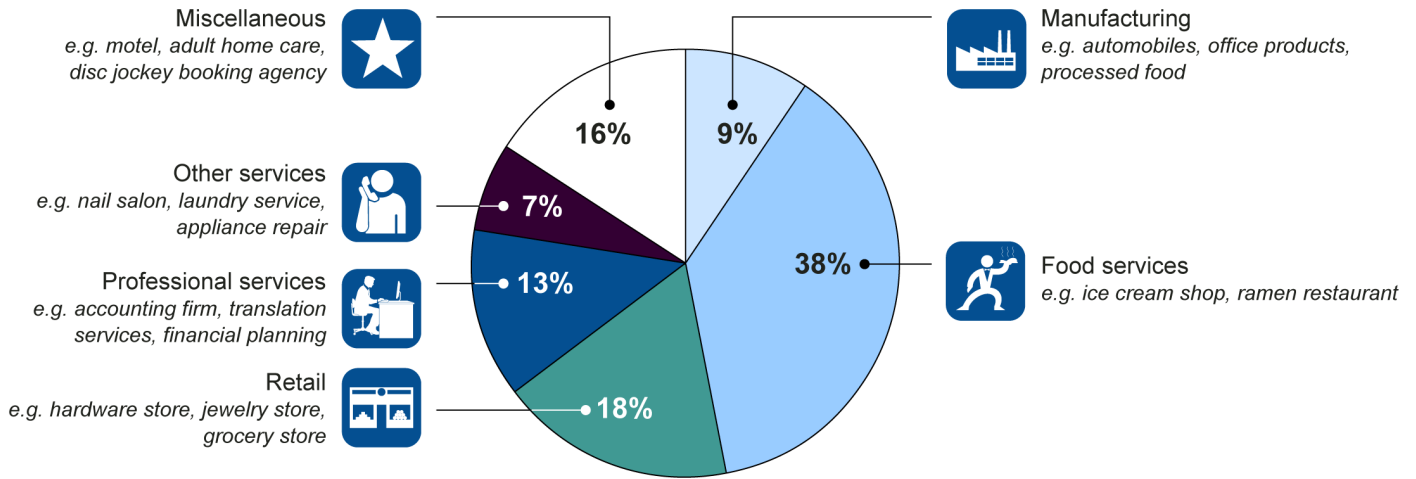
Reason for Denials	Estimated Percent of E-2 Principals Denied
Enterprise is not real and operating	20
Source of investment unclear	15
Investment is not substantial	14
Investment is not at risk	13
Enterprise marginal	6
Investor is not in a position to direct and develop the enterprise	4
Applicant did not meet definition of a supervisor or manager	4
Applicant is not a citizen of a treaty country	2
Applicant was not "essential"	0
Applicant withdrew application	29
Applicant abandoned application	11
Other	24

Source: GAO analysis of USCIS E-2 Petitions and denial letters. | GAO-19-547

Note: An application can be denied for multiple reasons. Applications are considered "abandoned" when the applicant does not respond to a USCIS request for additional evidence. Principals include E-2 investors, managers, and essential employees, but not dependents. Estimates in this figure are based on the results of our generalizable sample of fiscal year 2018 denied petitions and have a margin of error of +/- 14 percentage points or fewer.

Business Sectors. On the basis of our review, we estimate that the majority of E-2 principal beneficiaries were associated with 4 business sectors, as shown in figure 12: food services (38 percent), retail (18 percent), manufacturing (9 percent), and professional services (13 percent). Comparing our two generalizable samples, a smaller percentage of USCIS's E-2 principal beneficiaries were associated with manufacturing (44 versus 9 percent) and more with food services (13 versus 38 percent) than State's E-2 principal visa applicants.

Figure 12: Business sectors represented in Our Generalizable Sample of Fiscal Year 2018 E-2 Principal Petitions Filed with U.S. Citizenship and Immigration Services (USCIS)

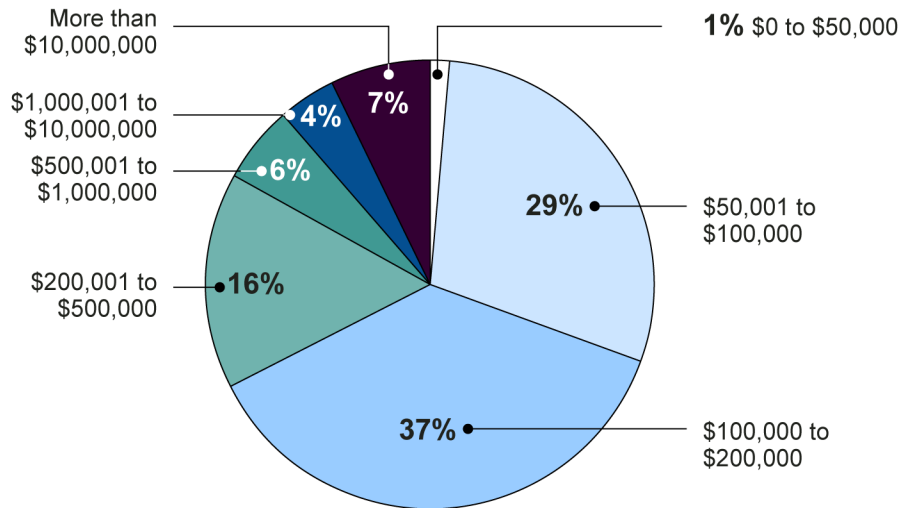


Source: GAO analysis of Department of Homeland Security E-2 petitions; Art Explosion (clip art). | GAO-19-547

Note: Estimates in this figure are based on the results of our generalizable sample of fiscal year 2018 principal E-2 visa applications (i.e., investors, managers, and essential employees) and have a margin of error of +/- 9 percentage points or fewer. Professional services include technical and scientific services, such as consulting. Other services include services not included elsewhere, such as laundry and personal care. Miscellaneous includes other business sectors, such as accommodation, arts and entertainment, finance, education, construction, real estate, and transportation. Business sectors are based on our analysis of E-2 visa applications using the North American Industry Classification System. The figure does not include business sectors associated with dependent E-2 visa applicants because the Department of Homeland Security does not collect such information, as it is not needed to determine E-2 dependent eligibility. Percentages may not sum to 100 due to rounding.

Investment. We estimate that about two-thirds of the approved petitions were for principal beneficiaries associated with investments of \$200,000 or less, as shown in figure 13. We found that about 30 percent of USCIS’s E-2 principal beneficiaries were associated with investment amounts of \$100,000 or less and 7 percent were associated with investments over \$10 million.

Figure 13: Associated Investments Reported by Principal Beneficiaries in Our Generalizable Sample Who Were Approved for E-2 Status in Fiscal Year 2018



Source: GAO analysis of Department of Homeland Security E-2 petitions. | GAO-19-547

Note: This figure is based on self-reported information from principal beneficiaries (e.g., investors, managers, and essential employees) on the qualifying total investment in a U.S. enterprise. The investment may be associated with the beneficiary because the beneficiary may not have made the investment themselves, but the investment was instead made by a separate E-2 investor. The figure does not include investment information reported by dependent E-2 beneficiaries because the Department of Homeland Security does not collect such information, as it is not needed to determine E-2 dependent eligibility. The estimates in this figure are based on the results of our generalizable sample of approved fiscal year 2018 petitions and have a margin of error of +/- 12 percentage points or fewer. Percentages may not sum to 100 due to rounding.

State and USCIS Have E-2 Guidance and Procedures, But Officials Identified Challenges with Respect to E-2 Adjudication

State and USCIS have agency-specific guidance, procedures, and training intended to ensure E-2 applicants and petitioners, respectively, meet E-2 eligibility requirements. However, officials from both agencies identified challenges in the E-2 adjudication process. Some of State's posts have developed E-2 company registration programs to help streamline the E-2 adjudication process, but there are no minimum standards for these programs, which may result in different processing of companies and applicants across posts. Further, State and USCIS require that consular and immigration officers retain certain documentation for all E-2 applications and petitions; however, during our case file review of E-2 applications and petitions adjudicated in fiscal year 2018, we found that State did not consistently retain all required documents.

State and USCIS Have Agency-Specific Guidance and Resources, Procedures, and Training

State and USCIS have guidance and resources to help officers adjudicate E-2 applications and petitions. Both agencies have similar high-level procedures for adjudicating E-2 applications and petitions, but there are some key differences in how each agency implements these procedures based on their specific roles and responsibilities. Further, both agencies provide their staff with some training on E-2 eligibility requirements.

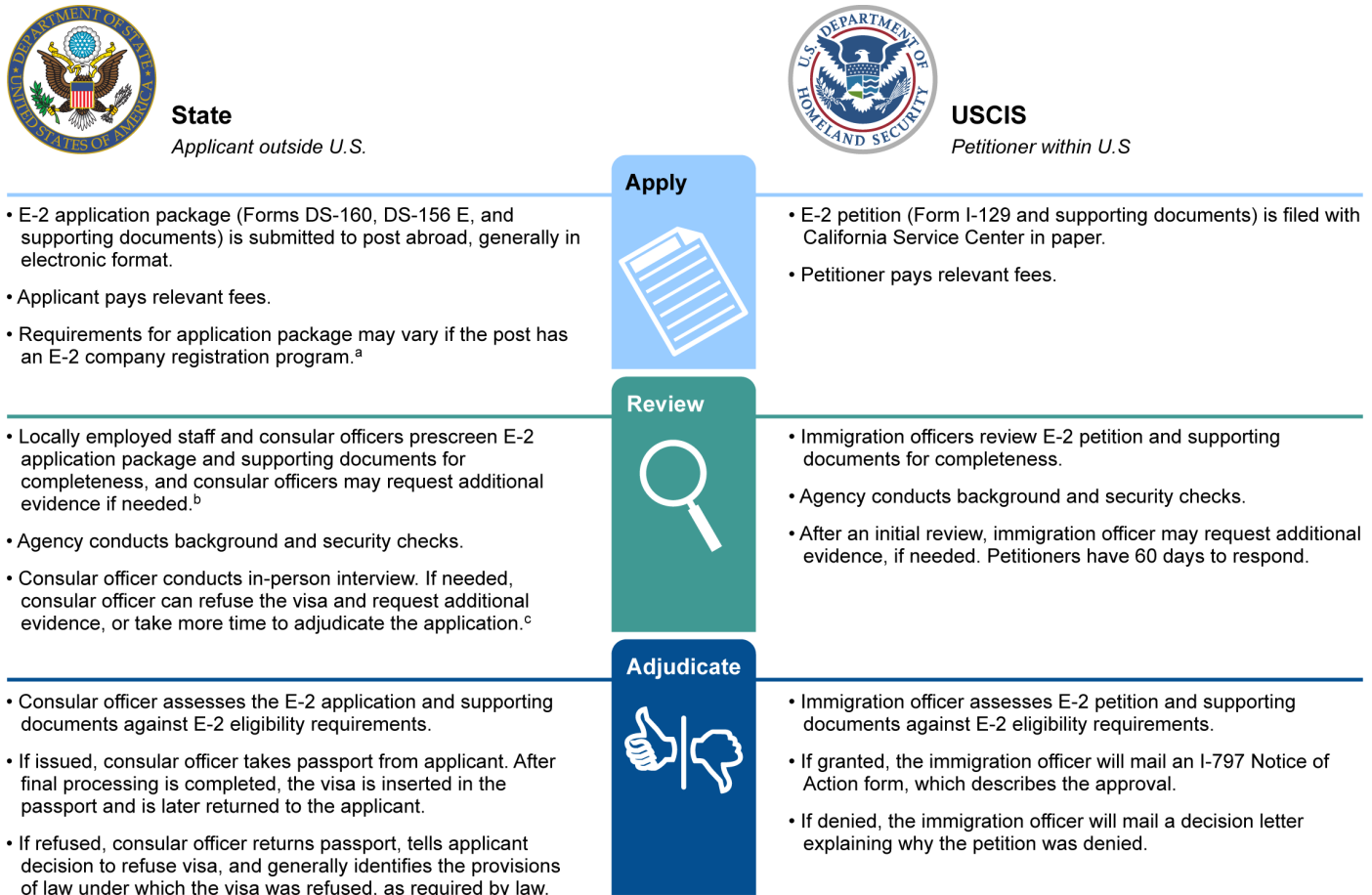
Guidance and resources. State and USCIS have guidance and resources available to staff who adjudicate E-2 visas and petitions to help ensure that applicants and petitioners meet E-2 eligibility requirements. Although the guidance documents have some minor differences, they are based on the same eligibility requirements.³⁵ For example, the main guidance documents for State and USCIS—State’s Foreign Affairs Manual (FAM) and USCIS’s national E-visa standard operating procedures—both include the same eligibility criteria and provide additional explanation on each of the eligibility requirements. State also provides supplementary resources for consular officers on its intranet, such as E-2 adjudication best practices, an adjudication guide, and case studies. State and USCIS both provide headquarters-based legal advisors and attorneys with whom officers can consult for case-specific guidance. For example, a State consular officer at one post we visited told us that he requested such assistance for an application from an investor whose company had a particularly complex ownership structure that made it difficult to determine if at least 50 percent of the company was owned by nationals of a treaty country.

Adjudication procedures. State and USCIS high-level procedures for adjudicating E-2 applications and petitions are generally similar, but there are some key differences based on their specific roles and responsibilities. As shown in figure 14, both agencies require foreign nationals to submit an E-2 application or petition, and pay any relevant fees. Additionally, both agencies vet individuals by conducting security checks and reviewing submitted information to ensure that all E-2 eligibility requirements are met.³⁶

³⁵See 8 U.S.C. § 1101(a)(15)(E). The regulations are codified at 8 C.F.R. § 214.2(e) (DHS), and 22 C.F.R. § 41.51 (State).

³⁶For more information on how State screens and vets nonimmigrant visa applicants, see GAO, *Nonimmigrant Visas: Outcomes of Applications and Changes in Response to 2017 Executive Actions*, [GAO-18-608](#) (Washington, D.C.: Aug. 7, 2018).

Figure 14: Department of State's (State) and U.S. Citizenship and Immigration Services' (USCIS) Procedures for Adjudicating E-2 Visa Applications and Petitions



Source: GAO observations of State and USCIS adjudications and analysis of State and USCIS information. | GAO-19-547

^aAn E-2 company registration program assesses companies against E-2 eligibility requirements and puts companies that meet eligibility requirements on an approved or registered companies list. Companies on the registered list do not have to be reassessed for eligibility each time one of their employees seeks an E-2 visa.

^bPrescreening is the review of a visa application prior to the applicant's interview, and can include reviewing applicant documentation for completeness, developing interview questions and summary notes, and conducting research on the applicant and business using available databases and resources.

^cE-2 visa applications can be refused for incomplete information and may require the applicant to submit additional information to demonstrate eligibility for an E-2 visa. In such cases, the application is refused under the Immigration and Nationality Act § 221(g). The applicant has one year after the date of refusal to overcome the refusal by, for example, providing missing information.

There are four key differences in State and USCIS procedures for adjudicating E-2 visa applications and petitions:

- **Interviews.** State requires in-person interviews of most E-2 applicants.³⁷ According to USCIS officials, USCIS does not conduct interviews of beneficiaries and petitioners because they do not have the resources or facilities to do so. In any case, USCIS’s process for adjudicating nonimmigrant visa petitions for foreign nationals who have already been lawfully admitted into the United States, in E-2 or other nonimmigrant status does not include an interview requirement.
- **Locally Employed Staff (LES) initial processing and prescreening.** In addition to consular officers, State employs local residents in its host country to help with consular services (see sidebar). For example, at some posts State’s LES prescreen visa applications before consular officers adjudicate the application.³⁸ Procedures for LES varied at the posts we interviewed and visited. For example, LES at some posts provide administrative help and processing—such as scanning application documents, checking applications for completeness, and scheduling interviews. LES at other posts provide additional analytical support—such as by summarizing applications, completing eligibility checklists, and maintaining databases on previously issued E-2 visas. Regardless of the kind of help LES may provide at post, only consular officers adjudicate E-2 visa applications and make decisions on whether or not the visa is issued. The number of LES supporting E-2 visa applications at the 14 posts we visited or interviewed ranged from one part-time position to five full-time LES. Consular managers and officers at all four of the posts we visited described the role of LES in processing E-2 visas as critical (see sidebar). Although USCIS’ California Service Center has staff who assist with processing petitions, such as by organizing folders with the petition materials, immigration officers generally perform the analytical tasks themselves.
- **Staffing model.** Depending on E-2 visa application volume, staffing considerations, and workload arrangements, the number of consular officers adjudicating E-2 visas at the 14 posts abroad we interviewed

Locally Employed Staff (LES) and E-2 Visa Adjudication

Consular officers and managers stated that LES play an important role in E-2 visa processing and adjudication. LES are employees hired under the local compensation plan at a U.S. post overseas. LES include foreign service nationals, U.S. citizens residing abroad, third country nationals, and eligible family members of State employees. LES can provide the institutional knowledge and expertise in E-2 visa issues, as consular officers rotate posts every 2 years but LES do not rotate. Consular managers at 4 of the 14 posts we interviewed or visited stated that their post specifically hired LES to work on E-2 visas because of their specialized knowledge and backgrounds in business or law. For example, a consular officer may consult with LES on an application to better understand the legal relationship between two companies, as some LES have a background or developed expertise in financial law.

Source: GAO. | GAO-19-547

³⁷See 8 U.S.C. § 1202(h); 22 C.F.R. § 41.102. State does not generally require interviews or that fingerprints be collected for applicants who are either under 14 years old or over 79 years old, or for foreign government officials seeking certain visas.

³⁸LES are employees hired under the local compensation plan at a U.S. post overseas. LES include foreign service nationals, U.S. citizens residing abroad, third country nationals, and eligible family members of State employees.

ranged from one to six per post. Further, on the basis of our observations and interviews with consular officials at 14 posts, we found that State’s posts have generally developed three different staffing models for adjudicating E-2 visa applications, as shown in table 6. Consular managers stated that the kind of model used at a post may depend on E-2 visa volume, as well as other factors. For example, a consular manager at a post we visited explained that the specialist model worked well at his post because it had a relatively low volume of E-2 adjudications each year, which meant that a single officer could focus on such visas. In contrast, a consular manager at a post we visited that was staffed with a hybrid of generalists and specialists had higher E-2 visa volume and stated that their model allowed them to balance efficiency and specialization. For USCIS, a specialized office of five immigration officers review and adjudicate all E-petitions (including E-1 and E-2) at one location –USCIS’ California Service Center, as of July 2018.³⁹

Table 6: Staffing Models for E-2 Visa Adjudications at 14 Posts We Visited or Interviewed

Model	Number of Posts	Description
Specialist	5 of 14	One consular officer or a small dedicated team is responsible for reviewing and adjudicating all E-2 visa applications received at post. This responsibility may rotate among officers.
Generalist	6 of 14	All of the consular officers adjudicate E-2 visas in addition to other nonimmigrant visas. At such posts, there may be an E-2 visa portfolio manager that prescreens the visa applications, but the visa is adjudicated by any of the consular officers available at the time of the interview.
Hybrid	3 of 14	All consular officers at post adjudicate E-2 visas like the generalist model. However, the post’s E-2 visa portfolio manager adjudicates all visa applications for first-time companies or complex cases.

Source: GAO interviews and site visits with Department of State consular officials. | GAO-19-547

Note: We conducted site visits or interviews with consular managers, consular officers, and locally employed staff at 14 posts that adjudicate E-2 visas. Ten posts were selected because they adjudicated the most E-2 visas in fiscal year 2017, and four were selected randomly because they adjudicated a relatively low number of E-2 visas in fiscal year 2017. We developed this model on the basis of interviews with Department of State consular officials.

Training. State and USCIS provide training to their respective E-2 processing and adjudication staff on E-2 eligibility requirements. State’s consular officers assigned to adjudicate E-2 visas receive the majority of their adjudication training at post, with a brief introduction to E-2 visas during a mandatory 6-week Foreign Service Institute training course

³⁹E-1 status is for nonimmigrant treaty traders. The classification has similar eligibility requirements as the E-2 status, but applicants must be engaging in substantial trade with the United States instead of investment.

taken prior to serving as a consular officer overseas. According to Foreign Service Institute officials, the course provides consular officers with an overview of the various visa classes they may adjudicate, but focuses on visas that all consular officers will address at post. Because E-2 visas are not adjudicated at every post, and consular officers typically cannot specialize in only one particular classification like USCIS counterparts who have a dedicated E-2 unit, the course does not concentrate on that visa classification. Instead, State relies on the individual posts to provide training to prepare consular officers to adjudicate E-2 visas on an “as needed” basis.

On the basis of our interviews and observations, we found that E-2 training programs for consular officers at post generally consist of three components. First, consular managers and senior consular officers at post provide the consular officer who will be adjudicating E-2 visa applications for the first time with an overview of the E-2 eligibility requirements along with any supplementary E-2 training resources, such as illustrative examples of challenging E-2 visa cases the post has previously adjudicated. Second, new consular officers are to observe senior consular officers adjudicate E-2 visas for 1 to 3 weeks, which helps the new officer to learn how the requirements are applied. Finally, new officers adjudicate E-2 visas under the supervision of a senior consular officer with experience adjudicating E-2 visa applications, with 100 percent of their adjudications reviewed by consular managers until management determines that the new officer is proficient. As needed, supervisors will meet with new officers to discuss specific adjudications, including whether the officer properly documented their decision.

State’s E-2 training for LES is entirely at post.⁴⁰ According to consular managers and LES, LES training generally consists of a review of eligibility requirements and supervision. First, new LES assigned to E-2 visa processing and prescreening receive an overview of the E-2 eligibility requirements from a senior LES. According to LES we interviewed, the overview of the eligibility requirements helps them to identify the types of documents E-2 applicants typically submit to establish E-2 eligibility. Second, new LES are observed by senior LES until management determines that the LES is proficient at processing and prescreening.

⁴⁰LES are eligible for training at the Foreign Service Institute, such as on fraud prevention, but none of the institute’s classroom training for LES in the United States focuses on E-2 visas.

As noted above, USCIS has staff dedicated to E-2 petitions and USCIS provides training to new E-2 immigration officers that include the same basic components as State, such as a review of eligibility requirements and job shadowing. First, immigration officers who will work on E-2 adjudications receive 3 weeks of classroom training during which they review the E-2 eligibility requirements. The classroom training is followed by a 1-week practicum session where USCIS immigration officers apply the classroom training to sample E-2 petitions. Specifically, immigration officers explained to us that during the practicum they are given example cases to which they are to apply their classroom training. After each officer has adjudicated the example case, they discuss how each applied the various E-2 eligibility requirements and reconcile any differences with the assistance of the immigration supervisor facilitating the training. Second, after the 4 weeks of training, USCIS immigration officers begin to adjudicate E-2 petitions under the guidance of an E-2 immigration supervisor. Third, new E-2 immigration officers have 100 percent of their cases reviewed by their supervisor until they are deemed proficient.

State and USCIS Officials Identified Challenges in the E-2 Adjudication Process and State Officials Identified the Need for Additional Training

State's consular officers and LES, as well as USCIS officials, stated that given the complexity of adjudicating E-2 applications and petitions, and the level of documentation and time required, the E-2 adjudication process can present challenges with respect to the analysis of the E-2 eligibility requirements. Consular officers and LES we spoke with stated that additional training on E-2 eligibility requirements would be beneficial. USCIS officials said that while E-2 petitions can be challenging to adjudicate, additional training was not necessary.

State Officials Identified Challenges and Training Needed for Adjudicating E-2 Visa Applications

Examples of Supporting Documents for E-2 Visa Applications and Petitions

Proof of nationality: Birth certificate, passport, or marriage license

Ownership documents: Stock certificates or articles of incorporation

Investment information: Tax valuation, market appraisal, bank transactions, audited financial statements, escrow receipts, lease agreements, or wire transfer receipts

Marginality: U.S. corporate tax returns, payroll register, or tax forms

Real and operating enterprise: Business permits, utility bills, or invoices from suppliers

Employee skills: Resume, organizational chart, college transcripts, or diplomas

Source: GAO analysis of Departments of State and Homeland Security information. | GAO-19-547

Consular officers we spoke with noted that E-2 visa adjudications are particularly complicated and resource-intensive, involving potentially complex business issues, and often requiring more documentation and time to adjudicate than is typically needed to adjudicate other visas. Specifically, consular officers at 10 of 14 posts we interviewed stated that E-2 visas are among the most difficult nonimmigrant visas to adjudicate because of the amount of supporting documentation that is required to demonstrate that both the business and applicant meet all eligibility requirements, as well as the time required to prescreen and adjudicate the application package. For example, E-2 application packages can include 200 pages or more of supporting documentation, and include a range of detailed business and financial documents (see sidebar). Further, consular officers told us that it can take between 45 minutes to 4 hours to review a single E-2 application with its supporting documents. Consular officers explained that, in contrast, other nonimmigrant visa categories do not require the same amount of time or number of documents to adjudicate. For example, business and tourism nonimmigrant visas typically take less than 10 minutes to adjudicate and do not require that any documentation be submitted by the applicant prior to the adjudication.

Consular officers at the 14 posts we visited or interviewed identified challenges with respect to the analysis of the E-2 eligibility requirements. Table 7 provides examples of some of these challenges, as identified by consular officers at the 14 posts.

Table 7: Challenges Noted by Department of State Consular Officers in Our Review with Respect to Adjudicating E-2 Visas

E-2 Eligibility Requirement	Examples of Challenges
Business nationality	<ul style="list-style-type: none"> Some companies have complex ownership structures, requiring that consular officers review stock and ownership information at every level of ownership (e.g., parent company and subsidiaries).
Active investment	<ul style="list-style-type: none"> It can be difficult to determine if funds are irrevocably committed in some cases. For example, funds set aside in a savings account can be easily transferred back to the investor, and are therefore not “at risk” investments. Consular officers must determine that the source of the funds was not obtained through criminal activity, which requires officers to trace the funds back to their original source. Consular officers stated that it can be more difficult to trace when funds were given as gifts from family members.
Real and operating business	<ul style="list-style-type: none"> New companies may still be in the process of hiring and purchasing equipment, so consular officers must use their professional judgment in determining if the company will be a real and active commercial or entrepreneurial undertaking. Different local jurisdictions in the United States have different legal requirements for operating businesses, such as certifications and licenses.
Substantial investment	<ul style="list-style-type: none"> Investment amounts can vary considerably based on the type of business and its location in the United States, so officers may consider the E-2 businesses that they have previously encountered to help inform their decision-making. However, some business types are very rare, unique, or offer specialized products or services, and the officer may not have any prior experience to inform their decision-making.
More than marginal enterprise	<ul style="list-style-type: none"> Whether or not a business is marginal may be considered not only by the number of jobs created, but also by other economic contributions, such as purchases from other businesses. Companies must show that they will be more than marginal within five years, but projections on future earnings can be unreliable.
Essential employees	<ul style="list-style-type: none"> The term special qualification is defined broadly, and it may be unclear at what point the qualification or skill makes an employee essential for successful operations in the United States. For example, while foreign language skills may be useful in a business context, consular officers told us that foreign language skills alone are generally not considered essential. Consular officers noted that the availability of a U.S. worker to do the same job may not impact whether the employee is considered essential.
Managers	<ul style="list-style-type: none"> At some posts, consular officers indicated that they generally defer to an individual or business investor’s assessment of prior qualification and experience in managerial hiring, whereas consular officers at other posts typically review such factors for prospective managers.

Source: GAO analysis based on interviews and site visits with Department of State consular officers. | GAO-19-547

Note: This table does not include all of the E-2 eligibility requirements, nor is it an exhaustive list of all of the challenges expressed by consular officers during our interviews and site visits with 14 posts.

In particular, consular officers provided examples of challenging circumstances they have encountered in the context of selected E-2 eligibility requirements:

Substantial investment requirement:

No prescribed minimum amount of capital, although it must be substantial in proportion to the cost of the business.

Sufficient to ensure the investor's financial commitment to the successful operation of the business.

Large enough to ensure the likelihood of success of the business.

Source: GAO analysis of the Code of Federal Regulations, 8 C.F.R. § 214.2(e) and 22 C.F.R. § 41.51(b). | GAO-19-547

- **Determining substantial investment.** Consular officers at 10 of 14 posts indicated that it can be challenging to determine substantiality of capital investment amounts. According to the FAM, there is no set amount of capital which is considered substantial; instead, various factors must be considered to ensure there is a large enough investment to support the business. Consular officers noted that it can be difficult to determine how much capital is needed to support the many types of businesses that consular officers see in E-2 applications, which can range from small restaurants to technology start-ups to large automobile manufacturers. For example, a consular officer may be presented with an application for an investor seeking an E-2 visa to open a business that the consular officer has never seen before in an E-2 visa application, such as an airport internet café that rents hourly sleeping pods to travelers on long layovers. The consular officer may be initially unfamiliar with what is considered to be a more unique type of business, and may not know immediately how much investment would be sufficient to ensure the successful operation of the business. In such cases, the officer might gather additional information from the applicant on similar businesses, which the officer could use to inform their determination as to the amount of capital that would be needed to support successful operation of the business in the United States.

Real and operating business requirement:

The business is a real and active commercial or entrepreneurial undertaking that produces goods (i.e. commodities) or services for profit, and meets applicable legal requirements for doing business in the particular jurisdiction of the United States.

Source: GAO analysis of the Code of Federal Regulations, 8 C.F.R. § 214.2(e) and 22 C.F.R. § 41.51(b). | GAO-19-547

- **Determining real and operating business.** Consular officers at 7 of 14 posts indicated that it can be challenging to determine whether the business is real and operating. Consular officers explained that particularly difficult issues may arise for new businesses, which may not be operational yet at the time of the interview. Consular officers stated that it can be very clear when a business is not yet operating, but that additional analysis is required for newly-formed businesses that do not yet have customers or revenue but may have taken other actions to start the business. Consular officers at one post explained it is sometimes very clear that a business is not operating because, for example, the business has not yet made any contracts with clients, does not have a website advertising its services, and has no evidence of any expenses made on behalf of the business. As for newly-formed businesses, consular officers at another post we visited provided a hypothetical example of a restaurant whose owner had a lease for the restaurant space, bought equipment, and hired employees, but had not opened to customers yet because it was waiting for the chef to

receive an E-2 visa as an essential employee. The officers indicated that in such a hypothetical scenario in which a business's qualification as an E-2 business depends on E-2 visa issuance of a key worker, it may not be immediately clear without further analysis, whether such business would be considered real and operating.

Manager requirement:

The individual is an employee in an executive or supervisory position.

Source: GAO analysis of the Code of Federal Regulations, 8 C.F.R. § 214.2(e) and 22 C.F.R. § 41.51(b). | GAO-19-547

- **Determining manager qualifications.** Consular officers at 6 of 14 posts indicated that it can be challenging to determine whether a prospective manager had or will have sufficient executive or supervisory duties to meet the E-2 managerial requirement. Consular officers provided a hypothetical example in which a consular officer may interview an applicant seeking an E-2 visa to become a manager at a restaurant, but the applicant may not have any prior management experience nor will she have any subordinates in the restaurant. Such a situation may pose challenges to the consular officer to determine if the applicant would be eligible for an E-2 visa as a manager. Officers noted that the FAM requirements did not specifically state that the applicant must have prior experience or subordinates to qualify as a manager.⁴¹ In such situations, consular officers said they might request additional information from the applicant about the restaurant, her skills and experience, and the nature of her managerial role in the business.
- **Determining essential employee qualifications.** Consular officers at 6 of 14 posts indicated that it can be challenging to determine whether a prospective essential employee has special qualifications (i.e. essential skills or aptitudes). Consular officers noted that they can ask questions and obtain information about the applicant's specialized skills, but that often further research is needed to determine if those skills are essential to the business' operations in the United States. For example, an officer at one post we interviewed provided a hypothetical example of a pet groomer seeking an E-2 visa as an essential employee for a pet grooming service. Although one might be skeptical that pet grooming is a specialized skill and that such an employee would be considered essential, in such a situation, the officer noted that he would likely conduct further research. In doing so, he might determine that the applicant is a well-known expert who

Essential employee requirement:

The individual is employed in a lesser capacity than a manager, but possesses special qualifications (i.e. skills and/or aptitudes) essential to the business' successful or efficient operations in the United States.

Source: GAO analysis of the Code of Federal Regulations, 8 C.F.R. § 214.2(e) and 22 C.F.R. § 41.51(b). | GAO-19-547

⁴¹Under 22 C.F.R. § 41.51(b)(12), a position primarily of supervisory character does not generally involve the direct supervision of low-level employees. While not specifically applicable to State, DHS's E-2 regulation may be informative in providing that, where applicable, an adjudicator is to consider whether a prospective manager has executive and supervisory skills and experience, and responsibility for supervising other professional and supervisory personnel. 8 C.F.R. § 214.2(e)(17).

specializes in grooming certain breeds of exotic or show animals, and that the grooming service is planning to target that type of animal.

- **Other requirements.** Consular officers told us that some of the other E-2 eligibility requirements are not particularly challenging. For example, consular officers at all 14 posts told us that it is relatively straightforward to determine if the applicant has a clear intent to depart the United States upon termination of E-2 status because applicants typically provide an affidavit attesting to their nonimmigrant intent. Further, consular officers stated that it is easy to determine if the applicant is an eligible dependent because consular officers are familiar with local identity information (e.g., birth and marriage certificates) and there are no nationality requirements for dependents.

In addition to potential challenges with respect to the analysis of the eligibility requirements, consular officers at 4 of 14 posts also identified challenges in understanding business and financial documents that are provided in support of an E-2 application. For example, at one post we visited, a consular officer explained the challenges he faced in understanding U.S. tax documentation and the differences between various types of corporations. Further, consular managers at two posts stated that officers without prior knowledge in basic business concepts can find E-2 visa adjudication challenging when they first arrive at post. A manager from a third post stated that the complexity of some E-2 visa cases requires knowledge of business and finance acquired through substantial experience or education.

More than marginal business requirement:

The investment must be made in a business that has the capacity to generate more than enough income to provide a minimal living for the treaty investor or employee and family, or has the present or future capacity (generally within five years) to make a significant economic contribution.

Source: GAO analysis of the Code of Federal Regulations, 8 C.F.R. § 214.2(e) and 22 C.F.R. § 41.51(b). | GAO-19-547

Although LES do not adjudicate visas, LES at 6 of 14 posts also indicated that they had encountered challenges with respect to the analysis of the E-2 eligibility requirements. For example, LES at one post indicated that it can be challenging to determine whether a company is more than marginal (see sidebar) because the size, type or investment sector of each E-2 company presents unique facts and circumstances. LES at one post told us that they needed additional examples of how applicants can meet the various criteria, which would help the LES flag potential areas of concern for the consular officer. Further, LES also expressed challenges in understanding some business and financial aspects of prescreening. For example, LES at two posts stated that determining the nationality of large companies can be difficult because they need to trace back ownership to the original, parent company, and that corporate structures can be very complicated.

Given the complexity of adjudicating E-2 visas, the majority of consular officers and consular managers we spoke with stated that additional

training and resources would be beneficial, such as online training, conferences to share best practices, or documents clarifying eligibility requirements. Specifically, consular officers at 9 of 14 posts and consular managers at 8 of the 14 posts stated that additional E-2 training or resources would be beneficial to consular officers. For example, a consular manager at one post noted that the additional resources provided on State's intranet, such as the adjudication guide and case studies, have already helped to improve clarity on the eligibility requirements, but more resources and training are needed. Further, consular managers at 4 posts stated that additional training related to tax and business concepts would be useful. For example, one manager stated that additional training on how to read and analyze U.S. tax returns could be helpful to accurately evaluate a company's overall financial health and make a determination that a business meets the requirement to be "more than marginal."

Further, LES at all 14 posts in our review also stated that additional training or resources would help them perform their responsibilities. For example, LES at one post we visited stated that additional training and resources that clarify the eligibility standards would allow them to better prepare application packages for the consular officers to adjudicate. Further, consular managers at 9 of the 14 posts in our review also stated that additional training and guidance for LES would be helpful. For example, one consular manager suggested that State develop an online training course for both E-2 adjudicating officers and LES that reviews common business documents. Another manager stated that a training or workshop would provide opportunities to LES and E-2 adjudicating officers to learn best practices from other posts that adjudicate E-2 visas.

Although State provides guidance and training on adjudicating E-2 visas, consular officers, managers, and LES identified challenges in the E-2 adjudication process, such as ensuring adjudicators adequately understand supporting financial and business documents. Many of these officials indicated that given the complexity of E-2 adjudications, additional training and resources would help them in making E-2 eligibility determinations. State officials noted that eligibility requirements are broadly defined so as to cover various business types and investment amounts. According to the *Standards for Internal Control in the Federal Government*, management establishes expectations of competence for key roles to help the entity achieve its objectives, which requires that staff have the relevant knowledge, skills, and abilities, needed to carry out their

responsibility.⁴² Such knowledge, skills, and abilities can be obtained by on-the-job training, formal training, and other training resources, which should be available to all staff performing such roles, regardless of their post. Providing additional E-2 training or related resources would help better ensure that all consular officers and LES prescreening and adjudicating these visas have the necessary knowledge, skills, and abilities to carry out their responsibilities effectively. Such training or other resources should cover topics that include information on E-2 eligibility requirements and how to understand business- and tax-related documents.

USCIS Immigration Officers Identified Challenges in Adjudicating Petitions and Noted Ways in Which They Address Them

USCIS immigration officers we spoke with communicated challenges with respect to the analysis of E-2 eligibility requirements, but explained that they are able to overcome these challenges with local resources. For example, USCIS immigration officers indicated that it is sometimes challenging to determine whether a prospective “essential employee” has requisite special qualifications, or a business is “more than marginal.” For example, immigration officers indicated that determining if an employee is considered essential depends on the relevant facts and circumstances. Further, immigration officers noted that the non-marginality eligibility requirement can be difficult to determine in some cases because the officer may have to project how successful the business will be in the future. However, the immigration officers explained that their colocation with all of the other immigration officers who adjudicate E-2 petitions helps to mitigate the challenges because the officers can coordinate with each other to determine how USCIS has typically adjudicated such cases. Generally, the USCIS immigration officers stated that additional training or resources for E-2 adjudication was not needed.

⁴² [GAO-14-704G](#).

E-2 Company Registration Programs Create Processing Efficiencies at Some Posts But State Does Not Have Minimum Standards for Program Implementation

As of April 2019, 7 of the top 10 E-2 adjudicating posts worldwide have implemented E-2 company registration programs.⁴³ An E-2 company registration program is a process by which posts assess companies against applicable E-2 eligibility requirements. Companies that meet eligibility requirements are placed on an approved or registered companies list. Companies on the registered list do not have to be reassessed for eligibility each time one of their employees seeks an E-2 visa, which creates processing efficiencies for these posts.

Consular managers stated that E-2 company registration programs are intended to give consular officers reasonable assurance that a company meets the minimum E-2 business and investment eligibility requirements, allowing the adjudicating officer to focus the majority of their effort on evaluating the applicant's E-2 eligibility. In fact, we found that at posts with E-2 company registration programs, the consular officer may not need to collect or review any supporting documentation related to the company prior to adjudicating the visa. In contrast, E-2 adjudicating posts without an E-2 company registration program would assess both the company and the applicant against the E-2 eligibility criteria each time they review and adjudicate an E-2 visa application.

While State has identified E-2 company registration programs as a potential best practice, these programs are not mentioned in the FAM and State has not developed guidance or minimum standards for how these programs should be implemented. Instead, State has permitted posts to develop and implement their own registration programs, which has led to variation in how the programs are implemented depending on post-specific factors. Specifically, we found that posts with E-2 company registration programs varied in three ways:

- **Registration criteria:** Three of the 7 posts with E-2 registration programs require all companies to register, while the remaining 4 posts established criteria so that only certain companies can register, such as large companies or companies with multiple E-2 visa issuances. For example, at one post, only companies with more than 500 employees in the United States are allowed to register. At posts that require all companies to register, the number of registered

⁴³Of the 14 posts in our review, the following had active E-2 company registration programs as of April 2019: London, United Kingdom; Madrid, Spain; Rome, Italy; Tokyo, Japan; Frankfurt, Germany; Osaka, Japan; and Toronto, Canada.

companies ranged from approximately 2,200 to 4,000. At posts that allow only certain companies to register, the number of registered companies ranged from about 100 to 200.

- **Documentation requirements:** Employees of E-2 registered companies seeking to obtain an E-2 visa provide different types of documentation during their E-2 adjudication, depending on the requirements of the post. For example, at two posts, applicants of registered E-2 companies must provide their resume and a company letter that outlines the applicant's specific role within the company, and do not need to provide any other supporting documentation regarding the company or underlying investment. At these posts, consular officers review their E-2 company registration database to ensure that the company in question is registered with the post's E-2 company registration program.
- **Revetting policy:** Two of 7 posts with E-2 company registration programs vet registered companies annually while the remaining five posts vet companies every 5 years. Consular managers added that if changes, such as changes in ownership, occur without the post knowing it, prospective applicants may no longer be eligible for the visa. However, according to consular managers, companies on the list are required to contact their post sooner than the 5- or 1- year renewal period if there are any changes in the company that would impact visa eligibility for company investors or employees.

Although such programs may allow posts to more efficiently adjudicate E-2 visas, the variation in these programs may result in different processing of companies and applicants across posts, as well as acceptance of varying levels of risk by posts. The more time a post allows companies before reassessing the company's eligibility for registration, the more risk that post is assuming, as the companies may no longer meet the eligibility requirements and continue to send or keep employees in the United States on E-2 visas for which they are not eligible. According to *Standards for Internal Control in the Federal Government*, management should design and implement policies and procedures that enforce management's directives to achieve the entity's objectives and address related risks.⁴⁴ However, State's Bureau of Consular Affairs has not provided posts with minimum standards governing the implementation of E-2 company registration programs, and thus, it is unclear whether the variations among these programs are consistent with the agency's requirements and objectives. Establishing minimum standards for posts

⁴⁴[GAO-14-704G](#).

that choose to implement such programs would better ensure that all posts' E-2 visa adjudication processes are aligned with State's policies, objectives, and risk tolerance.

Some State E-2 Application Documents Were Not Retained as Required

State and USCIS require certain information and documents be retained for all E-2 applications and petitions; however, during our file review of State and USCIS E-2 adjudications, we identified that some required documents were missing from State files; USCIS was able to provide copies of all the documents required to be retained for each file we reviewed.

State. State's FAM includes requirements related to the collection of E-2 visa application information for all E-2 principals (i.e. investors, managers, and essential employees). Principal investors provide their information when they complete their application online, which is automatically uploaded to State's consular database system. However, managers and essential employees provide some information by completing a paper form DS-156E, and the FAM requires officials to scan the forms each applicant's record.

On the basis of our file review, we estimate that about 20 percent of fiscal year 2018 E-2 application files for managers and essential employees were missing required documentation, either in part or in full.⁴⁵ Specifically, 14 percent of E-2 applications were missing the entire DS-156E, and 8 percent (6 of 80) were missing pages of the DS-156E. According to the *Standards for Internal Control in the Federal Government*, management performs ongoing monitoring of the design and operating effectiveness of the internal control system as part of the normal course of operations. Ongoing monitoring includes regular management and supervisory activities. According to State officials, the responsibility for ensuring that document retention is consistent with standards rests with posts, and consular managers are responsible for ensuring compliance. State officials noted that the Bureau of Consular Affairs does not have an ongoing monitoring process in place to ensure that posts are complying with the FAM requirement. Developing a process to ensure that posts are retaining all required E-2 visa documentation by monitoring implementation of the requirement could better position State to be able

⁴⁵As part of our review of application files, we obtained randomly selected fiscal year 2018 application files from 40 managers and 40 essential employees.

to access applicant information, should it be needed for law enforcement, anti-fraud, or security purposes later.

USCIS. According to USCIS officials, USCIS requires the I-129 petition, supporting documentation, and decision letters for refused petitions to be retained for all petitioners. As part of our review of petition files, we requested 124 randomly selected fiscal year 2018 petition files for investors, managers, and essential employees.⁴⁶ In response, USCIS was able to provide us with all of the required elements for each of the petition files.

⁴⁶Generally, dependents seeking E-2 status from USCIS complete an I-539 petition. We did not review such petitions as a part of our file review because the petition does not include information about the relevant business.

State and USCIS View Risk of E-2 Fraud Differently and Interagency Coordination On E-2 Fraud Efforts Is Limited

State Has Resources Available to Consular Officers to Help Identify Potential Fraud, but State Generally Considers E-2 Visa Fraud to Be Low Risk

State has resources to help combat nonimmigrant visa fraud, including for E-2 visas.⁴⁷ State officials said that the resources available and the steps they take if E-2 fraud is suspected are similar for all types of visa fraud. If a consular officer reviewing an E-2 visa application suspects fraud—either during prescreening or after the interview—the officer is to make a fraud referral to the post’s fraud prevention manager or to diplomatic security officials. According to State officials, not every case with potential fraud concerns will be referred for additional investigation. If a consular officer does not find the applicant to be qualified or overcome immigrant intent, officers may refuse the case without additional fraud assessments.⁴⁸ Fraud prevention managers, who are part of State’s

⁴⁷E-2 fraud is a type of immigration benefit fraud. Such fraud involves the willful or knowing misrepresentation of material facts for the purpose of obtaining an immigration benefit, such as E-2 nonimmigrant status, for which the person committing fraud is therefore ineligible. Such misrepresentations may involve a specific intent to deceive. Immigration benefit fraud is often facilitated by document fraud and identity fraud. Immigration-related document fraud includes forging, counterfeiting, altering, or falsely making any document, or using, possessing, obtaining, accepting, or receiving such falsified documents in order to satisfy any requirement of, or to obtain a benefit under the INA. Identity fraud refers to the fraudulent use of others’ valid documents. Fraud in the immigration context may result in various statutory violations. See, e.g., 18 U.S.C. ch. 47 (fraud and false statements), in particular § 1001 (criminal penalties for false statements and concealment before any U.S. government entity); 18 U.S.C. §§ 1541–1547 (criminal penalties for immigration-related fraud); 18 U.S.C. § 1621 (criminal penalties for perjury); 8 U.S.C. §§ 1182(a)(6)(C)(i), (a)(6)(F), 1227(a)(1)(A), (a)(1)(B), (a)(3)(C)(i) (grounds of removability for fraud or willful misrepresentations), 1324c (civil penalties for immigration-related document fraud and criminal penalties for not disclosing role as document preparer).

⁴⁸State officials stated that most posts do not have the resources to investigate every single case with fraud indicators and generally focus on cases of otherwise qualified applicants where there may be a criminal nexus or broader fraud trend.

Bureau of Consular Affairs, investigate fraud cases and provide information on fraud trends to consular officers. At some posts, State's Bureau of Diplomatic Security's ARSO-Is specialize in criminal investigations of visa fraud and coordinate with local law enforcement.⁴⁹ Both fraud prevention managers and ARSO-Is are to conduct additional research to determine if fraud exists, such as through open source searches, interviews, and coordination with other U.S. and local government entities.

State officials we spoke with stated that they take fraud in all visa fraud categories seriously, but generally consider E-2 visa fraud to be lower risk relative to other visa categories because they believe the large amount of complex paperwork required for the visa would discourage malicious actors. For example, consular officers at 12 of the 14 posts we interviewed stated that E-2 visas were a low fraud risk.⁵⁰ Similarly, consular managers at 10 of the 14 posts stated that E-2 visa fraud was generally not a concern at their post. State headquarters officials attributed the low fraud risk to the large amount of paperwork that is required, which includes complex financial documents and U.S. government produced tax forms. For example, State headquarters officials indicated that, given the documentation burden for both the applicant and the company, the E-2 nonimmigrant classification may be less susceptible to fraud than other nonimmigrant classifications.

According to State's E-2 fraud data, the number of E-2 fraud referrals has decreased since fiscal year 2015, but the number of confirmed fraud cases was consistent from fiscal years 2014 through 2018, as shown in figure 15. There was an initial increase in referrals from fiscal year 2014 to 2015, which State officials attributed to consular staff more consistently making such requests through the official system of record rather than by email.⁵¹ From fiscal years 2015 through 2018 the number of E-2 visa fraud referrals decreased each year, from 664 in fiscal year 2015 to 280

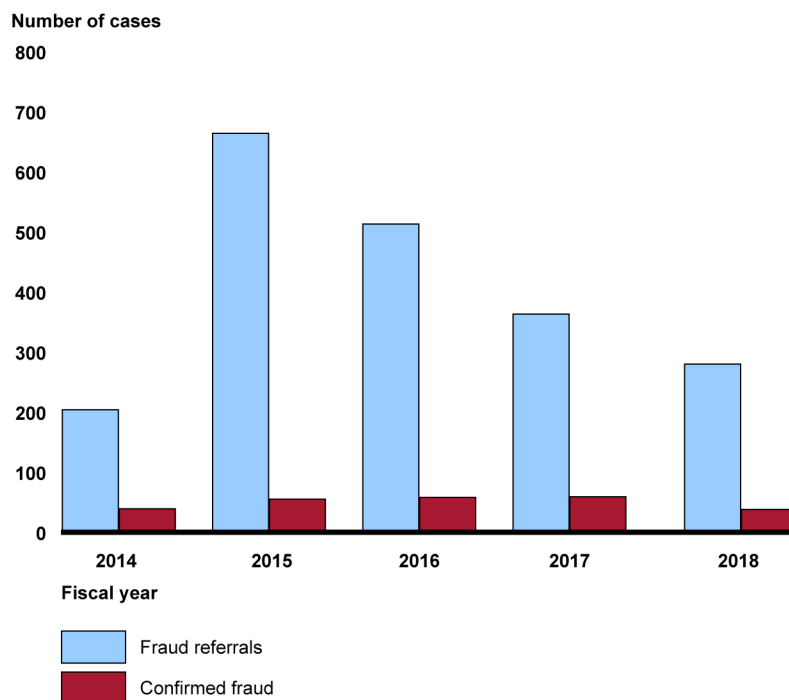
⁴⁹Under State's Bureau of Diplomatic Security, 122 ARSO-Is are assigned to 107 posts to protect the integrity of the visa system and disrupt criminal networks and terrorist mobility, as of April 2019. Diplomatic Security recommends that ARSO-Is spend 80 percent of their time working on visa fraud, and 20 percent of their time supporting other Diplomatic Security responsibilities, such as providing security to high-level visitors at post.

⁵⁰Consular officers at the remaining two posts had concerns with E-2 visa fraud related to money laundering for illicit activities.

⁵¹In April 2011, State released its first centralized system for fraud prevention managers to track and manage their nonimmigrant and immigrant visa fraud cases.

in fiscal year 2018. Throughout this time period, the number of confirmed fraud cases stayed about the same, ranging from 39 to 59 cases per year.

Figure 15: Department of State Consular Officers' Referrals for Potential E-2 Visa Fraud and Confirmed Fraud Cases, Fiscal Years 2014 through 2018



Source: GAO analysis of Department of State E-2 data . | GAO-19-547

Note: This chart does not include fraud referrals and confirmed fraud cases for one post because this post, by local policy, submits all E-2 visa applications for a fraud referral. This skewed the results of our analysis, so we removed the post as an outlier.

Although consular officials at 12 of the 14 posts considered E-2 visas to be low fraud risk, consular officers also identified country-specific E-2 fraud trends and indicators that they monitored at their post, as appropriate, such as the type of business, the location of the business, or the nationality of the applicant.

Some of the posts in our review have taken additional actions to address E-2 fraud, such as additional fraud reviews and conducting validation studies:

-
- **Additional fraud review:** Consular managers at one post told us that the post has devoted additional resources to ensure that all E-2 visa applications undergo an additional fraud review, given that E-2 visas can have a relatively long validity period than most nonimmigrant visas. At this post, all E-2 visa applications are sent to the fraud prevention manager and the ARSO-I, both of whom conduct additional research and look for fraud indicators.
 - **Validation study:** Validation studies determine the extent to which foreign nationals who were issued visas later overstayed or misused their visa, and can be conducted by post officials for any visa classification. One post in our review conducted a validation study that focused on E-2 visas that post had issued to foreign nationals associated with food service companies (e.g., restaurants) to determine how many remained in business and how many E-2 visa holders continued to travel or stay in the United States after the business failed. According to this 2016 validation study, the post had concluded that almost one-quarter of food service companies in its study had failed within about three years, and nearly half of E-2 visa holders for those companies did not depart after the company had failed or continued to travel to the United States on their E-2 visa. According to the post's fraud team, the study showed that even prospective E-2 visa enterprises that meet the applicable requirements at the time of application can become unqualified over time, and that adjudicators should take long-term viability into account when determining the marginality of a business. The post's fraud team also stated that other posts may wish to consider standardized follow-ups for approved E-2 enterprises and routine confirmations of vetted E companies as the E-2 visa category continues to grow in popularity.⁵²

USCIS Has Identified E-2 Fraud as a Priority and Is Analyzing Its Fraud Risk in a Pilot Project

USCIS officials stated they consider E-2 fraud to be a significant issue and take several steps to identify fraud, including fraud referrals, fraud assessment technology, and site visits. First, according to USCIS officials, immigration officers reviewing the E-2 petition look for anomalies and other indicators of fraud and send a fraud referral for any potential fraud cases by forwarding the case to the service center's fraud detection office. Immigration officers in the fraud detection office then are to

⁵²State headquarters officials added that because there is not a limit on the number of times E-2 nonimmigrants may seek to extend their status with USCIS, validation studies are of more limited use in the E-2 visa category than they are in other visa categories.

conduct further research, such as reviewing open sources (e.g., company website) or may request a site visit to the business.

Second, USCIS uses a fraud assessment technology on all petitions to determine if an E-2 company exists and is financially viable. Specifically, the Validation Instrument for Business Enterprises (VIBE) is a technology that helps immigration officers to determine if a business is operating, financially strong and viable, has good credit, and has not been involved in past fraud. According to USCIS officials, VIBE reviews existing business-related information on an enterprise, such as an office supply store account or utility bills, to determine if it is real and operating.⁵³

Finally, immigration officers may request site visits based on their review of the application or VIBE results. During such site visits, immigration officers visit the business location to determine if the business is performing as stated in the petition and in compliance with the E-2 visa eligibility requirements. The results of the site visit are sent back to the originating location for adjudication. According to USCIS officials, if a larger conspiracy is uncovered, such as fraud involving multiple beneficiaries, the immigration officer may make a referral to U.S. Immigration and Customs Enforcement for further criminal investigation and potential prosecution, but added that this is very rare.

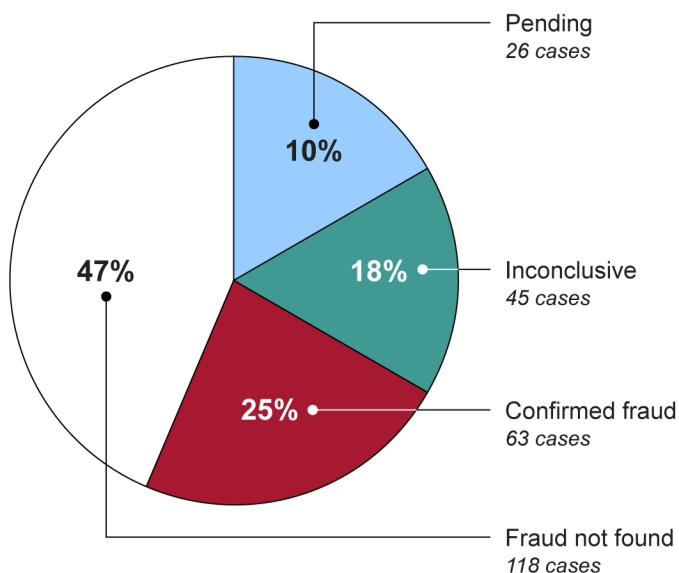
USCIS immigration officers made 252 requests for site visits based on VIBE results from fiscal year 2014 through 2018 for E-2s. Of these site visits, USCIS determined there was confirmed fraud for 25 percent (63), as shown in figure 16. Of the 63 confirmed fraud cases, 42 enterprises were not located at the site provided in the petition and 14 enterprises had provided fraudulent documents or otherwise misrepresented the facts.⁵⁴ For example, in one case, the beneficiary paid a dental laboratory to assign her in a fictitious position of office manager so that she could obtain E-2 status, but the beneficiary had never worked there. In another example, an investor seeking E-2 status in May 2015 submitted a petition based on a discount store that had gone out of business in January 2013. According to USCIS officials, when fraud is confirmed, the immigration

⁵³State officials do not routinely apply VIBE or a similar technology when adjudicating E-2 visa applications. However, some officials at post, such as fraud prevention managers, may have access to VIBE.

⁵⁴Some E-2 fraud cases had multiple findings. For example, of the 42 enterprises that were not located at the location provided in the petition, 8 enterprises had also fraudulent documents or misrepresented facts.

officer will deny the petition, review any pending or previously approved petitions from the petitioner, and fraud finding will be entered into VIBE, which affects the applicant's ability to obtain future immigration benefits, including visa application or petition approvals from the United States government.

Figure 16: Results of E-2 Fraud Site Visits Conducted by U.S. Citizenship and Immigration Services, Fiscal Years 2014 through 2018



Source: Department of Homeland Security data. | GAO-19-547

Note: Data includes 252 site visits requested based on the results of the Validation Instrument for Business Enterprises database as of the end of fiscal year 2018. Pending case includes four cases for which site visits were not conducted.

State consular officers can also request that USCIS conduct site visits to help in its adjudication of E-2 visa applications, but USCIS data indicate that such requests are rare. According to USCIS, the agency received 10 external site visit requests from State from fiscal years 2014 through 2018. Of the 10 requests, USCIS conducted site visits to seven businesses and found one incidence of fraud involving a restaurant.⁵⁵

⁵⁵Of the remaining 6 site visits, fraud was not found in three cases and three cases were inconclusive. USCIS was unable to conduct site visits for 3 of the 10 requests due to logistical issues or because State did not provide enough information to USCIS to identify a location for a site visit. Further, one site visit request was pending at the time USCIS provided its data to us in September 2018.

According to State officials, site visits are considered to be resource intensive for the USCIS and can take several weeks or months to complete. The officials added that if a consular officer determines that an applicant is unqualified for the visa, it would not be considered an effective use of the post's resources to conduct additional investigations or request a U.S.-based site visit from USCIS.

Based on the results of the site visits and other factors, USCIS officials stated that they have prioritized E-2 fraud, and initiated a site visit pilot program in February 2018 to better determine the extent to which fraud exists. This pilot program focuses on businesses associated with individuals approved for an E-2 status extension and certain eligibility criteria. According to USCIS officials in July 2019, the most commonly encountered fraud or noncompliance issues thus far have involved enterprises that were not operational, not engaged in any business activities, or were not operating as stated in the petition. USCIS plans to continue the E-2 pilot into fiscal year 2020 and to share the results with State.

State and USCIS Efforts to Coordinate E-2 Anti-Fraud Activities Are Limited

State's and USCIS's respective roles in the E-2 process, along with a current lack of coordination on E-2 anti-fraud efforts, may contribute to the differences in the way the agencies view and prioritize the risks of E-2 fraud.⁵⁶ Drawing on the results of its site visit pilot project, USCIS has said it views E-2 fraud as a significant issue and plans to prioritize efforts to combat E-2 fraud moving forward. While State has taken some steps to examine and combat E-2 visa fraud, officials we spoke with at posts and at headquarters told us that E-2 fraud is rare and generally low risk. The E-2 validation study that one post conducted, noted earlier, also provided evidence that E-2 fraud occurred, at least in that business sector from that particular country. While it is possible that additional validation studies across different posts and business sectors would uncover fraud trends, State officials noted that validation studies are resource intensive, and that E-2 visas represent only a small fraction of the total visas they adjudicate each year. Therefore, State officials stated that such studies

⁵⁶State is responsible for adjudicating E-2 visa applications for individuals seeking to travel to the United States for inspection and lawful admission by CBP at a U.S. port of entry for up to a 2-year period. USCIS handles the E-2 petition (or application) process for those already present in the United States and seeking to change to E-2 from another nonimmigrant status, or extend E-2 status beyond the initial authorized period of stay.

are likely to be focused on more common visa types, such as tourist and business visitor visas.

Although some factors may explain why USCIS and State view the risk of E-2 fraud differently, both agencies encounter foreign nationals seeking the E-2 status in the United States. Officials from both agencies stated that USCIS may be more likely to uncover fraud than State because USCIS processes E-2 status extensions for individuals already in the United States. E-2 principals (i.e., investors, managers, and essential employees) would have had up to 2 years to try to run, manage, or work for their business, with the intention to depart at the conclusion of their authorized period of stay. If they failed, gave up, or ended employment, but still sought an E-2 status extension, any materially false representations made as to their eligibility could be considered fraudulent. Officials from both agencies suggested that State may be adjudicating visas for more new businesses, which may qualify at the time of initial adjudication but could ultimately fail. However, during our observations and file reviews, we found that USCIS also adjudicates petitions for new businesses for beneficiaries seeking to change to E-2 status, and State also adjudicates E-2 visa applications for existing businesses that have previously been associated with E-2 visa holders. Further, neither State nor USCIS collect data that track the number of new businesses seeking E-2 status for their employees. As such, we cannot verify the accuracy of this reason for explaining why or if USCIS is more likely to encounter fraud among individuals seeking E-2 status than State.

Both State and USCIS collect information that could potentially be useful to each other's activities to identify and address E-2 fraud, but the agencies do not have a mechanism for regular coordination on fraud. For example, as previously noted, consular officers adjudicating E-2 visas overseas learn to identify country-based fraud trends as well as trends specific to E-2 visas. USCIS immigration officers can identify similar trends, and the results of USCIS's site visits may further identify potential fraud trends that would be useful for State consular officers.

However, interagency coordination is ad hoc, generally among headquarters officials only, and relatively rare. For example, both State and USCIS officials stated that the main formal mechanism of coordination on all E-2 visa issues is a quarterly teleconference. However, such meetings were cancelled 7 out of 8 times in fiscal years 2017 and 2018 because officials did not identify agenda topics to discuss, according to State and USCIS officials. Further, such meetings have not included discussions of E-2 fraud issues. State officials stated that they

share country fraud summaries with USCIS. However, these fraud summaries do not focus on E-2 visas, but fraud trends more generally.⁵⁷

According to *A Framework for Managing Fraud Risks in Federal Programs*, agencies should establish collaborative relationships with stakeholders to share information on fraud risks and emerging fraud schemes, as well as lessons learned related to fraud control activities.⁵⁸ Managers can collaborate and communicate through a variety of means, including task forces, working groups, or communities of practice. Although State and USCIS have some informal mechanisms in place to share fraud-related information, such as emails among headquarters officials and by sharing high-level country fraud reports, formal information sharing mechanisms have not been regularly operating. Although the two entities view the risk of E-2 fraud visa differently, both State's and USCIS' E-2 antifraud efforts would benefit from ensuring that they regularly share information on fraud risks. Doing so will help both entities to better identify emerging fraud trends, prevent foreign nationals from fraudulently obtaining E-2 status, and identify areas for potential collaboration and resource sharing.

Conclusions

The E-2 nonimmigrant classification helps to facilitate foreign investment in the United States, which contributes to the U.S. economy each year. State and USCIS share the responsibility for adjudicating thousands of E-2 visa applications and petitions annually for foreign nationals seeking E-2 status. Both State and USCIS officials stated that given the complexity of adjudicating E-2 applications and petitions, and the level of documentation and time required, the E-2 adjudication process can present challenges with respect to the analysis of E-2 eligibility requirements. State consular officers, managers, and LES noted that additional training and resources are needed to help them better understand the eligibility requirements and supporting financial and business documents. Enhancing E-2 training and providing additional resources such as documents clarifying E-2 eligibility requirements would help better ensure that consular officers and LES prescreening and adjudicating these visas have the necessary knowledge, skills, and

⁵⁷State and USCIS officials noted that the agencies provide access to some of each other's fraud databases. For example, some State officials, generally at headquarters, have access to USCIS's VIBE, and can conduct additional research on an E-2 applicant if requested by a consular officer abroad.

⁵⁸[GAO-15-593SP](#).

abilities to carry out their responsibilities effectively across posts worldwide.

Additionally, some overseas State posts have developed E-2 company registration programs to more efficiently process and adjudicate E-2 visa applications. Although there are benefits to such programs, the variation in the standards of these programs may result in different processing of companies and applicants across posts, as well as acceptance of varying levels of risk by posts. Establishing guidance or minimum standards for posts that choose to implement such programs would better ensure that all posts' E-2 visa adjudication processes are consistent with State's policies, objectives, and risk tolerance. Further, State and USCIS require certain information and documents be retained for all E-2 applications and petitions; however, during our file review of State and USCIS E-2 adjudications, we identified that some required documents were missing from State files. Ensuring that posts retain all required E-2 documentation would better position State to be able access applicant information, which could be needed for law enforcement, anti-fraud, or security purposes later. Finally, although State and USCIS collect information that could potentially be useful to each other's activities to address E-2 fraud, coordination between State and USCIS on E-2 fraud has been ad hoc, generally among headquarters officials only, and relatively rare. Developing regular coordination mechanisms would help both entities to better identify emerging fraud trends and prevent foreign nationals from fraudulently obtaining E-2 status.

Recommendations for Executive Action

We are making the following five recommendations to State and USCIS:

- The Assistant Secretary of State for Consular Affairs should provide additional training or related resources to consular officers and locally employed staff on adjudicating E-2 visas, to cover topics that include the E-2 eligibility requirements and understanding business- and tax-related documents. (Recommendation 1)
- The Assistant Secretary of State for Consular Affairs should develop minimum standards for E-2 company registration programs, such as standards for how often companies are to be re-vetted. (Recommendation 2)
- The Assistant Secretary of State for Consular Affairs should develop and implement a process to ensure that posts maintain required E-2 visa application documentation. (Recommendation 3)

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- The Secretary of State, in coordination with the Director of USCIS, should establish regular coordination mechanisms to share information on E-2 fraud risks. (Recommendation 4)
 - The Director of USCIS, in coordination with the Secretary of State, should establish regular coordination mechanisms to share information on E-2 fraud risks. (Recommendation 5)

Agency Comments and Our Evaluation

We provided a draft of this report to State and DHS for their review and comment. State and DHS provided written comments, which are reproduced in appendices IV and V, respectively. Both State and DHS concurred with our recommendations. State and DHS also provided technical comments, which we incorporated as appropriate.

State concurred with all four recommendations addressed to it in the report (recommendations 1, 2, 3, and 4), and described actions it plans to take in response. To address recommendation 1, State plans to increase the frequency and specificity of E-2 content through webinars, workshops, and guidance, and by developing subject matter experts domestically who can provide consultative services on an as-needed basis for business and tax-related documents. To address recommendation 2, State plans to require a minimum 5-year mandatory review of companies registered at any post using a company registration program. To address recommendation 3, State plans to reinforce its E-2 visa documentation retention policy in regular policy guidance to consular managers. To address recommendation 4, State plans to hold regular, high-level coordination meetings with USCIS to include coordination on E visa adjudication standards. DHS concurred with recommendation 5, and stated that the department plans to share the results of its site visits during quarterly coordination meetings with State. These actions, if effectively implemented, should address the intent of our recommendations.

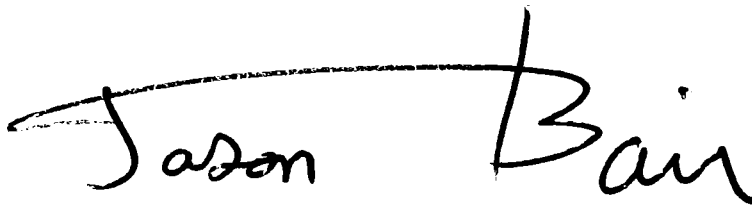
We are sending copies of the report to the Acting Secretary of Homeland Security, Secretary of State, and appropriate congressional committees. In addition, the report will be available at no charge on GAO's website at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact Rebecca Gambler at (202) 512-8777 or gablerr@gao.gov or Jason Bair at (202) 512-6881 or bairj@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix VI.

Sincerely yours,

Handwritten signature of Rebecca Gambler in cursive script.

Rebecca Gambler,
Director,
Homeland Security and Justice

Handwritten signature of Jason Bair in cursive script.

Jason Bair,
Acting Director,
International Affairs and Trade

Appendix I: Objectives, Scope, and Methodology

This report reviews the Department of State's (State) and Homeland Security's (DHS) U.S. Citizenship and Immigration Services' (USCIS) oversight and implementation of E-2 adjudications. Specifically, this report examines (1) the outcomes and characteristics of foreign nationals who have sought or received E-2 status during fiscal years 2014 through 2018, (2) State's and USCIS's policies and procedures to ensure that individuals meet E-2 eligibility requirements, and (3) State's and USCIS's efforts to assess and address potential fraud in the E-2 adjudication process.

To determine the outcomes and characteristics of foreign nationals who have sought or received E-2 status, we analyzed data from State's Bureau of Consular Affairs and USCIS on E-2 visa applications and petitions adjudicated from fiscal years 2014 through 2018.¹ For example, the data we analyzed included E-2 role (e.g., investor, manager, essential employee, and dependents), adjudication outcome (i.e., issued or refused), and nationality, among other data points. To assess the reliability of the E-2 data, we interviewed State and USCIS officials that maintain the data and checked the data for missing information, outliers, and obvious errors, among other actions. For example, we identified and removed duplicate entries in State's data.² On the basis of these steps, we determined that the data were sufficiently reliable for the purposes of our reporting objectives, including providing summary statistics on E-2 adjudications, outcomes, and the characteristics of those seeking E-2 status.

To obtain additional data points, such as types of business and investment amount, we analyzed generalizable stratified random samples of E-2 visa applications and petitions adjudicated in fiscal year 2018.³ Specifically, we reviewed 124 E-2 petitions from USCIS and 120 State

¹Our analysis includes applications or petitions that were adjudicated in fiscal years 2014 through 2018. Such petitions and applications may have been received in prior fiscal years.

²We removed about 560 duplicate data entries out of a total of 225,369 entries, or 0.2 percent. According to State, duplicate entries occurred in the data when applicants were refused a visa for multiple reasons, among other potential causes. We identified the duplicate entries using State's unique identifiers, and removed entries that, for example, utilized temporary or preliminary refusal codes.

³Applications or petitions may have been received in the prior fiscal year, but were adjudicated in fiscal year 2018.

applications for E-2 investors, managers, and essential employees.⁴ The documents in our file review included, for example, State's DS-160 online nonimmigrant visa application and DS-156E supplemental application, USCIS's I-129 petition for nonimmigrant workers, and supporting documents, when available. To collect information from the applications and petitions, we created a data collection instrument and established standard procedures to ensure that we accurately collected the information from the original forms. We chose sample sizes to achieve precision levels for a percentage estimate of plus or minus 10 percentage points for important sub-populations, such as denied petitions and role (e.g., investor, manager, and essential employee). As a result, all percentage estimates presented in this report have a precision of plus or minus 10 percentage points or fewer, unless otherwise noted. Further, we classified the types of businesses in the applications and petitions using the North American Industry Classification System by conducting a content analysis of the business description field in the applications and petitions to group related business types into larger groups, such as food service and manufacturing.⁵

Further, we also collected and analyzed data and information from USCIS and U.S. Customs and Border Protection on post E-2 adjudication outcomes, including changing status from E-2 to another nonimmigrant category, adjusting from E-2 status to lawful permanent residency, and E-2 nonimmigrants who remain in the United States beyond the expiration of their authorized period of stay, known as overstays.⁶ We present the results of this analysis in Appendix III. To assess the reliability of these

⁴We did not review applications and petitions for E-2 dependents because the forms for such dependents did not include information we needed for our analysis, such as amount invested.

⁵The North American Industry Classification System is the standard used by federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy. Two analysts independently coded the businesses and resolved any discrepancies.

⁶Overstays are nonimmigrants who remain in the United States beyond the expiration of their authorized period of stay by: (1) failing to depart by the status expiration date or completion of qualifying activity (plus any time permitted for departure) without first obtaining an extension or other valid immigration status or protection, or (2) violating the terms and conditions of their nonimmigrant status at any point during their stay. The authorized period of stay is the fixed or variable amount of time for which a nonimmigrant is admitted to the United States upon inspection by a U.S. Customs and Border Protection (CBP) officer at a U.S. port of entry. See 8 U.S.C. §§ 1101(a)(15), 1184(a), 1185, 1202(g), 1225; and as for CBP's customs inspection authority, see 19 U.S.C. §§ 1461, 1467.

data, we interviewed officials that maintain the data and checked the data for missing information, outliers, and obvious errors, among other actions. On the basis of these steps, we determined that the data were sufficiently reliable for the purpose of providing summary statistics on E-2 post adjudication outcomes.

To assess State and USCIS policies and procedures to ensure that individuals meet E-2 eligibility requirements, we reviewed relevant State and USCIS guidance documentation, including State's Foreign Affairs Manual and USCIS's E-2 standard operating procedures. We also reviewed relevant provisions of the Immigration and Nationality Act and implementing regulations, which set forth the E-2 eligibility requirements. We interviewed officials from State's Bureau of Consular Affairs and Foreign Service Institute, and USCIS on their respective agencies' E-2 processes and procedures, as well as training provided to State's consular officers and USCIS's immigration officers. Further, we assessed State's and USCIS's policies and procedures to ensure that individuals meet E-2 eligibility requirements against control environment, control activities, and monitoring internal control standards in *Standards for Internal Control in the Federal Government*, as well as documentation retention requirements in agency guidance.⁷

We conducted site visits to State and USCIS locations that adjudicate E-2 visas and petitions, respectively. For State, we conducted site visits to four posts abroad—London, United Kingdom; Seoul, South Korea; Tokyo, Japan; and Toronto, Canada from October through December 2018. For our site visits, we selected posts that (1) were among the 10 highest E-2 adjudicating posts by volume in fiscal year 2017, (2) had different staffing models for processing E-2 visa adjudications, such as posts that had a single officer specializing in E-2 visas or posts that had all consular officers adjudicate E-2 visas, and (3) were geographically dispersed. During these visits, we observed the prescreening and adjudication of E-2 applications and used a data collection instrument to collect information on the cases we observed, such as adjudication outcome and other non-personally identifiable information about the case. We interviewed consular officers and managers, locally employed staff (LES), fraud prevention managers, and the assistant regional security officer-investigators (ARSO-I), where available, about topics such as E-2 visa

⁷GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: September 2014).

adjudication policies, procedures, resources and training available at post.⁸ Our observations from these site visits provided useful insights into State's E-2 adjudication procedures, but are not generalizable to all posts that adjudicate E-2 visas. For USCIS, in November 2018, we visited the California Service Center in Laguna Niguel, California—which is the only USCIS service center that adjudicates E-2 petitions—to observe E-2 petition adjudications and interview USCIS officials.

In addition to our site visits, we conducted telephonic interviews with consular officers and LES who are responsible for prescreening and adjudicating E-2 visa applications at the remaining six of the top 10 posts in terms of E-2 annual adjudications, as well as four randomly selected low-volume posts.⁹ The 4 low-volume posts were selected at random from a list of posts that had adjudicated at least 100 E-2 visa applications in fiscal year 2017.¹⁰ We collected copies of post-specific standard operating procedures and local E-2 visa adjudication tools (e.g., checklists), as available, from the 14 posts we visited or interviewed. Further, we reviewed written responses from the consular managers responsible for supervising E-2 visa adjudications at these 14 posts to a

⁸LES are employees hired under the local compensation plan at a U.S. post overseas, which include foreign service nationals, U.S. citizens residing abroad, third country nationals, and eligible family members of State employees. State's Bureau of Consular Affairs' fraud prevention managers investigate fraud cases, conduct fraud training for consular officers, and provide information on fraud trends to consular officers. State's Bureau of Diplomatic Security's ARSO-Is are to assist consular officers by investigating suspected passport and visa fraud detected through the consular officers' reviews of visa applications and supporting documents.

⁹The other six posts with the highest E-2 processing volume in fiscal year 2017 are: Ciudad Juarez, Mexico; Frankfurt, Germany; Madrid, Spain; Osaka, Japan; Paris, France; and Rome, Italy. Similar to our site visits, we requested to speak with all of the consular officers and LES involved in the adjudication and processing of E-2 visas at these posts, to the extent they were available during our phone call or site visit. The number of consular officers we interviewed during our site visits or phone calls ranged from 1 to 6 and the number of LES ranged from 1 to 4.

¹⁰The four low-volume E-2 adjudicating posts in fiscal year 2017 selected were: Bogota, Colombia, Copenhagen, Denmark; Santiago, Chile; and Santo Domingo, Dominican Republic. We included posts that had adjudicated at least 100 E-2 visas in fiscal year 2014 to ensure that consular officers had sufficient experience to speak generally about their experiences adjudicating such visas.

set of questions regarding E-2 adjudication processes and procedures, challenges, E-2 company registration programs, and E-2 training.¹¹

To determine the efforts that State and USCIS take to assess and address E-2 fraud, we reviewed relevant State and USCIS standard operating procedures and guidance. We interviewed headquarters officials from State and USCIS, such as State's Office of Fraud Prevention Program and USCIS's Fraud Detection and National Security Directorate, on how both agencies identify and address potential E-2 fraud and what, if any, coordination or information sharing occur between State and USCIS. During our 4 site visits abroad, we interviewed officials, such as fraud prevention managers and ARSO-Is, on anti-fraud efforts for E-2 visas at their posts, including potential fraud trends. Similarly, we interviewed immigration officers at USCIS's California Service Center on their anti-fraud efforts for E-2 petitions. We obtained data from State and USCIS on fraud referrals—that is, cases sent to fraud experts for additional research and review—and the results of fraud site visits from fiscal year 2014 through 2018. To assess the reliability of these data, we interviewed State and USCIS officials that maintain the data and checked the data for missing information, outliers, and obvious errors, among other actions. On the basis of these steps, we determined that the data were sufficiently reliable for the purposes of our reporting objectives, including providing summary statistics on fraud referrals and the results of fraud site visits. Further, we assessed State's and USCIS's anti-fraud efforts against best practices found in *A Framework for Managing Fraud Risks in Federal Programs*.¹²

We conducted this performance audit from July 2018 to July 2019 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

¹¹An E-2 company registration program is a process by which posts assess companies against E-2 eligibility requirements. Companies that meet eligibility requirements are placed on an approved or registered companies list. Companies on the registered list do not have to be reassessed for eligibility each time one of their employees seeks an E-2 visa.

¹²GAO, *A Framework for Managing Fraud Risks in Federal Programs*, [GAO-15-593SP](#) (Washington, D.C.: July 2015).

Appendix II: List of Treaty Countries Eligible for E-2 Status

The Immigration and Nationality Act requires the existence of a qualifying treaty of commerce and navigation between the United States and a foreign state in order for E-2 visa classification to be accorded to nationals of that foreign state. According to Department of State guidance, such qualifying treaties may include treaties of friendship, commerce and navigation, and bilateral investment treaties.¹ As of June 2019, nationals of the 82 countries listed in Table 7 may be accorded E-2 status pursuant to a qualifying treaty, or pursuant to legislation enacted to extend that same privilege.²

Table 8: List of Treaty Countries Eligible for E-2 Status, as of June 2019

Country	Effective Date	Country	Effective Date
Albania	January 4, 1998	Korea (South)	November 7, 1957
Argentina	December 20, 1854	Kosovo ^a	November 15, 1882
Armenia	March 29, 1996	Kyrgyzstan	January 12, 1994
Australia	December 27, 1991	Latvia	December 26, 1996
Austria	May 27, 1931	Liberia	November 21, 1939
Azerbaijan	August 2, 2001	Lithuania	November 22, 2001
Bahrain	May 30, 2001	Luxembourg	March 28, 1963
Bangladesh	July 25, 1989	Macedonia ^a	November 15, 1982
Belgium	October 3, 1963	Mexico	January 1, 1994
Bolivia ^b	June 6, 2001	Moldova	November 25, 1994
Bosnia and Herzegovina ^a	November 15, 1982	Mongolia	January 1, 1997
Bulgaria	June 2, 1954	Montenegro ^a	November 15, 1882
Cameroon	April 6, 1989	Morocco	May 29, 1991
Canada	January 1, 1994	Netherlands ^c	December 5, 1957
Chile	January 1, 2004	New Zealand	June 10, 2019
China (Taiwan) ^d	November 30, 1948	Norway ^e	January 18, 1928
Colombia	June 10, 1948	Oman	June 11, 1960
Congo (Brazzaville)	August 13, 1994	Pakistan	February 12, 1961
Congo (Kinshasa)	July 28, 1989	Panama	May 30, 1991
Costa Rica	May 26, 1852	Paraguay	March 07, 1860

¹See the Department of State Foreign Affairs Manual (FAM), 9 FAM 402.9-4(A).

²According to Department of State officials, some bilateral investment treaties provide the basis for E-2 visa status, but officials noted that, in some cases, the basis is provided by specific legislation.

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for E-2 Status**

Country	Effective Date	Country	Effective Date
Croatia ^a	November 15, 1982	Philippines	September 6, 1955
Czech Republic ^f	January 1, 1993	Poland	August 6, 1994
Denmark	December 10, 2008	Romania	January 15, 1994
Ecuador ^g	May 11, 1997	Senegal	October 25, 1990
Egypt	June 27, 1992	Serbia ^a	November 15, 1882
Estonia	February 16, 1997	Singapore	January 1, 2004
Ethiopia	October 8, 1953	Slovak Republic ^f	January 1, 1993
Finland	December 1, 1992	Slovenia ^a	November 15, 1882
France ^h	December 21, 1960	Spain	April 14, 1903
Georgia	August 17, 1997	Sri Lanka	May 1, 1993
Germany	July 14, 1956	Suriname ⁱ	February 10, 1963
Grenada	March 3, 1989	Sweden	February 20, 1992
Honduras	July 19, 1928	Switzerland	November 08, 1855
Iran	June 16, 1957	Thailand	June 8, 1968
Ireland	November 18, 1992	Togo	February 5, 1967
Israel ^j	May 1, 2019	Trinidad & Tobago	December 26, 1996
Italy	July 26, 1949	Tunisia	February 7, 1993
Jamaica	March 7, 1997	Turkey	May 18, 1990
Japan ^k	October 30, 1953	Ukraine	November 16, 1996
Jordan	December 17, 2001	United Kingdom ^l	July 03, 1815
Kazakhstan	January 12, 1994	Yugoslavia ^a	November 15, 1882

Source: Department of State Foreign Affairs Manual (FAM), 9 FAM 402.9-10 and Department of State information | GAO-19-547

^aYugoslavia - The U.S. view is that the Socialist Federal Republic of Yugoslavia has dissolved and that the successors that formerly made up the Socialist Federal Republic of Yugoslavia - Bosnia and Herzegovina, Croatia, the Republic of Macedonia, Slovenia, Montenegro, Serbia, and Kosovo continue to be bound by the treaty in force with the Socialist Federal Republic of Yugoslavia at the time of dissolution.

^bBolivia - Bolivian nationals with qualifying investments in place in the United States by June 10, 2012 continue to be entitled to E-2 classification until June 10, 2022. The only nationals of Bolivia (other than those qualifying for derivative status based on a familial relationship to an E-2 principal foreign national) who may qualify for E-2 visas at this time are those applicants who are coming to the United States to engage in E-2 activity in furtherance of covered investments established or acquired prior to June 10, 2012.

^cNetherlands - The Treaty which entered into force on December 05, 1957, is applicable to Aruba and Netherlands Antilles.

^dChina (Taiwan) - Pursuant to Section 6 of the Taiwan Relations Act, Pub. L. No. 96-8, 93 Stat. 14 (1979), this agreement which was concluded with the Taiwan authorities prior to January 1, 1979, is administered on a nongovernmental basis by the American Institute in Taiwan, a nonprofit District of Columbia corporation, and constitutes neither recognition of the Taiwan authorities nor the continuation of any official relationship with Taiwan.

^eNorway - The Treaty which entered into force on September 13, 1932, does not apply to Svalbard (Spitzbergen and certain lesser islands).

^fCzech Republic and Slovak Republic - The Treaty with the Czech and Slovak Federal Republics entered into force on December 19, 1992; entered into force for the Czech Republic and Slovak Republic as separate states on January 01, 1993.

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for E-2 Status**

^gEcuadorian nationals with qualifying investments in place in the United States by May 18, 2018 continue to be entitled to E-2 classification until May 18, 2028. The only nationals of Ecuador (other than those qualifying for derivative status based on a familial relationship to an E-2 principal foreign national) who may qualify for E-2 visas at this time are those applicants who are coming to the United States to engage in E-2 activity in furtherance of covered investments established or acquired prior to May 18, 2018.

^hFrance - The Treaty which entered into force on December 21, 1960, applies to the departments of Martinique, Guadeloupe, French Guiana and Reunion.

ⁱSuriname - The Treaty with the Netherlands which entered into force December 05, 1957, was made applicable to Suriname on February 10, 1963.

^jPublic law 112-130 (June 8, 2012), accords nationals of Israel E-2 status for treaty investor purposes if the government of Israel provides similar nonimmigrant status to a national of the United States. The Department of State confirmed that Israel offers reciprocal treaty investor treatment to U.S. nationals and E-2 visas were permitted to be issued to nationals of Israel beginning on May 1, 2019.

^kJapan - The Treaty which entered into force on October 30, 1953, was made applicable to the Bonin Islands on June 26, 1968, and to the Ryukyu Islands on May 15, 1972.

^lUnited Kingdom - The Convention which entered into force on July 03, 1815, applies only to British territory in Europe (the British Isles (except the Republic of Ireland), the Channel Islands and Gibraltar) and to "inhabitants" of such territory. This term, as used in the Convention, means "one who resides actually and permanently in a given place, and has his domicile there." Also, in order to qualify for treaty trader or treaty investor status under this treaty, the foreign national must be a national of the United Kingdom. Individuals having the nationality of members of the Commonwealth other than the United Kingdom do not qualify for treaty trader or treaty investor status under this treaty.

Appendix III: E-2 Adjudication Statistics

This appendix presents various statistics on adjudications by State for E-2 visas as well as those by U.S. Citizenship and Immigration Services (USCIS) for E-2 petitions for fiscal years 2014 through 2018.¹ We present these data broken out by fiscal year, outcome (e.g., issued or refused), type (e.g., investor, manager, essential employee, dependent), country of nationality or birth, reason for refusal, and prior nonimmigrant status, if available. Further, we also provide statistics on some post-adjudication outcomes—that is, data on characteristics of those who obtained E-2 status. These outcomes include changes to another nonimmigrant status or lawful permanent residency, or the extent to which E-2 status holders remained in the United States beyond their authorized period of stay, known as overstaying.

State

For the purposes of this appendix, there are four potential roles for foreign nationals seeking E-2 status. First, a foreign national who has committed funds to a U.S. enterprise and is in a position to develop and direct the operations of the enterprise in which he or she has invested substantial capital is known as an investor. Second, a foreign national employee in an executive or supervisory position is known as a manager. Third, a foreign national employee, in a lesser capacity than a manager, but having special qualifications essential to successful or efficient business operations, is known as an essential employee. Finally, the spouse or qualifying child of an investor, manager, or essential employee is known as a dependent. State consular officers will adjudicate the visa application as either issued or refused.

¹Our analysis includes applications or petitions that were adjudicated in fiscal years 2014 through 2018. Such petitions and applications may have been received in prior fiscal years. For the purposes of this report, we refer to the USCIS forms that foreign nationals complete to change to or extend their E-2 status—the I-129 and I-539 forms—as petitions. E-2 principal investors, managers and essential employees are to complete the I-129, Petition for a Nonimmigrant Worker, while dependents are to complete the I-539, Application To Extend/Change Nonimmigrant Status.

Appendix III: E-2 Adjudication Statistics

Table 9: E-2 Visa Adjudications Results, Fiscal Years 2014 through 2018

Fiscal Year	Issuances	Refusals	Total Adjudications	Refusal Rate
2014	35,599	2,710	38,309	7.1%
2015	41,282	2,731	44,013	6.2%
2016	44,361	3,923	48,284	8.1%
2017	43,914	5,579	49,493	11.3%
2018	33,455	3,071 - 11,255	44,710	6.9%-25.2%
Total	198,611	26,198	224,809	11.7%

Source: GAO analysis of Department of State data. | GAO-19-547

Note: We present the fiscal year 2018 refusal rate as a range because it is subject to change until the end of fiscal year 2019. Specifically, an application adjudicated in fiscal year 2018 may require the applicant to submit additional information to demonstrate eligibility for an E-2 visa. In such cases, the application is refused under Immigration and Nationality Act (INA) § 221(g). The applicant has one year after the date of refusal to overcome the refusal by, for example, providing missing information. After one year, the applicant must reapply. Specifically, 8,184 of the 11,255 refusals in fiscal year 2018 were refused under INA § 221(g) as of November 2018, when the Department of State (State) provided the data to us. In the range, the maximum refusal rate includes all INA 221(g) refusals, and the minimum refusal rate is the rate that would exist if all applications refused INA § 221(g) were later overcome and issued.

Table 10: E-2 Visa Adjudications, Issuances, and Refusal Rates by Applicant Type, Fiscal Years 2014 through 2018

Applicant types		Fiscal Year					2018 (maximum refusal rate)	2018 (minimum refusal rate)	Total
		2014	2015	2016	2017	2018			
Investor	Adjudications	5,294	6,263	6,673	6,755	6,135	6,135	31,123	
	Issuances	4,427	5,389	5,625	5,161	3,119	5,234	23,723	
	Refusal Rate	16.4%	14.0%	15.7%	23.6%	49.2%	14.7%	23.8%	
Manager	Adjudications	7,531	8,740	9,347	9,884	9,218	9,218	44,720	
	Issuances	7,196	8,360	8,756	9,031	7,295	8,820	40,638	
	Refusal Rate	4.4%	4.3%	6.3%	8.6%	20.9%	4.3%	9.1%	
Essential Employee	Adjudications	6,844	7,697	8,832	9,593	8,514	8,514	41,481	
	Issuances	6,710	7,481	8,340	9,012	7,423	8,095	38,966	
	Refusal Rate	2.0%	2.8%	5.6%	6.1%	12.8%	4.9%	6.1%	
Dependents	Adjudications	16,857	19,329	21,212	21,508	19,169	19,169	98,074	
	Issuances	15,594	18,153	19,618	19,172	14,257	17,927	86,794	
	Refusal Rate	7.5%	6.1%	7.5%	10.9%	25.6%	6.5%	11.5%	
Others	Adjudications	1,783	1,984	2,220	1,753	1,674	1,674	9,411	
	Issuances	1,672	1,899	2,022	1,538	1,361	1,563	8,490	
	Refusal Rate	6.2%	4.3%	8.9%	12.3%	18.7%	6.6%	9.8%	

Source: GAO analysis of Department of State data. | GAO-19-547

Appendix III: E-2 Adjudication Statistics

Note: We present the fiscal year 2018 refusal rate with a minimum and a maximum because it is subject to change until the end of fiscal year 2019. Specifically, an application adjudicated in fiscal year 2018 may require the applicant to submit additional information to demonstrate eligibility for an E-2 visa. In such cases, the application is refused under Immigration and Nationality Act (INA) § 221(g). The applicant has one year after the date of refusal to overcome the refusal by, for example, providing missing information. After one year, the applicant must reapply. Specifically, 8,184 of the 11,255 refusals in fiscal year 2018 were refused under INA § 221(g) as of November 2018, when the Department of State (State) provided the data to us. In the range, the maximum refusal rate includes all INA 221(g) refusals, and the minimum refusal rate is the rate that would exist if all applications refused INA § 221(g) were later overcome and issued. Depending on the extent to which applicants refused in fiscal year 2018 under INA 221(g) are able to overcome their refusals, State officials stated that they expected the fiscal year 2018 refusal rate to be somewhere within the range. The total for fiscal years 2014 through 2018 includes INA § 221(g) refusals for fiscal year 2018.

Table 11: E-2 Visa Adjudications by Country of Nationality and Percent, Fiscal Years 2014 through 2018

Country of nationality		Fiscal Year				
		2014	2015	2016	2017	2018
Canada	Adjudications	2,771	2,877	3,463	3,558	3,777
	Refusal Rate	8.1%	8.3%	13.2%	19.1%	7.0 - 43.2%
France	Adjudications	2,731	3,553	3,292	3,042	3,238
	Refusal Rate	7.8%	6.7%	2.5%	5.1%	5.0 - 21.8%
Germany	Adjudications	3,748	4,490	4,576	4,640	3,802
	Refusal Rate	1.7%	3.3%	5.3%	7.3%	4.2 - 25.9%
United Kingdom	Adjudications	2,848	3,071	3,118	3,239	2,844
	Refusal Rate	2.0%	3.7%	4.7%	10.8%	6.0 - 13.8%
Italy	Adjudications	1,498	2,174	2,375	2,456	2,237
	Refusal Rate	11.4%	11.6%	11.8%	21.9%	11.3 - 43.7%
Japan	Adjudications	11,374	12,336	13,950	14,812	13,511
	Refusal Rate	0.5%	1.2%	2.3%	2.6%	1.3 - 9.1%
South Korea	Adjudications	2,467	2,396	2,685	2,718	2,565
	Refusal Rate	30.8%	11.1%	24.4%	21.8%	6.1 - 14.7%
Mexico	Adjudications	2,870	2,946	2,819	2,757	1,851
	Refusal Rate	16.2%	12.6%	6.7%	11.5%	7.3 - 66.0%
Spain	Adjudications	1,468	2,009	1,642	1,584	1,448
	Refusal Rate	5.4%	3.8%	6.5%	11.3%	11.0 - 25.7%
Turkey	Adjudications	442	438	835	914	893
	Refusal Rate	8.4%	16.0%	17.7%	30.9%	31.7 - 52.3%
Total	Adjudications	38,309	44,013	48,284	49,493	44,710
	Refusal Rate	7.1%	6.2%	8.1%	11.3	6.9 - 25.2%

Source: GAO analysis of Department of State data. | GAO-19-547

Note: We present the fiscal year 2018 refusal rate as a range because it is subject to change until the end of fiscal year 2019. Specifically, an application adjudicated in fiscal year 2018 may require the applicant to submit additional information to demonstrate eligibility for an E-2 visa. In such cases, the application is refused under Immigration and Nationality Act (INA) § 221(g). The applicant has one

year after the date of refusal to overcome the refusal by, for example, providing missing information. After one year, the applicant must reapply. Specifically, 8,184 of the 11,255 refusals in fiscal year 2018 were refused under INA § 221(g) as of November 2018, when the Department of State (State) provided the data to us. In the range, the maximum refusal rate includes all INA 221(g) refusals, and the minimum refusal rate is the rate that would exist if all applications refused INA § 221(g) were later overcome and issued. Depending on the extent to which applicants refused in fiscal year 2018 under INA § 221(g) are able to overcome their refusals, State officials stated that they expected the fiscal year 2018 refusal rate to be somewhere within the range. The total for fiscal years 2014 through 2018 includes INA 221§ (g) refusals for fiscal year 2018.

Table 12: Reasons for E-2 Visa Refusals, Fiscal Years 2014 through 2018

Refusal Reason	Fiscal Year (Percent of Annual Total)				
	2014	2015	2016	2017	2018
Health related ^a	2 (0.1%)	3 (0.1%)	4 (0.1%)	2 (0.0%)	0 (0.0%)
Security or criminal related ^b	16 (0.6%)	38 (1.4%)	34 (0.9%)	28 (0.5%)	44 (0.4%)
Fraud or misrepresentation ^c	13 (0.5%)	22 (0.8%)	40 (1.0%)	9 (0.2%)	24 (0.2%)
Immigration related ^d	16 (0.6%)	14 (0.5%)	30 (0.8%)	7 (0.1%)	27 (0.2%)
Inadequate documentation ^e	443 (16.3%)	590 (21.6)	744 (19.0%)	1442 (25.9%)	8,184 (72.7%)
Unqualified immigrant ^f	2,215 (81.7%)	2,057 (75.3)	3,003 (76.5%)	3,970 (71.2%)	2,806 (24.9%)
Other	5 (0.2%)	7 (0.3%)	71 (1.8%)	118 (2.1%)	170 (1.5%)
Total	2,710 (100.0%)	2,731 (100.0%)	3,926 (100.0%)	5,576 (100.0%)	11,255 (100.0%)

Source: GAO analysis of Department of State data. | GAO-19-547

^aImmigration and Nationality Act (INA) § 212(a)(1) (8 U.S.C. § 1182(a)(1)).

^bINA § 212(a)(2), (3).

^cINA § 212(a)(6)(C)(i).

^dINA § 212(a)(6), (9).

^eINA § 221(g) (8 U.S.C. § 1201(g)).

^fINA § 214(b) (8 U.S.C. § 1184(b)).

USCIS

A foreign national seeking E-2 status as an investor, manager, or essential employee is known as a principal, and a spouse or qualifying child of a principal is known as a dependent. Foreign nationals seeking E-2 status through USCIS use different forms based on whether they are a principal or a dependent. USCIS immigration officers will generally adjudicate the petition as either approved or denied.

Table 13: E-2 Petitions Results for Extension and Change of Status Requests, Fiscal Years 2014 through 2018

Fiscal Year		Extension of Status		Change of Status		Total		Grand Total
		Principal	Dependents	Principal	Dependents	Principal	Dependents	
2014	Adjudications	2,626	4,443	1,476	1,629	4,102	6,072	10,174
	Approvals	2,448	4,082	1,142	1,302	3,590	5,384	8,974
	Denial Rate	6.8%	8.1%	22.6%	20.1%	12.5%	11.3%	11.8%
2015	Adjudications	2,076	3,420	1,553	1,684	3,629	5,104	8,733
	Approvals	1,909	3,170	1,149	1,320	3,058	4,490	7,548
	Denial Rate	8.0%	7.3%	26.0%	21.6%	15.7%	12.0%	13.6%
2016	Adjudications	2,632	3,746	1,833	2,006	4,465	5,752	10,217
	Approvals	2,313	3,340	1,225	1,429	3,538	4,769	8,307
	Denial Rate	12.1%	10.8%	33.2%	28.8%	20.8%	17.1%	18.7%
2017	Adjudications	1,890	2,807	1,696	1,983	3,586	4,790	8,376
	Approvals	1,570	2,328	1,084	1,350	2,654	3,678	6,332
	Denial Rate	16.9%	17.1%	36.1%	31.9%	26.0%	23.2%	24.4%
2018	Adjudications	2,479	3,384	1,615	1,898	4,094	5,282	9,376
	Approvals	2,239	2,975	1,205	1,456	3,444	4,431	7,875
	Denial Rate	9.7%	12.1%	25.4%	23.3%	15.9%	16.1%	16.0%
Total	Adjudications	11,703	17,800	8,173	9,200	19,876	27,000	46,876
	Approvals	10,479	15,895	5,805	6,857	16,284	22,752	39,036
	Denial Rate	10.5%	10.7%	29.0%	25.5%	18.1%	15.7%	16.7%

Source: GAO analysis of Department of Homeland Security data. | GAO-19-547

Note: Petitions may have been filed in the prior fiscal year. Principals included investors, managers, and essential employees, and dependents include spouses and children of principals. The I-129 petition is for principals and the I-539 is for dependents.

Table 14: Extension of E-2 Status Petitions by Country of Birth, Fiscal Years 2014 through 2018

Country of Birth		2014	2015	2016	2017	2018	Total
Canada	Principal	133	43	49	35	44	304
	Dependents	177	109	154	81	127	648
	Total	310	152	203	116	171	952
	Denial rate	9.4%	10.5%	13.8%	30.2%	15.2%	14.1%
France	Principal	34	40	40	35	43	192
	Dependents	70	58	59	57	39	283
	Total	104	98	99	92	82	475
	Denial rate	16.3%	13.3%	27.3%	31.5%	13.4%	20.4%

Appendix III: E-2 Adjudication Statistics

Country of Birth		2014	2015	2016	2017	2018	Total
Germany	Principal	65	45	55	41	49	255
	Dependents	113	86	71	71	60	401
	Total	178	131	126	112	109	656
	Denial rate	16.9%	16.8%	15.1%	22.3%	28.4%	19.4%
India	Principal	0	28	52	46	63	189
	Dependents	29	25	65	52	81	252
	Total	29	53	117	98	144	441
	Denial rate	31.0%	13.2%	14.5%	6.1%	9.7%	12.0%
Italy	Principal	26	24	24	20	33	127
	Dependents	26	31	28	39	31	155
	Total	52	55	52	59	64	282
	Denial rate	28.8%	14.5%	17.3%	23.7%	20.3%	20.9%
Japan	Principal	187	158	181	148	176	850
	Dependents	288	257	205	195	158	1,103
	Total	475	415	386	343	334	1,953
	Denial rate	6.9%	10.6%	13.2%	19.0%	9.0%	11.4%
South Korea	Principal	1,131	851	1,036	641	836	4,495
	Dependents	2,248	1,587	1,610	928	1,061	7,434
	Total	3,379	2,438	2,646	1,569	1,897	11,929
	Denial rate	4.8%	3.4%	8.7%	12.0%	7.3%	6.7%
Mexico	Principal	189	165	203	160	199	916
	Dependents	406	332	350	309	325	1,722
	Total	595	497	553	469	524	2,638
	Denial rate	8.7%	11.1%	12.5%	19.2%	5.9%	11.3%
Pakistan	Principal	69	55	95	77	133	429
	Dependents	133	84	145	153	253	768
	Total	202	139	240	230	386	1,197
	Denial rate	7.4%	10.8%	7.5%	13.5%	13.2%	10.9%
Philippines	Principal	45	36	43	30	31	185
	Dependents	63	59	69	47	48	286
	Total	108	95	112	77	79	471
	Denial rate	10.2%	5.3%	8.0%	6.5%	6.3%	7.4%
Thailand	Principal	61	67	102	101	213	544
	Dependents	55	55	77	63	142	392
	Total	116	122	179	164	355	936

Appendix III: E-2 Adjudication Statistics

Country of Birth	2014	2015	2016	2017	2018	Total	
	Denial rate	6.0%	5.7%	11.2%	17.7%	8.2%	9.8%
Turkey	Principal	43	32	53	39	84	251
	Dependents	32	42	74	47	141	336
	Total	75	74	127	86	225	587
	Denial rate	5.3%	5.4%	11.0%	18.6%	12.4%	11.2%
United Kingdom	Principal	185	159	147	119	111	721
	Dependents	278	268	215	196	156	1,113
	Total	463	427	362	315	267	1,834
	Denial rate	7.8%	7.5%	15.5%	22.9%	18.0%	13.3%
Venezuela	Principal	1	7	21	10	20	59
	Dependents	46	29	54	42	67	238
	Total	47	36	75	52	87	297
	Denial rate	38.3%	8.3%	18.7%	17.3%	6.9%	16.8%
Other countries	Principal	457	366	531	388	444	2,186
	Dependents	479	398	570	527	695	2,669
	Total	936	764	1,101	915	1,139	4,855
	Denial rate	10.9%	13.4%	13.0%	20.1%	16.5%	14.8%
Grand total	Principal	2,626	2,076	2,632	1,890	2,479	11,703
	Dependents	4,443	3,420	3,746	2,807	3,384	17,800
	Total	7,069	5,496	6,378	4,697	5,863	29,503
	Denial rate	7.6%	7.6%	11.4%	17.0%	11.1%	10.6%

Source: GAO analysis of Department of Homeland Security data. | GAO-19-547

Note: Petitions may have been filed in the prior fiscal year. Principals included investors, managers, and essential employees, and dependents include spouses and children of principals. The I-129 petition is for principals and the I-539 application is for dependents. Although the Department of State maintains electronic data on the nationality of its E-2 visa applicants, U.S. Citizenship and Immigration Services does not maintain such data on its E-2 status beneficiaries. Instead USCIS maintains data on the country of birth for E-2 status beneficiaries.

Table 15: Change to E-2 Status Petitions by Country of Birth, Fiscal Years 2014 through 2018

Country of Birth		2014	2015	2016	2017	2018	Total
Argentina	Principal	19	28	20	23	23	113
	Dependents	35	41	25	44	46	191
	Total	54	69	45	67	69	304
	Denial rate	27.8%	15.9%	44.4%	19.4%	40.6%	28.6%
Brazil	Principal	0	7	9	13	15	44
	Dependents	18	28	53	37	64	200
	Total	18	35	62	50	79	244
	Denial rate	33.3%	22.9%	58.1%	52.0%	36.7%	43.0%
Canada	Principal	92	61	47	22	28	250
	Dependents	103	103	93	53	58	410
	Total	195	164	140	75	86	660
	Denial rate	18.5%	23.8%	32.9%	28.0%	11.6%	23.0%
Colombia	Principal	37	25	37	34	36	169
	Dependents	65	37	46	37	48	233
	Total	102	62	83	71	84	402
	Denial rate	33.3%	38.7%	27.7%	33.8%	23.8%	31.1%
Egypt	Principal	30	26	39	21	26	142
	Dependents	31	24	39	23	34	151
	Total	61	50	78	44	60	293
	Denial rate	18.0%	28.0%	65.4%	27.3%	23.3%	34.8%
India	Principal	1	22	42	35	47	147
	Dependents	13	26	28	36	37	140
	Total	14	48	70	71	84	287
	Denial rate	7.1%	16.7%	22.9%	19.7%	20.2%	19.5%
Italy	Principal	59	42	38	27	29	195
	Dependents	47	22	38	14	24	145
	Total	106	64	76	41	53	340
	Denial rate	36.8%	32.8%	25.0%	43.9%	47.2%	35.9%
Japan	Principal	137	127	145	96	119	624
	Dependents	73	65	70	34	40	282
	Total	210	192	215	130	159	906
	Denial rate	13.3%	20.8%	20.5%	26.2%	14.5%	18.7%

Appendix III: E-2 Adjudication Statistics

Country of Birth		2014	2015	2016	2017	2018	Total
South Korea	Principal	366	331	294	233	257	1,481
	Dependents	403	340	268	166	202	1,379
	Total	769	671	562	399	459	2,860
	Denial rate	12.0%	14.8%	22.2%	24.6%	12.0%	16.4%
Mexico	Principal	89	91	103	80	67	430
	Dependents	160	184	156	165	95	760
	Total	249	275	259	245	162	1,190
	Denial rate	28.1%	20.4%	35.5%	49.0%	32.1%	32.8%
Pakistan	Principal	69	93	170	167	141	640
	Dependents	106	132	292	296	258	1,084
	Total	175	225	462	463	399	1,724
	Denial rate	19.4%	11.1%	22.7%	29.2%	20.8%	22.2%
Philippines	Principal	31	22	28	31	35	147
	Dependents	26	16	30	27	33	132
	Total	57	38	58	58	68	279
	Denial rate	43.9%	52.6%	8.6%	34.5%	30.9%	32.6%
Taiwan	Principal	30	36	38	31	26	161
	Dependents	22	19	20	14	18	93
	Total	52	55	58	45	44	254
	Denial rate	23.1%	36.4%	15.5%	48.9%	15.9%	27.6%
Thailand	Principal	46	67	81	59	60	313
	Dependents	26	31	50	41	45	193
	Total	72	98	131	100	105	506
	Denial rate	16.7%	18.4%	30.5%	34.0%	23.8%	25.5%
Turkey	Principal	57	56	146	329	229	817
	Dependents	58	46	139	392	267	902
	Total	115	102	285	721	496	1,719
	Denial rate	12.2%	21.6%	24.2%	27.3%	22.0%	23.9%
United Kingdom	Principal	62	67	74	40	44	287
	Dependents	65	70	58	46	48	287
	Total	127	137	132	86	92	574
	Denial rate	20.5%	32.8%	50.8%	41.9%	27.2%	34.7%
Venezuela	Principal	1	14	18	13	24	70
	Dependents	24	73	53	61	51	262
	Total	25	87	71	74	75	332
	Denial rate	36.0%	52.9%	47.9%	35.1%	45.3%	44.9%

Appendix III: E-2 Adjudication Statistics

Country of Birth		2014	2015	2016	2017	2018	Total
Other Countries	Principal	350	438	504	442	409	2143
	Dependents	354	427	548	497	530	2,356
	Total	704	865	1,052	939	939	4,499
	Denial rate	28.0%	29.1%	36.5%	42.1%	29.3%	33.4%
Grand Total	Principal	1,476	1,553	1,833	1,696	1,615	8173
	Dependents	1,629	1,684	2,006	1,983	1,898	9,200
	Total	3,105	3,237	3,839	3,679	3,513	17,373
	Denial rate	21.3%	23.7%	30.9%	33.8%	24.3%	27.1%

Source: GAO analysis of Department of Homeland Security data. | GAO-19-547

Note: Petitions may have been filed in the prior fiscal year. Principals included investors, managers, and essential employees, and dependents include spouses and children of principals. The I-129 petition is for principals and the I-539 is for dependents. Although the Department of State maintains electronic data on the nationality of its E-2 visa applicants, U.S. Citizenship and Immigration Services does not maintain such data on its E-2 status beneficiaries. Instead USCIS maintains data on the country of birth for E-2 status beneficiaries.

Table 16: Change to E-2 Status Petition from Another Nonimmigrant Status, Fiscal Years 2014 through 2018

Status	Description	Fiscal Year					Total
		2014	2015	2016	2017	2018	
B-1	Temporary visitors to the United States for business	193	193	262	301	294	1,243
B-2	Temporary visitors to the United States for tourism and pleasure	1,169	1,309	1,743	1,973	1,697	7,891
E-1	Treaty trader, spouse, or child.	64	44	70	41	40	259
E-2	Treaty investor, spouse, or child.	118	135	118	133	147	651
F-1	Students—academic institutions	544	534	565	451	494	2,588
F2	Spouses and children of F-1 visa holders	278	242	259	180	164	1,123
H-1B	Temporary workers with “specialty occupation”	116	88	101	56	56	417
H-4	Spouse or child of H-1, H-2, or H-3 visa holder.	97	95	98	68	56	414
J-1	Exchange visitor	55	72	92	65	79	363
L-1	Intracompany transferee	29	36	26	25	30	146
L-1A	Intracompany transferee – executive or manager	43	54	36	25	40	198
L-2	Spouses and children of L-1 visa holders	153	165	155	107	161	741
	Other status classifications	246	270	314	254	255	1,339
Total		3,105	3,237	3,839	3,679	3,513	17,373

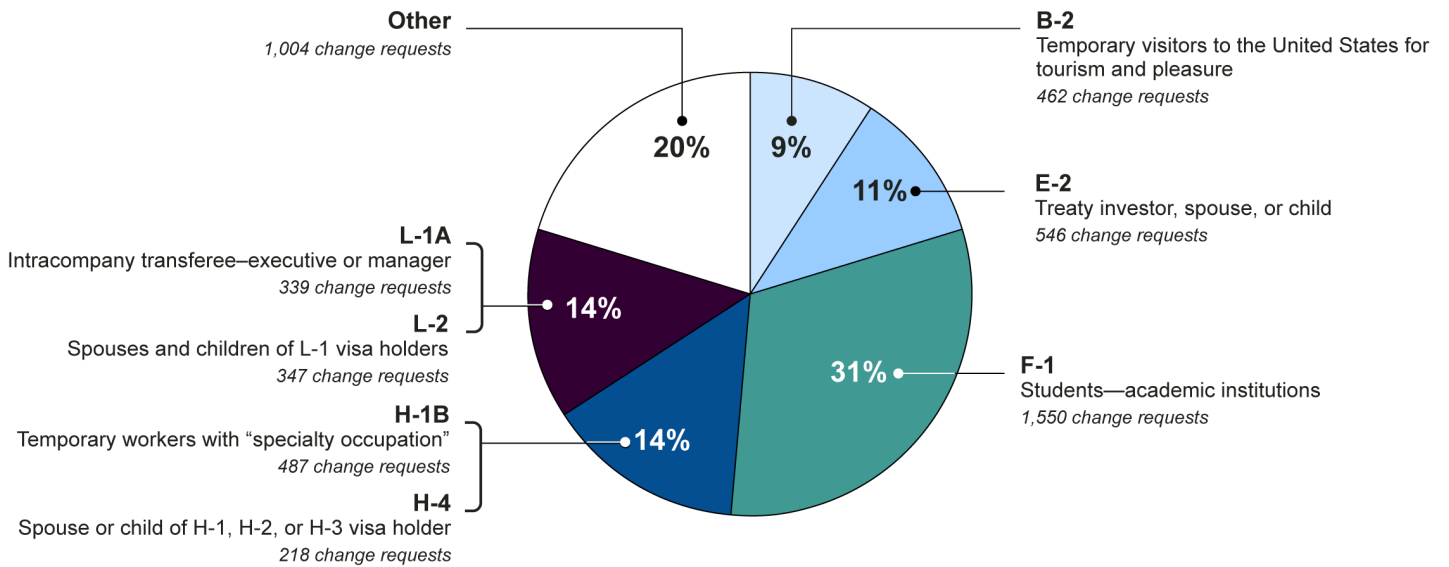
Source: GAO analysis of Department of Homeland Security data. | GAO-19-547

Note: Beneficiaries were seeking to change status within the E-2 classification include, for example, a child or spouse of an E-2 investor who may later wish to work at the company as a manager, and therefore would change their E-2 status from a dependent to a manager.

Post Adjudication Outcomes for E-2 Status Holders

Change of Status From E-2 to Another Nonimmigrant Category. From fiscal years 2014 through 2018, about 5,000 foreign nationals sought to change from E-2 status to another nonimmigrant status. As shown in figure 17 and table 16, most of these requests were to change to academic student status (F-1, 31 percent), temporary workers in specialty occupation status (H-1B, 10 percent), tourist status (B-2, 9 percent), and intracompany transferee executive or manager status (L-1A, 7 percent), as well as dependents of these statuses. Further, about 11 percent of these foreign nationals were requesting to change from one role within E-2 status to another. As previously noted, this could include, for example, a spouse of an E-2 investor later seeking to work at the company as a manager.

Figure 17: Petitions to Change from E-2 Status to Another Nonimmigrant Status, Fiscal Years 2014 through 2018



Source: GAO analysis of Department of Homeland Security data. | GAO-19-547

Note: Beneficiaries were seeking to change status within the E-2 classification include, for example, a child or spouse of an E-2 investor who may later wish to work at the company as a manager, and therefore would change their E-2 status from a dependent to a manager.

Table 17: Petitions to Change From E-2 Status To Another Nonimmigrant Status, Fiscal Years 2014 through 2018

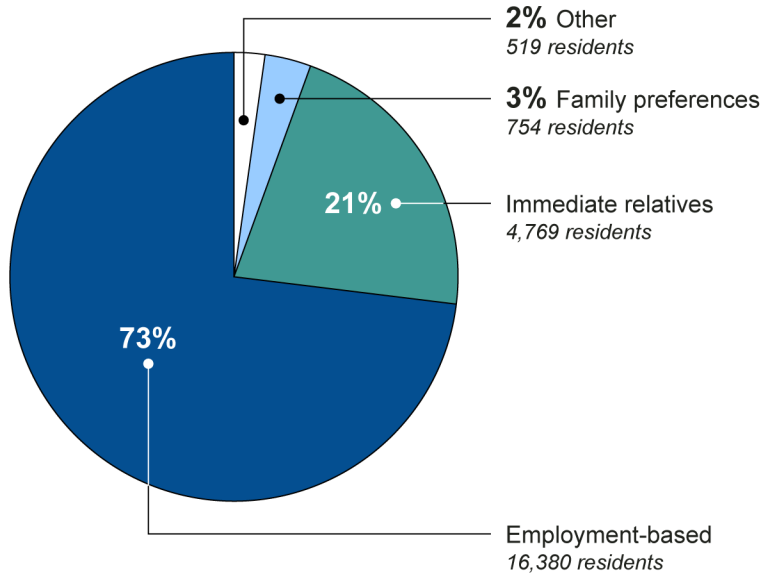
Status	Description	Fiscal Year					Total
		2014	2015	2016	2017	2018	
B1	Temporary visitors to the United States for business	18	11	32	21	48	130
B2	Temporary visitors to the United States for tourism and pleasure	70	70	110	76	136	462
E1	Treaty trader, spouse, or child.	23	20	10	4	22	79
E2	Treaty investor, spouse, or child.	95	103	96	101	151	546
E3	Australian treaty foreign national coming to the United States solely to perform services in a specialty occupation	5	4	10	3	1	33
F1	Students—academic institutions	324	255	472	242	257	1,550
F2	Spouses and children of F-1 visa holders	8	4	9	10	9	40
H1B	Temporary workers with “specialty occupation”	143	94	90	80	80	487
H4	Spouse or child of H-1, H-2, or H-3 visa holder.	71	39	38	30	40	218
L1A	Intracompany transferee – executive or manager	76	73	63	68	59	339
L1B	Intracompany transferee – specialist	24	11	19	20	25	99
L2	Spouses and children of L-1 visa holders	72	63	59	50	103	347
O1	Temporary workers with extraordinary ability or achievement in the sciences, arts, education, business, athletics, TV or film.	8	10	10	6	15	49
O1A	Temporary workers with an extraordinary ability in the sciences, education, business, or athletics (not including the arts, motion pictures or television industry)	15	19	26	26	40	126
O1B	Temporary workers with an extraordinary ability in the arts or extraordinary achievement in motion picture or television industry	20	14	26	28	31	119
O3	Spouses and children of O-1 and O-2 visa holders	19	11	15	20	67	132
R1	Temporary workers in religious occupations	12	9	1	4	8	34
R2	Spouses and children of R-1 visa holders	7	4	2	2	6	21
	Other status	30	36	30	20	36	152
Total		1,040	850	1,118	811	1,134	4,953

Source: GAO analysis of Department of Homeland Security data. | GAO-19-547

Note: Beneficiaries were seeking to change status within the E-2 classification include, for example, a child or spouse of an E-2 investor who may later wish to work at the company as a manager, and therefore would change their E-2 status from a dependent to a manager.

Adjusting from E-2 Status to Lawful Permanent Resident. From fiscal years 2014 through 2018, over 22,000 foreign nationals changed from E-2 status to lawful permanent residents. The large majority of these (73.1 percent) were employment-based (i.e., sponsored by a U.S. employer), as shown in figure 18 and table 17.

Figure 18: Change from E-2 Status to Lawful Permanent Resident Status, Fiscal Years 2014 through 2018



Source: GAO analysis of Department of Homeland Security E-2 petition data. | GAO-19-547

Table 18: Change from E-2 Status to Lawful Permanent Resident Status, Fiscal Years 2014 through 2018

Lawful Permanent Resident Category	2014	2015	2016	2017	2018	Total
Immediate Relatives	1,057 (20.7%)	1,018 (26.1%)	969 (19.4%)	914 (20.0%)	811 (21.0%)	4,769 (21.3%)
Family Preferences	180 (3.5%)	122 (3.1%)	183 (3.7%)	151 (3.3%)	118 (3.1%)	754 (3.4%)
Employment-Based	3,761 (73.6%)	2,648 (68.0%)	3,729 (74.7%)	3,416 (74.9%)	2,826 (73.1%)	16,380 (73.1%)
Other	109 (2.1%)	108 (2.8%)	111 (2.2%)	80 (1.8%)	111 (2.9%)	519 (2.3%)
Total	5,107 (100.0%)	3,896 (100.0%)	4,992 (100.0%)	4,561 (100.0%)	3,866 (100.0%)	22,422 (100.0%)

Source: GAO analysis of Department of Homeland Security data. | GAO-19-547

Overstays. According to DHS data, a relatively low percentage of foreign nationals with E-2 status—obtained either through an E-2 visa from State or an approval to change to, or extend, their E-2 status from USCIS—

overstayed their authorized period of admission compared to other nonimmigrant statuses.² From fiscal years 2016 through 2018, DHS reported that the total overstay rate decreased slightly from 1.5 percent to 1.2 percent.³ Similarly, the overstay rate for E-2 status for the same years decreased from 0.8 percent from 0.6 percent, as shown in table 18.

Table 19: Potential E-2 Overstays, Fiscal Years 2016 through 2018

Fiscal Year	Expected Departures	E-2 Overstays	E-2 Overstay Rate	Overall Nonimmigrant Overstay Rate
2016	212,214	1,775	0.8 percent	1.5 percent
2017	237,538	1,694	0.7 percent	1.3 percent
2018	264,688	1,658	0.6 percent	1.2 percent

Source: GAO analysis of Department of Homeland Security data. | GAO-19-547

Note: The overstay rate is an automated calculation based on the number of nonimmigrant admissions to the United States through air or sea ports of entry who did not depart in a fiscal year divided by the total number of expected departures for that fiscal year

²Overstays are nonimmigrants who remain in the United States beyond the expiration of their authorized period of stay by: (1) failing to depart by the status expiration date or completion of qualifying activity (plus any time permitted for departure) without first obtaining an extension or other valid immigration status or protection, or (2) violating the terms and conditions of their nonimmigrant status at any point during their stay. The authorized period of stay is the fixed or variable amount of time for which a nonimmigrant is admitted to the United States upon inspection by a U.S. Customs and Border Protection officer at a U.S. port of entry. See 8 U.S.C. §§ 1101(a)(15), 1184(a), 1185, 1202(g), 1225; and as for U.S. Customs and Border Protection’s customs inspection authority, see 19 U.S.C. §§ 1461, 1467.

³The overstay rate is an automated calculation based on the number of nonimmigrant admissions to the United States through air or sea ports of entry who did not depart in a fiscal year divided by the total number of expected departures for that fiscal year. These overstay rates do not account for individuals who may have entered or exited the country using land ports of entry.

As we previously reported, U.S. Customs and Border Protection (CBP) implemented system changes in 2015 that allowed CBP to identify E-2 overstays, along with other nonimmigrant categories beginning in fiscal year 2016.⁴

DHS officials stated that the process to track E-2 visa overstays is the same as with other visa categories. They noted that specific visa categories are not prioritized; CBP and U.S. Immigration and Customs Enforcement focus on those overstays where the individual is identified as a national security or public safety risk.

⁴GAO, *Department of Homeland Security: Review of the Fiscal Year 2017 Entry/Exit Overstay Report*, [GAO-19-298R](#) (Washington, D.C.: Feb. 22, 2019).

Appendix IV: Comments from the Department of Homeland Security

U.S. Department of Homeland Security
Washington, DC 20528



**Homeland
Security**

July 2, 2019

Rebecca Gambler
Director, Homeland Security and Justice
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Jason Bair
Acting Director, International Affairs and Trade
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Re: Management Response to Draft Report GAO-19-547, "NONIMMIGRANT INVESTORS: Actions Needed to Improve E-2 Visa Adjudication and Fraud Coordination"

Dear Ms. Gambler and Mr. Bair:


Thank you for the opportunity to review and comment on this draft report. The U.S. Department of Homeland Security (DHS) appreciates the U.S. Government Accountability Office's (GAO) work in planning and conducting its review and issuing this report.

The Department appreciates GAO's positive recognition of the efforts U.S. Citizenship and Immigration Services (USCIS) has taken to mitigate challenges with E-2 adjudications. For example, the draft report noted the benefits of using the Validation Instrument for Business Enterprises system to determine a company's existence and financial viability. In addition, GAO recognized USCIS's E-2 site visit pilot program, which has identified instances of fraud or noncompliance. USCIS will continue E-2 site visits into fiscal year 2020 and is considering making them a regular part of the agency's site visit programs. USCIS remains committed to addressing fraud through its internal operations as well as regular interagency coordination, including with the Department of State.

The draft report contained five recommendations, including one for USCIS with which DHS concurs. Attached find our detailed response to this recommendation. Technical comments were previously provided under separate cover.

Again, thank you for the opportunity to review and comment on this draft report. Please feel free to contact me if you have any questions. We look forward to working with you again in the future.

Sincerely,


for JIM H. CRUMPACKER, CIA, CFE
Director
Departmental GAO-OIG Liaison Office

Attachment

**Attachment: Management Response to Recommendation
Contained in GAO-19-547**

GAO recommended that the Director of USCIS, in coordination with the Secretary of State:

Recommendation 5: Establish regular coordination mechanisms to share information on E-2 fraud risks.

Response: Concur. Each year USCIS's Fraud Detection and National Security Directorate (FDNS) receives a small number of consular requests from the Department of State for site visits relating to suspected E-2 fraud. In order to identify trends and patterns, as well as develop best practices for detecting and deterring E-2 fraud, USCIS FDNS will compare the results of consular-requested site visits to those conducted for USCIS administrative investigations. This review will also include targeted E-2 site visits that have resulted in noncompliant determinations. USCIS FDNS will conduct this analysis on an ongoing basis and will share its findings with the Department of State during the already established quarterly coordination meetings between the Department of State and the USCIS. Representatives from multiple USCIS offices participate in this quarterly coordination meeting, which addresses issues such as immigration law interpretation, regulatory requirements, fraud trends, and addressing fraud trends in a collaborative manner. Estimated Completion Date: June 30, 2020.

Appendix V: Comments from the Department of State



United States Department of State
Comptroller
Washington, DC 20520

JUN 28 2019

Thomas Melito
Managing Director
International Affairs and Trade
Government Accountability Office
441 G Street, N.W.
Washington, D.C. 20548-0001

Dear Mr. Melito:

We appreciate the opportunity to review your draft report, "NONIMMIGRANT INVESTORS: Actions Needed to Improve E-2 Visa Adjudication and Fraud Coordination" GAO Job Code 102882.

The enclosed Department of State comments are provided for incorporation with this letter as an appendix to the final report.

Sincerely,

A handwritten signature in blue ink that reads "Jeffrey C. Mounts".

Jeffrey C. Mounts (Acting)

Enclosure:
As stated

cc: GAO – Rebecca Gambler
CA – Edward Ramotowski
OIG - Norman Brown

Department of State Comments on GAO Draft Report

**NONIMMIGRANT INVESTORS: Actions Needed to Improve E-2 Visa Adjudication and
Fraud Coordination**
(GAO-19-547SU, GAO Code 102882)

The Department thanks GAO for its evaluation of the Department's E-2 visa adjudication process. E-2 visa holders, through foreign direct investment, contribute to the U.S. economy by investing capital and creating jobs. We want to improve the adjudication of applicants applying under this classification, and we always strive to process and adjudicate visa applications as efficiently and effectively as possible. Your evaluation and recommendations help facilitate discussion that will assist us in improving our processes at our posts around the world.

Recommendation 1: The Assistant Secretary of State for Consular Affairs should provide additional training or related resources to consular officers and locally employed staff on adjudicating E-2 visas, to cover topics that include the E-2 eligibility requirements and understanding business-and tax-related documents.

The Department agrees with this recommendation. The Department agrees with the need to provide more training for E-2 adjudication staff and will work with the necessary entities to ensure staff have additional training and resources to evaluate E-2 requirements and eligibility. The Visa Office plans to increase the frequency and specificity of E-2 content through webinars, workshops, and cables. For consistency, formal training for consular officers and LE Staff in the essential elements of visa adjudication should be delivered by the Foreign Service Institute (FSI). In regards to business and tax-related documents, the Department concurs that additional resources would be helpful for consular officers to assess E-2 eligibility requirements related to U.S. financial documentation. However, since U.S. business and tax related documents are not statutorily required, and in light of the expense and difficulty of providing specific financial document training to individual consular officers, the Department plans to address this recommendation by developing subject matter experts domestically who can provide consultative services on an as-needed basis.

Recommendation 2: The Assistant Secretary of State for Consular Affairs should develop minimum standards for E-2 company registrations programs, such as standards for how often companies are to be re-vetted.

The Department concurs with this recommendation. The Visa Office will incorporate into policy a 5-year mandatory review of companies registered at any post using a company registration program. Individual posts may, at their discretion, decide to review registered companies more frequently than once every five years.

Recommendation 3: The Assistant Secretary of State for Consular Affairs should develop and implement a process to ensure that posts maintain required E-2 visa application documentation.

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The Department concurs with this recommendation. Section 402.9 of volume 9 of the Foreign Affairs Manual (9 FAM 402.9) explicitly states that certain documents should be scanned into each visa applicant's record. The Visa Office will reinforce this requirement in its monthly cable to overseas missions in which we highlight important policy requirements that officers may have overlooked. We will also provide regular policy guidance directly to consular managers at posts that adjudicate E-2 visa applications.

Recommendation 4: The Secretary of State, in coordination with the Director of USCIS, should establish regular coordination mechanism to share information on E-2 fraud risks.

The Department concurs with this recommendation. The Department has held, and plans to continue holding, regular high-level summits to include coordination on E visa adjudication standards. Quarterly teleconferences involving the Bureau of Consular Affairs and USCIS recommenced on June 18, 2019. The next teleconference is scheduled for the 1st quarter of FY 2020. This dialogue will facilitate information sharing between posts and our interagency colleagues who process E-2 applicants domestically. State and USCIS adjudicators are frequent attendees at immigration-related U.S. government workshops addressing E-2 visa standards and fraud trends. The Department is planning additional workshops for FY 2020. In addition, the Department shares with USCIS its weekly fraud cables and bi-monthly fraud digest report.

Appendix VI: GAO Contacts and Staff Acknowledgments

GAO Contacts

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