

UNITED STATES DEPARTMENT OF JUSTICE
Immigration And Naturalization Service
Dallas, Texas

FILE: A22 350 314 - Dallas

May 3, 1978

IN RE: Applicant: Abdur-Rahim Noormohamed
9310 Seagrove Drive
Dallas, Texas 75231

IN BEHALF OF APPLICANT: Eugenio Cazorla
Attorney At Law
1309 Main Street, Suite 1400
Dallas, Texas 75202

MOTION: To Reconsider Denial of Application for Permanent Residence Under
Section 245 of the Immigration and Nationality Act, as Amended.

DISCUSSION: The motion to reconsider was denied by the District Director,
Dallas, Texas, and is now considered on certification.

The applicant is a 24-year-old single male, a native and citizen of South Africa. He was admitted as a visitor for business on January 18, 1976, for a period of six months. A Section 245 adjustment application was filed on June 25, 1976. The application was denied because the District Director concluded that the business used to support a claim to exemption of the alien employment certification requirement in accordance with Title 8 CFR 212.8(b)(4), had been discontinued. The motion to reconsider was denied by the District Director and certified to this office for review.

It is noted that the applicant's brother's case, Moosa Sabadia, A20 695 142, closely parallels that of the applicant, in that the brothers were partners in both business ventures used to support the claimed exemption to the alien employment certification requirement. The District Director's denial of the applicant's brother's motion to reconsider has been affirmed.

Form I-526, Request for Determination that Prospective Immigrant is an Investor, is based on a business called Euraytrading, Inc., 5622 Dyer Street, Dallas, Texas, and was primarily involved in the importation and sale of textiles. The applicant's present business is named Sabtronics International, Inc., is at a different location and its business interests are concerned with the marketing of electronics.

The importance of establishing eligibility to the exemption at the time of initial filing lies in the more favorable availability of visa numbers and the less stringent regulatory requirements to be met.

This office has decided that the factors recited above are sufficient to

establish that the business, Sabtronics International, Inc., is a different business than Euraytrading, Inc. and does not relate to the original Form I-526. This office agrees with the District Director that a Section 245 adjustment applicant must establish eligibility as of the time the application is properly filed and priority claimed.

Counsel's claim that despite the changes recognized by the applicant, the business is still the same venture, and should be acceptable as adequate support of the original Form I-526, is not persuasive.

The entire record has been carefully reviewed and consideration given the information provided on certification. It has been decided that the District Director properly denied the Section 245 adjustment application and the instant motion to reconsider, and that decision will be affirmed.

ORDER: The District Director's denial of the motion to reconsider is hereby affirmed.


REGIONAL COMMISSIONER
SOUTHERN REGION