

10/02/2008 15:20 FAX 973 622 7997

DHS Chief Counsel Newark

002/006

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

OMB# 1125-0002

**Notice of Appeal from a Decision of an
Immigration Judge**

1. List Name(s) and "A" Number(s) of all Respondent(s)/Applicant(s):

Mohammad QATANANI A76-133-969
Sumaia ABHUHNOUD A76-123-694
Omar QATANANI A76-123-695
Ahmad QATANANI A76-123-696
Isra QATANANI A76-123-697

Staple Check or Money Order Here. Include Name(s) and
"A" Number(s) on the face of the check or money order.

For Official Use Only

! WARNING: Names and "A" Numbers of **everyone** appealing the
Immigration Judge's decision must be written in item #1.

2. I am ☐ the Respondent/Applicant ☒ DHS-ICE (Mark only one box.)

3. I am ☐ DETAINED ☒ NOT DETAINED (Mark only one box.)

4. My last hearing was at Newark, NJ (Location, City, State)

5. What decision are you appealing?

Mark only one box below. If you want to appeal more than one decision, you must use more than one Notice of Appeal (Form EOIR-26).

☒ I am filing an appeal from the Immigration Judge's decision in *merits proceedings* (example: removal, deportation, exclusion, asylum, etc.) dated September 4, 2008.

☐ I am filing an appeal from the Immigration Judge's decision in *bond proceedings* dated _____ . (For DHS use only: Did DHS invoke the automatic stay provision before the Immigration Court? ☐ Yes. ☐ No.)

☐ I am filing an appeal from the Immigration Judge's decision *denying a motion to reopen or a motion to reconsider* dated _____ .

(Please attach a copy of the Immigration Judge's decision that you are appealing.)

Form EOIR-26
Revised Dec. 2005

6. State in detail the reason(s) for this appeal. Please refer to the General Instructions at item F for further guidance. You are not limited to the space provided below; use more sheets of paper if necessary. Write your name(s) and "A" number(s) on every sheet.

This is an appeal filed by the US Department of Homeland Security (DHS) from the Immigration Judge's September 4, 2008 decision, in which he granted the respondents' applications for adjustment of status. The Immigration Judge erred in granting adjustment of status for multiple reasons.

Please see the attachment for the DHS' statements of error committed by the Immigration Judge.

(Attach additional sheets if necessary)

! WARNING: You must clearly explain the specific facts and law on which you base your appeal of the Immigration Judge's decision. The Board may summarily dismiss your appeal if it cannot tell from this Notice of Appeal, or any statements attached to this Notice of Appeal, why you are appealing.

7. Do you desire oral argument before the Board of Immigration Appeals? ☐ Yes ☒ No
8. Do you intend to file a separate written brief or statement after filing this Notice of Appeal? ☒ Yes ☐ No

! WARNING: If you mark "Yes" in item #8, you will be expected to file a written brief or statement after you receive a briefing schedule from the Board. The Board may summarily dismiss your appeal if you do not file a brief or statement within the time set in the briefing schedule.

9.



X

Alan Wolf

Signature of Person Appealing
(or attorney or representative)

10/2/08

Date

10/02/2008 15:20 FAX 973 622 7997

DHS Chief Counsel Newark

004/008

10.

Mailing Address of Respondent(s)/Applicant(s) Mohammed Batanani, Sumais Abukhnaoud, Omar Batanani, Ahmad Batanani, and Isra Batanani	
(Name)	
151 Derrom Avenue	
(Street Address)	
(Apartment or Room Number)	
Paterson, NJ 07504	
(City, State, Zip Code)	
(Telephone Number)	

11.

Mailing Address of Attorney or Representative for the Respondent(s)/Applicant(s) Claudia Slavinsky	
(Name)	
401 Broadway	
(Street Address)	
Suite 1600	
(Suite or Room Number)	
New York, NY 10013	
(City, State, Zip Code)	
212 925-0101	
(Telephone Number)	

NOTE: You must notify the Board within five (5) working days if you move to a new address. You must use an alien's Change of Address Form (Form EOIR-33/BIA).

NOTE: If an attorney or representative signs this appeal for you, he or she must file with this appeal, a Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals (Form EOIR-27).

12.

PROOF OF SERVICE
(You Must Complete This)

I Alan Wolf (Name) mailed or delivered a copy of this Notice of Appeal
on 10/2/08 to Mohammed Batanani, Sumais Abukhnaoud, Omar Batanani, Ahmad Batanani, and Isra Batanani
at 151 Derrom Avenue, Paterson, NJ 07504 and to Claudia Slavinsky at
401 Broadway, Suite 1600, New York, NY 10013



X

Signature

NOTE: If you are the Respondent or Applicant, the "Opposing Party" is the Assistant Chief Counsel of DHS - ICE.

WARNING: If you do not complete this section properly, your appeal will be rejected or dismissed.

WARNING: If you do not attach the fee or a completed Fee Waiver Request (Form EOIR-26A) to this appeal, your appeal will be rejected or dismissed.

- ☐ Read all of the General Instructions
- ☐ Provided all of the requested information
- ☐ Completed this form in English
- ☐ Provided a certified English translation for all non-English attachments

HAVE YOU?

- ☐ Signed the form
- ☐ Served a copy of this form and all attachments on the opposing party
- ☐ Completed and signed the Proof of Service
- ☐ Attached the required fee or Fee Waiver Request

The Immigration Judge erred in holding that the lead respondent was eligible for adjustment of status, see INA 245(a). The lead respondent is not eligible for adjustment of status because he has engaged in unauthorized employment in the United States, see 8 CFR §1245.1(b)(10).

The Immigration Judge erred in holding that the lead respondent was eligible for adjustment of status, see INA 245(a), as he is inadmissible to the United States because he has by fraud or willfully misrepresenting a material fact, sought to procure a visa, other documentation, or admission into the United States or other benefit provided under the Immigration and Nationality Act, see INA §212(a)(6)(C).

The Immigration Judge erred in holding that the lead respondent was eligible for adjustment of status, see INA 245(a), as he is inadmissible to the United States because he has engaged in terrorist activity, see INA §212(a)(3)(B)(i)(I), Matter of S-K, 23 I&N Dec. 936.

The Immigration Judge erred in holding that the lead respondent did not make material misrepresentations on his non-immigrant visa application and on his adjustment of status application.

The Immigration Judge erred in granting adjustment of status, as the lead respondent failed to prove, as per 8 CFR 1240.8(d), by a preponderance of the evidence, that he was not inadmissible as alleged by the DHS.

The Immigration Judge erred by finding that the conviction records submitted by the DHS, and received into evidence, were not properly authenticated, that they were unreliable, and that the DHS failed to prove that the records pertained to the lead respondent.

The Immigration Judge erred by entering an adverse credibility finding as to the DHS witnesses, FBI Special Agent Angel Alicea and ICE Special Agent Heather Philpott, when said adverse credibility finding was based on mere speculation and surmise, and not substantial evidence. See Gao v. Ashcroft, 299 F.3d 266 (3rd Cir. 2002).

The Immigration Judge erred in limiting testimony regarding Mohamed El-Mezain and financial transactions conducted by the lead respondent.

The Immigration Judge erred in receiving the affidavit of Ronald Fava into evidence when the Immigration judge stated in court that he was marking said affidavit for identification purposes, and the DHS was thereby prejudiced because, as pointed out in court, the DHS did have additional potential witnesses who were available and who, if called, would have testified about the subject matter of the affidavit, and this potential testimony could have impacted the Immigration Judge's above mentioned adverse credibility finding as to the witnesses who did testify.

The Immigration erred by granting adjustment of status, as a matter of discretion, when the adverse factors outweighed the positive factors of the lead respondent's case.

Due to the complexities of the issues presented and the voluminous record, the DHS hereby respectfully requests to reserve the right to raise additional grounds of appeal in its appellate brief.