

UNITED STATES DEPARTMENT OF JUSTICE
 EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
 OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

May 14, 2021

UNITED STATES OF AMERICA,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324c Proceeding
)	OCAHO Case No. 2020C00011
)	
SAMUEL TOMINIYI FASAKIN,)	
Respondent.)	
_____)	

NOTIFICATION OF ADMINISTRATIVE REVIEW

This case arises under the document fraud provisions of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1324c. More specifically, Complainant filed a complaint against Respondent on November 4, 2019, charging two counts of violating of 8 U.S.C. § 1324c(a)(2) related to the submission of a false divorce decree from Nigeria to the Department of Homeland Security’s U.S. Citizenship and Immigration Services in connection with Respondent’s application for adjustment of status to that of a lawful permanent resident. A hearing was held January 11-12, 2021, and the parties submitted multiple post-hearing filings. On May 10, 2021, Administrative Law Judge (ALJ) Andrea Carroll-Tipton issued a Final Decision and Order (“Order”) finding that Complainant did not meet its burden of proof in establishing the violations alleged in the complaint. The undersigned has reviewed the ALJ’s Order and has determined that such order is appropriate for administrative review pursuant to 5 U.S.C. § 557, 8 U.S.C. § 1324c(d)(4), and 28 C.F.R. § 68.54. Therefore, the undersigned hereby issues this notification of administrative review, in accordance with 28 C.F.R. § 68.54(a)(2).¹

The issues to be reviewed are outlined below, each of which relates to the ALJ’s overall determination that Complainant did not meet its burden of proof by a preponderance of the evidence in establishing the knowledge element required to prove a violation of 8 U.S.C. § 1324c(a)(2). The undersigned is not reviewing the ALJ’s conclusions regarding the other three elements required under 8 U.S.C. § 1324c(a)(2).

The ALJ determined that Complainant’s witnesses testified credibly. Order at 11. By contrast, the ALJ’s decision illustrates multiple credibility concerns with the testimony of

¹ As this Notification of Administrative Review was being prepared for issuance, on May 14, 2021, the undersigned received a Request for Administrative Review (“Request”) filed by Complainant pursuant to 28 C.F.R. § 68.54(a)(1). The bases for Complainant’s Request are subsumed within the issues I will review pursuant to 28 C.F.R. § 68.54(a)(2). Accordingly, Complainant’s Request is denied as moot.

Respondent and his nephew. *Id.* at 10-11. The ALJ also found that Respondent's witness, Attorney Adebowale Adenigbabe,² testified credibly, that his testimony corroborated that of Respondent and Respondent's nephew, and that his credible testimony "permits the Court to make factual findings and legal conclusions related to circumstantial knowledge." *Id.* at 11. However, the ALJ's finding regarding Attorney Adebowale's testimony is conclusory, lacks citations to the record, and, relatedly, elides several issues about his credibility that are reflected in the record and were raised by Complainant. The undersigned will review whether the record supports a positive credibility finding for Attorney Adebowale and whether the ALJ correctly assessed the credibility of the parties' witnesses in determining that Complainant did not meet its burden of proof.

Additionally, the ALJ determined that the multiple facial errors on Respondent's first divorce decree were not so obvious as to impute knowledge of its falsity to Respondent. *Id.* at 11-15. In doing so, the ALJ credited Respondent's putatively innocent explanations for not noticing the errors over the arguments of Complainant; however, in light of the credibility issues regarding Respondent and his witnesses, the record is not clear that the ALJ's determination on this point flows from either credible testimony or the evidence admitted. The undersigned will review whether the ALJ's determinations regarding the errors in the first divorce decree are supported by or consistent with the record.

Overall, the ALJ determined that Complainant did not prove by a preponderance of the evidence that Respondent knowingly violated 8 U.S.C. § 1324c(a)(2). *See id.* at 15-16. In doing so, the ALJ's decision references, *inter alia*, "knowledge," "constructive knowledge," and "willful blindness," but the decision is unclear as to which specific standard(s) the ALJ measured the evidence and the burden of proof against. *Id.* at 9-15. OCAHO jurisprudence has long struggled with defining the term "knowing" in situations without direct evidence of actual knowledge. *See, e.g., United States v. Jonel, Inc.*, 8 OCAHO no. 1008, 7-11 (1998) (summarizing various ways courts and commentators have attempted to define knowledge in the absence of direct evidence of actual knowledge). The undersigned will review whether the ALJ applied the correct legal standard of knowledge required to find a violation of 8 U.S.C. § 1324c(a)(2) and whether a preponderance of the evidence meets that standard.

This administrative review will be conducted in accordance with the provisions of 28 C.F.R. § 68.54(b)-(d). Accordingly, within twenty-one days of the date of entry of the ALJ's order, the parties may submit briefs or other written statements addressing the issues presented above. *See* 28 C.F.R. § 68.54(b)(1). The deadline for submitting such briefs or other written statements is **June 1, 2021**.³ Parties should file and serve their briefs or other written statements by email, pursuant to the Chief ALJ's January 26, 2021, Order Directing Parties to File Case Documents by Email.

² Respondent's witness list identifies the witness as Adenigbabe Adebowale, though at the hearing, the witness identified himself as Adebowale Adenigbabe. To avoid confusion, the undersigned refers to the witness as Mr. Adebowale or Attorney Adebowale, which is how the parties addressed him.

³ The twenty-first day after the date of entry of the ALJ's Final Decision and Order in this case is May 31, 2021. However, since May 31, 2021, is a "legal holiday observed by the Federal Government" (*i.e.* Memorial Day), the deadline for filing briefs or other written statements related to this administrative review includes the next business day, which is June 1. *See* 28 C.F.R. § 68.8(a).

James McHenry
Chief Administrative Hearing Officer