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

July 6, 2023

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

Appearances: Samuel Yim, Esq., Mark Wilmoth, Esq., and Jeffrey Bubier, Esq., for Complainant
Mark Goldstein, Esq., and Jelena Gilliam, Esq., for Respondent

FINAL DECISION AND ORDER

This case arises under the document fraud provisions of the Immigration and Nationality Act (INA or the Act), as amended, 8 U.S.C. § 1324c.

In conformity with 28 C.F.R. § 68.52(e),[1] this is the Final Order in this case (which was remanded by the Chief Administrative Hearing Officer by way of his Order Vacating the Administrative Law Judge's Final Decision and Order and Remanding for Further Proceedings (Order on Remand). *United States v. Fasakin*, 14 OCAHO no. 1375b, 1 (2023)).[2]

[1] OCAHO Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2023).

[2] Citations to OCAHO precedents reprinted in bound Volumes 1 through 8 reflect the volume number and the case number of the particular decision, followed by the specific page in that volume where the decision begins; the pinpoint citations which follow are thus to the pages, seriatim, of the specific entire volume. Pinpoint citations to OCAHO precedents subsequent to Volume 8, where the decision has not yet reprinted in a bound volume, are to pages within the original issuances; the beginning page number of an unbound case will always be 1, and is accordingly omitted from the citation. Published decisions may be accessed in the Westlaw database "FIM-OCAHO," or in the LexisNexis database "OCAHO," or on the website at http://www.justice.gov/eoir/OcahoMain/ocahosibpage.htm#PubDecOrders.

Summary of Underlying Facts

Given the lengthy procedural history of this case, the Court provides this brief summary of the facts which gave rise to the Complaint.[3]

Respondent, a native and citizen of Nigeria, came to the United States on a temporary visitor visa on October 8, 2013. He elected to overstay that visa. In 2012 (prior to his arrival in the United States), he coordinated with and retained a Nigerian law firm to initiate divorce proceedings related to his marriage to another Nigerian national in Nigeria. At his consular interview (for his visa), he represented to the State Department he was still married to his Nigerian wife.

While in the United States, Respondent married a U.S. citizen. Beginning in 2014, Respondent sought to adjust his status (based on his marriage to a U.S. citizen) to that of a conditional Lawful Permanent Resident.

In support of his application to adjust status, Respondent provided what purported to be Nigerian divorce documents to United States Citizenship and Immigration Services (USCIS). Specifically, he provided a Decree Absolute which contained, as an attachment, the corresponding Decree Nisi. This document was allegedly issued by a Nigerian court in the state of Lagos. Respondent was successful in adjusting his status to that of a conditional Lawful Permanent Resident.

In 2017, Respondent sought to remove the conditions on his permanent resident status. During the interview process, USCIS became concerned about the veracity of Respondent's statements and the authenticity of his marriage to his U.S. citizen spouse.

As a result of these suspicions, USCIS decided to look again at the Nigerian divorce documents (Decree Absolute with accompanying Decree Nisi) provided by Respondent in support of his 2014 adjustment of status to conditional Lawful Permanent Resident. Through investigation, USCIS determined the Nigerian divorce documents (both the Decree Absolute and accompanying Decree Nisi) provided in 2014 (and again in 2015) to be fraudulent. USCIS concluded Respondent provided these documents to obtain a benefit under the Act (i.e., adjustment of status).

Ultimately, both parties concede the documents presented to USCIS in 2014 and again in 2015 are not authentic (i.e., they are fraudulent documents), and both parties concede that Respondent provided them to obtain a benefit under the Act. At issue is whether Respondent knew, at the time he provided them, that the documents were fraudulent.

[3] An omission or inclusion of a fact in this brief summary should not be construed as dispositive to the analysis. This section merely serves to orient the reader. The Court made full Findings of Fact, which are available at a later section of this Order.

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I. PROCEDURAL HISTORY[4]

Complainant, the United States Department of Homeland Security (DHS), Immigration and Customs Enforcement (ICE), served on Respondent, Samuel Tominiyi Fasakin, a Notice of Intent to Fine Under Section 274C of the INA, which informed Respondent of his right to request a hearing in this forum. Compl. Ex. A. Respondent timely requested a hearing. *Id.* at Ex. B.

On November 4, 2019, Complainant filed a complaint in this forum. The Complaint charges Respondent with two counts of violating Section § 274C(a)(2) of the Act, 8 U.S.C. § 1324c(a)(2), which renders it unlawful to knowingly use, attempt to use, possess, obtain, accept or receive or to provide any forged, counterfeit, altered, or falsely made document in order to satisfy any

[4] This matter initially went to hearing on January 11–12, 2021. Exhibits submitted before and during this initial hearing are identified as Exs. C-1, C-2, R-1, R-2, etc. This first hearing is referred to as the "initial hearing" throughout this Order. Any references to the initial hearing transcript will be identified as such.

Additionally, a hearing on remand occurred on September 21–22, 2022. Exhibits submitted before and during this hearing on remand are identified as Exs. C(II)-1, C(II)-2, R(II)-1, R(II)-2, etc. This second hearing is referred to as the "hearing on remand" throughout this Order. Transcript A refers to proceedings held on September 21, 2022, while Transcript B refers to proceedings held on September 22, 2022.

requirement or obtain a benefit under the INA.[5] *Id.* at 2–3. Complainant seeks a "cease and desist" order and $473 in penalties. *Id.* at 3, Ex. A.
On December 11, 2019, Respondent filed an answer denying the allegations in the Complaint.

On September 3, 2020, Respondent filed a dispositive motion, seeking dismissal of the case.

On September 24, 2020, the Court issued an Order on Summary Decision holding there were genuine issues of material fact in dispute.[6]

On January 11–12, 2021, the Chief Administrative Law Judge (ALJ) conducted a hearing.[7] At the conclusion of the hearing, the record was closed pursuant to 28 C.F.R. § 68.49(a).

The Court permitted the parties to submit written posthearing briefs. On March 17, 2021, the Court received the last written posthearing filing. On May 10, 2021, the Court issued a final order pursuant to 28 C.F.R. § 68.52.

On May 14, 2021, the Chief Administrative Hearing Officer (CAHO) issued a Notification of Administrative Review, pursuant to 8 U.S.C. § 1324c(d)(4) and 28 C.F.R. § 68.54(a)(2). *See United States v. Fasakin*, 14 OCAHO no. 1375a, 1 (2021). The Notification identified three issues to be reviewed:

> (1) "whether the ALJ correctly assessed the credibility of the parties' witnesses in determining that Complainant did not meet its burden of proof," (2) "whether the ALJ's determinations regarding the errors in the first divorce decree are supported by or consistent with the record," and (3) "whether the ALJ applied the correct legal

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[5] Specifically, Complainant asserts that Respondent, a native and citizen of Nigeria, violated § 1324c(a)(2) on November 4, 2014 and April 9, 2015, when he "knowingly used, attempted to use, possessed, obtained, accepted or received or provided a counterfeit Nigerian divorce certificate in order to satisfy a requirement . . . and/or to obtain the benefit of adjustment of status to that of a lawful permanent resident under Section 245 and/or Section 216 of the Act." Compl. 2–3.

[6] These facts were in dispute: whether the divorce certificates were fraudulent and whether Respondent had knowledge that the documents were fraudulent. *United States v. Fasakin*, 14 OCAHO no. 1375, 4 (2020).

[7] Consistent with 28 C.F.R. §§ 68.39, 68.48(a), a verbatim transcript was generated, totaling 617 pages. At the initial hearing, parties submitted sixty-one evidentiary exhibits. Four witnesses testified for Complainant, and three witnesses testified for Respondent. The Court describes exhibits and testimony relevant to this analysis in further detail in later sections of this Final Order.

> 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."

Fasakin, 14 OCAHO no. 1375b, at 10 (citing *Fasakin*, 14 OCAHO no. 1375a, at 2).

The Notification stated the ALJ's conclusions for the other three elements required to establish a violation of 8 U.S.C. § 1324c(a)(2) were not reviewed. *See Fasakin*, 14 OCAHO no. 1375a, at 1.

On June 8, 2021, the CAHO issued an order vacating the ALJ's final order, and remanding the case for further proceedings (the Order on Remand). *See Fasakin*, 14 OCAHO no. 1375b, at 1.

Following the June 8, 2021 Order, the Court held nine prehearing conferences to marshal the parties to a hearing on remand. Tr. A, 14–22 (describing all conferences). In these conferences, the Court provided Complainant time to conduct analysis on documents[8] and explore deposing witnesses.[9] The Court provided Respondent more time to retrieve documents from Nigeria.[10] Upon motion by the parties, the Court selected Philadelphia, PA as the hearing location. *United States v. Fasakin*, OCAHO Case. No. 2020C00011 (November 12, 2021) (Order Granting Respondent's Request – Hearing Location). The Court reminded the parties the proceedings are governed by the Administrative Procedure Act (APA). *See* 28 C.F.R. § 68.1.[11]

On September 21–22, 2022, the Court held the hearing on remand in Philadelphia, PA. The parties appeared in person for this hearing. Consistent with 28 C.F.R. § 68.48(a), a verbatim transcript was generated, totaling 749 pages. The parties submitted twelve evidentiary exhibits, all which were admitted into the record. The following individuals testified in Complainant's case in chief: the Immigration Officer (who testified at the initial hearing) and a Consular Officer. Respondent called the following witnesses: the second Nigerian divorce attorney (who testified at the initial

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[8] *E.g.*, *United States v. Fasakin*, 14 OCAHO no. 1375c, 1 (2021).

[9] *E.g.*, *United States v. Fasakin*, 14 OCAHO no. 1375d, 1 (2022).

[10] *United States v. Fasakin*, OCAHO Case No. 2020C00011 (August 4, 2022) (Order Summarizing July 29, 2022 Prehearing Conference).

[11] At the prehearing conference on October 18, 2021, and at the hearing on September 21, 2022, the Court highlighted 5 U.S.C. § 556(e), which states "[t]he transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, constitutes the exclusive record for decision[.]" *Fasakin*, 14 OCAHO no. 1375c, at 3; Tr. A, 16–17. In accordance with the APA, the Court explained it was incumbent upon the parties to present evidence to further develop the record in accordance with the order on remand. *Fasakin*, 14 OCAHO no. 1375c, at 3.

hearing) and another Nigerian attorney. Respondent also provided sworn testimony. At the conclusion of the hearing, the record was not closed[12] as is permitted by 28 C.F.R. § 68.49(a).

On October 18, 2022, the Court held a posthearing conference with the parties to discuss the status of Complainant's rebuttal evidence (the reason for keeping the record open).[13]

On February 15, 2023, the Court held a posthearing conference to further discuss submission of rebuttal evidence and the date the record would close.[14]

On March 1, 2023, the Court closed the record pursuant to 28 C.F.R. § 68.49(a).[15]

In compliance with the Court's March 15, 2023 Order, Complainant submitted its posthearing brief on April 14, 2023, and Respondent submitted its posthearing brief on May 14, 2023. Complainant declined to submit further briefing. The Court now issues a final order pursuant to 28 C.F.R. § 68.52, which was entered within sixty days of receipt of post-hearing briefs. 28 C.F.R. § 68.52(b).

II. CAHO ORDER ON REMAND

As noted above, the CAHO issued an order vacating the first final order, and remanded for further proceedings.[16] *Fasakin*, 14 OCAHO no. 1375b, at 1. Before providing summary and analysis of the hearing on remand, it is helpful to consider the guidance and directives provided by the CAHO.

The CAHO first noted Complainant bears the burden to prove four elements to establish a violation of 8 U.S.C. § 1324c(a)(2). *See id.* at 8. Those elements are:

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[12] The Court admitted into the record a late-filed exhibit by Respondent. *See* Tr. B, 243–54. Consequently, the Court held the record open, which afforded Complainant additional time to consider whether it would provide any additional exhibits to rebut this late-filed evidence. *Id.*

[13] *United States v. Fasakin*, 14 OCAHO no. 1375i, 1 (2022).

[14] *United States v. Fasakin*, 14 OCAHO no. 1375j, 1 (2023).

[15] *United States v. Fasakin*, 14 OCAHO no. 1375k, 2 (2023).

[16] "Although the [CAHO] possesses de novo review authority . . . [the CAHO] find[s] it more prudent to vacate the Order and remand this case to the ALJ for further proceedings. *See United States v. Crescent City Meat Co.,* 11 OCAHO no. 1217, 6 n. 6 (CAHO 2014)." *Fasakin*, 14 OCAHO no. 1375b, at 26.

> (1) respondent used . . . the forged, counterfeit, altered or falsely made documents described in the complaint;
> (2) knowing the documents to be forged, counterfeit, altered or falsely made;
> (3) after November 29, 1990; and
> (4) for the purpose of obtaining a benefit under the INA.

Id. The CAHO explained:

> The ALJ found that the first, third, and fourth elements had been established—that is, the Respondent used forged, counterfeit, altered or falsely made divorce documents after November 29, 1990 in order to obtain adjustment of status, which is a benefit under the INA. *Id.* at 9 . . . The ALJ found that "the sole issue remaining for decision is whether Complainant can meet its burden as to the second element, that Respondent provided these documents knowing the documents to be forged, counterfeit, altered or falsely made."

Id. The CAHO did not disturb the findings as to elements one, three and four, stating they "were not being reviewed." *Id.* at 10. The CAHO did, however, remand the matter for further record development related to element two.[17] *Id.* at 25–26. Specifically, the CAHO mandated further development of the record pertaining to some credibility assessments; the analysis of the errors in the first divorce decree; and the application of legal standards for knowledge required to find a violation of 8 U.S.C. § 1324c(a)(2). *Id.*

A. CREDIBILITY GUIDANCE & DIRECTIVES - CAHO ORDER ON REMAND

As to Complainant's witnesses, the CAHO noted:

> In her Final Decision and Order, the ALJ determined that all of the Complainant's witnesses testified credibly. Order at 11. Respondent did not challenge the credibility of Complainant's witnesses, and the record supports the ALJ's determination. Consequently, [the CAHO] find[s] no basis to disturb the ALJ's credibility determination regarding the Complainant's witnesses.

Id. at 12.

[17] "There is no dispute over the first, third, and fourth elements in the instant case, but the parties vigorously dispute whether Complainant proved the second element, Respondent's knowledge. The ALJ determined that Complainant had not met its burden of proof on that point. Order at 11-15, and that is the principal issue under review." *Fasakin*, 14 OCAHO no. 1375b, at 18.

The CAHO also analyzed the credibility assessments of Respondent's two witnesses, and the Respondent. *Id.* at 12–17. "The ALJ identified multiple credibility concerns with the testimony of both Respondent and his nephew."[18] *Id.* at 12.
As to the second Nigerian divorce attorney (Attorney Adebowale), the Court's conclusions on credibility were "not sufficiently supported by the record to be affirmed." *See id.* at 12–17.

B. ANALYSIS OF ERRORS IN DIVORCE DECREE - CAHO ORDER ON REMAND

As the CAHO explained in his Order on Remand:

> The ALJ discussed four facial errors in the first divorce decree identified by the Complainant—i.e., the incorrect court location (Ikeja, rather than Lagos), an error

[18] The CAHO stated: "As the ALJ rightly noted, there were numerous 'valid concerns pertaining to the credibility of Respondent,' as well as Respondent's nephew." *Fasakin*, 14 OCAHO no. 1375b, at 15. The CAHO then cited the following:

> Respondent was afforded the privilege of entry to the United States by way of a nonimmigrant visa, which he knowingly overstayed in contravention of the terms of the visa grant. *See* Tr. B, 212. When securing this visa, Respondent did not outright lie; however, he was less than forthcoming at his interview. Respondent had already filed for divorce and was still legally married, but he did not disclose the true nature of affairs related to his marriage at the interview. Tr. B, 170–71. Additionally, he informed government officials that his attorney had sent him the documents, likely in an attempt to bolster the reliability of those documents, when in all reality, he received the documents (identified as Ex. C-37) from his nephew. Tr. B, 187–90. Respondent is also less than clear about whether he ceased residing with his current spouse and was not particularly forthcoming about how long he resided at the apartment and to whom he sublet it. *See* Tr. B, 151–55, 192–98.
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> Similarly, Respondent's nephew's credibility is diminished based on his willingness to engage in dishonest activities. The nephew lied to Respondent about the origin of the documents, and then engaged in a second act of deceit by keeping the remainder of the funds intended for the attorney. Tr. B, 92, 96–98, 113, 123–24, 138. The nephew's declaration said that he obtained the documents a week after going to the High Court, Ex. R-21; however, he testified that he obtained the documents that day he went to court. Tr. B, 96. The nephew was also inconsistent as to the number of times he met the attorney who provided the fraudulent documents. *Compare* Tr. B, 94, *with* Ex. R-21.

Id. at 15–16.

> in the birthdate of one of the Respondent's children, the legal grounds for divorce, and indicia that the Respondent was present on the day the document was allegedly issued—but found that none of those errors was "egregious" enough to be sufficient evidence to establish the Respondent's knowledge of the falsity of the decree. *Id*. at 15.

Id. at 21. The CAHO concluded, "the ALJ's conclusion regarding these errors[19] is insufficiently supported by the record to be affirmed." *Id.*

C. LEGAL STANDARDS FOR KNOWLEDGE – CAHO ORDER ON REMAND

In his Order on Remand, the CAHO provides discussion and analysis on determining whether and how Complainant can meet its burden as to the element of "knowledge." *Id.* at 18–21.

> A violation of 8 U.S.C. § 1324c(a)(2) requires, *inter alia*, conduct performed knowingly, namely that the respondent knew the relevant documents to be forged, counterfeit, altered or falsely made. Unlike 8 U.S.C. § 1324a, which also requires proof of knowing conduct in certain instances, the regulations applicable to 8 U.S.C. § 1324c do not contain a definition of "knowing." As a general statutory term, "knowingly" has a range of meanings, and unless otherwise specified, it typically includes both actual and constructive knowledge. Further, Congress has made clear that it will specify actual knowledge if it intends to limit a statutory mens rea to actual knowledge, and no such specification is present in 8 U.S.C. § 1324c.
>
> Moreover, OCAHO case law has indicated that a violation of 8 U.S.C. § 1324c may be established by constructive knowledge. *See* [*United States v.*] *Ortiz*, 6 OCAHO no. 899, [713,] 719 [(1998)] ("[K]nowledge may be proved by conduct and by all the facts and circumstances surrounding the case, and one may infer knowledge if a party deliberately avoids acquiring full or exact knowledge of the nature and extent of suspicious dealings").[20]

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[19] The CAHO indicated the decision was unclear as to whether these errors were considered cumulatively and/or individually. Accordingly, further record development was necessary to analyze the errors both individually and cumulatively. *Fasakin*, 14 OCAHO no. 1375b, at 21.

[20] As to *Ortiz,* the CAHO clarified further at *Fasakin*, 14 OCAHO no. 1375b, at 19 n.25:

> Certain imprecise language in *Ortiz* may inadvertently suggest that the burden of proof regarding knowledge in cases brought under 8 U.S.C. § 1324c shifts once the complainant establishes a prima facie case of knowledge. 6 OCAHO no. 889, at

Accordingly, for purposes of 8 U.S.C. § 1324c, the "knowingly" mens rea encompasses either actual knowledge or constructive knowledge. Although those two forms of knowledge are well-established, the contours of their definitions and how they are proven, especially in situations without an admission or direct evidence of knowledge, have provided fertile ground for argument for many years.

However, a recent unanimous Supreme Court decision, *Intel Corp. Inv. Policy Comm. v. Sulyma*, 140 S. Ct. 768 (2020), provides helpful guidance that clarifies a lot of the issues regarding actual and constructive knowledge. In *Sulyma*, the Supreme Court interpreted the scope of a statutory provision involving "actual knowledge." *See id*. at 773–79. In doing so, it clarified the difference between actual knowledge and constructive knowledge. *See id*. at 776. Actual knowledge is awareness of something in fact. *See id*. Actual knowledge is also knowledge that is "more than 'potential, possible, virtual, conceivable, theoretical, hypothetical, or nominal.'" *Id*. In contrast, "the law will sometimes impute knowledge—often called 'constructive' knowledge—to a person who fails to learn something that a reasonably diligent person would have learned." *Id*.

After clarifying the distinction between these two types of knowledge, the Supreme Court also helpfully reiterated three ways in which actual knowledge may be proven in litigation. *Id*. at 779. First, actual knowledge may be shown by direct evidence, i.e., an admission. *See id*. Second, actual knowledge may be proven by inference from circumstantial evidence. *Id*. Finally, evidence of "willful blindness"[21] may also show actual knowledge. *Id*.

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719 ("Once Complainant has established a prima facie case of knowledge, the burden will shift to the Respondent to come forward with evidence refuting Complainant's case."). To be clear, this language in *Ortiz* refers to shifting the burden of production, not the burden of proof. The burden of proof of establishing all four elements of a violation of 8 U.S.C. § 1324c(a)(2), including knowledge, always rests with the complainant. Once the complainant has introduced prima facie evidence of those elements, the burden of production shifts to the respondent to introduce evidence of its own to controvert the complainant's evidence. "If the respondent fails to introduce any such evidence, the unrebutted evidence introduced by the [complainant] may be sufficient to satisfy its burden of proof." *United States v. Durable, Inc*., 11 OCAHO no. 1231, 5 (2014) (explaining the difference between the burden of proof and the burden of production).

[21] The CAHO provided additional analysis at *Fasakin*, 14 OCAHO no. 1375b, at 20 n.27 (internal citations omitted, with internal spacing modified):

> Although *Sulyma* arose in a different context, the Supreme Court's discussion of knowledge is nevertheless clear and instructive, and I find it appropriate to use in the context of OCAHO adjudications under 8 U.S.C. § 1324c. Accordingly, to establish a violation of 8 U.S.C.§ 1324c(a)(2), a complainant must demonstrate, *inter alia*, the respondent's either actual or constructive knowledge of the relevant document's status as one that has been forged, counterfeited, altered or falsely made, and a complainant may prove either form of knowledge by direct evidence, circumstantial evidence, or evidence of willful blindness.

Id. at 18–20 (some internal citations omitted, with internal spacing modified).

III. EVIDENCE PRESENTED AT INITIAL HEARING & HEARING ON REMAND

With the above guidance and directives in mind, the Court held a hearing on remand. What follows in this section is a summary of select initial hearing evidence[22] and hearing on remand evidence.

A. SUMMARY OF EVIDENCE PRESENTED AT INITIAL HEARING

1. Complainant Witness Testimony[23]

> In 2010, the Supreme Court summarized the following state of jurisprudence regarding "willful blindness": While the Courts of Appeals articulate the doctrine of willful blindness in slightly different ways, all appear to agree on two basic requirements: (1) The defendant must subjectively believe that there is a high probability that a fact exists and (2) the defendant must take deliberate actions to avoid learning of that fact . . . "[C]ourts applying the doctrine of willful blindness hold that defendants cannot escape the reach of . . . [the law] by deliberately shielding themselves from clear evidence of critical facts that are strongly suggested by the circumstances." In short, deliberate avoidance of inquiry in the face of obvious circumstances in which there is a high probability an individual knows a fact exists is evidence of willful blindness and, thus, may be evidence of knowledge.

[22] The Court provides a brief summary of portions of the initial hearing to provide context and identify relevant evidence also considered for the issues on remand.

[23] In the Prior Final Order, the Court determined these witnesses were credible. Nothing in the CAHO Order indicated a need to disturb the Court's conclusions about the credibility of

Complainant called four witnesses: two Immigration Officials, a Special Agent, and an Immigration Officer who analyzed the 2014/2015 divorce document (Decree Absolute, with accompanying Decree Nisi) presented by Respondent.

Because the Immigration Officer testified at the hearing on remand, the Court will briefly summarize his testimony from the initial hearing. Initial Hr'g Tr. A, 235–300.

The Immigration Officer stated that in his current position he serves as a liaison to the Homeland Security Investigations Forensic Laboratory. The Immigration Officer described his expertise on fraudulent documents.[24] He also explained the process by which Complainant investigates suspect documents. He explained the specific indicia of fraud he observed on the documents Respondent provided to USCIS to adjust status (2014/2015 Decree Absolute and Decree Nisi (Ex. C-6)). The Immigration Officer testified consistent with his affidavit. *See* Ex. C-32.

2. Complainant's Exhibits

The Court limits this discussion to exhibits relevant to its analysis of the issues on remand. Those exhibits are Exs. C-4, C-6, C-7, C-9, C-16, C-23.

Ex. C-4: Paperwork submitted to USCIS in connection to Respondent's adjustment of status to conditional Lawful Permanent Resident. The USCIS Form I-130, Petition for Alien Relative, shows the date Respondent's Nigerian marriage ended as February 6, 2014. This response is circled. It appears as though a partial stamp of the date November 4 (year unknown) is next to this entry. The USCIS Form G-325A, Biographical Information is signed by Respondent and lists the divorce date as November 4, 2013.

Ex. C-6: Fraudulent Decree Absolute from Ikeja Court (in Lagos State). This document contains within it a copy of a fraudulent Decree Nisi which asserts Respondent sought to divorce his Nigerian spouse due to "irreconcilable differences." Ex. C-6, p. 4. The document indicates the

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Complainant's witnesses from the initial hearing. Further, nothing that transpired at the hearing on remand causes the Court to disturb these conclusions now.

[24] At the initial hearing, the Court ruled this witness to be an expert in Nigerian divorce documents, and permitted him to "testify as to what on its face is a problem with [the documents.]" Initial Hr'g Tr. A, 260–61. In the first final order, the ALJ observed that this Immigration Officer "has an expertise in fraudulent documents given his extensive training, occupation with the Fraud Detection National Security (FDNS) branch of USCIS, and position as 'the permanent USCI[S] liaison to the ICE Homeland Security Investigations Forensic Laboratory.'" Prior Final Order 7 n.7 (citing to Initial Hr'g Tr. A, 236–39).

Decree Nisi in the case was issued on November 4, 2013, and the Decree Absolute was issued February 6, 2014. This is the document that was presented to USCIS on November 4, 2014.

Ex. C-7: Statement of Findings from USCIS. This document explains that, in 2017, Respondent and his U.S. citizen wife filed a USCIS Form I-751 to remove conditions from his Lawful Permanent Resident status. USCIS looked into the authenticity of that marriage, which seemed dubious because the couple lived at separate residences. This concern about marriage fraud also caused USCIS to submit an Overseas Verification Report (OVR) to inquire about the authenticity of the 2014 Decree Absolute and Decree Nisi documents (Ex. C-6). The U.S. Consulate in Lagos confirmed via the OVR process these documents were fraudulent. The result of the OVR is the correspondence provided at Exhibit C-8.

Ex. C-9: USCIS Record of Sworn Statement. Respondent signed this document under penalty of perjury. In March 2019, Respondent was interviewed about his immigration history. When asked when he "[got] divorced," Respondent answered that "The final dissolution [of his marriage] was in January 2014." Ex. C-9, p. 2.

Ex. C-16: A letter response (dated March 4, 2020) to an OVR about Respondent's divorce proceedings in Nigeria. The Nigerian Court states that it can see a suit number for Respondent's divorce; however, there is no file in the Nigerian Court's archives.

Ex. C-22: USCIS Form N-400, Application for Naturalization. This exhibit is the completed application submitted by Respondent. Respondent signed the application on November 12, 2018. The preparer signature was completed on November 14, 2018. The exhibit was provided by Complainant (DHS) and was not yet adjudicated.

Ex. C-23: Fraudulent Decree Absolute from Lagos Court (in Lagos). The exhibit begins with a cover letter from a Nigerian attorney representing Respondent (i.e., the second Nigerian attorney). The attorney states he is requesting the Decree Absolute and Decree Nisi. The letter has a stamp indicating it was received on March 20, 2019. Following the letter are purportedly a Decree Nisi and Decree Absolute which were issued (or re-issued) on March 25, 2019. The documents assert Respondent sought to divorce his Nigerian spouse given "reason and facts that [the] marriage has broken down irretrievably." Ex. C-23, p. 4. The document claims that the Decree Nisi in the case was issued on November 4, 2013, and the Decree Absolute was issued February 6, 2014.[25]

[25] As a point of clarification and distinction: In the June 2021 first final order, the record as developed by the parties supported the proposition that this document was in fact authentic; however, at the hearing on remand, the record was further developed and now supports the proposition that this 2019 version of the Decree Absolute (and Decree Nisi contained therein) is actually fraudulent.

3. Respondent's Witness Testimony[26]

The following individuals testified: Respondent's second Nigerian divorce attorney (Attorney Adebowale), Respondent's nephew, and Respondent. The Court will briefly summarize testimony from the initial hearing as these individuals either testified again at the hearing on remand, or their testimony is relevant to issues on remand.

Respondent's second Nigerian divorce attorney described the general nature of court processes and family law principles in Nigeria, and his role in Respondent's divorce proceedings. Initial Hr'g Tr. B, 15–85. The Court initially determined this witness testified credibly; however, this witness's credibility was at issue according to the CAHO Order on Remand.

Respondent's nephew from Nigeria testified. Initial Hr'g Tr. B, 89–126. He claimed Respondent provided him with the money owed to the Nigerian divorce attorney, and that he (the nephew) kept a portion of the money and provided his uncle (Respondent) with fraudulent divorce documents. He claimed when he was later questioned by Respondent's extended family, he took responsibility for procuring the fraudulent documents and rectified the situation by obtaining and relaying the 'true' documents in 2019. The Court ultimately assigned diminished weight to the nephew's testimony for the reasons summarized in the CAHO Order on Remand.

Respondent testified. Initial Hr'g Tr. B, 131–215. He described the circumstances of his divorce from his Nigerian spouse; his decision to come to the United States, and his interactions with the USCIS. As to the fraudulent documents submitted in 2014, Respondent's explanation largely aligned with his nephew's. The Court ultimately assigned diminished weight to Respondent's testimony for the reasons summarized in the CAHO Order on Remand.

4. Respondent's Exhibits

The Court limits this discussion to exhibits relevant to its analysis of the issues on remand. Those exhibits are Exs. R-18, R-19, R-20.

This new development is further discussed in later sections of this Order.

[26] Nothing in the CAHO Order indicated a need to disturb the ALJ's conclusions about Respondent and Respondent's nephew's credibility. Further, nothing that transpired at the hearing on remand causes the Court to disturb these conclusions now.

As to the second divorce attorney (Attorney Adebowale), the CAHO did indicate further record development was required to assess his credibility. This will be more fully summarized and discussed in the following section describing the hearing on remand.

Ex. R-18: A letter generated by Respondent's first Nigerian divorce attorney in 2012. The letter explains the scope of representation and the total cost of representation in divorce proceedings. According to this letter, Respondent was to pay a total of 400,000, with an advance of 250,000 and the remaining balance of 150,000 naira due "at the end of the case." Ex. R-18, p. 2.

Ex. R-19: This document appears to be a filing made by Respondent's first Nigerian divorce attorney at the Nigerian Court, indicating the matter was ready for trial. This document is dated February 7, 2013 and is signed by the first Nigerian divorce attorney, but the portions of the document where the Nigerian Court would affirmatively set the dates for trial are left blank.

Ex. R-20: A photograph of a Nigerian affidavit provided by Respondent. It appears that Respondent made a sworn statement on November 17, 2012 about the basis for his divorce.

B. SUMMARY OF EVIDENCE PRESENTED AT HEARING ON REMAND

1. Complainant Witness Testimony

a. Immigration Officer

The Immigration Officer testified at the initial hearing, and he returned to testify at the hearing on remand. Tr. A, 57–267. He clarified the contours of his document fraud training and experience. The Court concluded he is an expert in conducting initial analysis of document content, but he is not an expert in forensic examination of documents presented to USCIS or Nigerian law.[27]
The Immigration Officer personally examined the 2014 fraudulent Decree Nisi and Decree Absolute (the documents Respondent presented to USCIS to adjust status (Ex. C-6)). Based on

[27] The Immigration Officer is not a forensic document examiner, rather he is a document analyst. Forensic document examiners have specific, two-year training, and their expertise relates to physical aspects of a document (paper, ink, etc.). In contrast, this witness' area of expertise relates to the content of documents. When this witness examines a document, he looks at whether the document was "created by a competent authority," and "issued to a lawful bearer[.]" Tr. A, 78. In his analysis, he may use "apparatuses" within DHS or the Law Library of Congress. *Id.* at 80.

The Immigration Officer explained the limits of his knowledge of Nigerian law relative to divorce and divorce processing. He is not an expert in this topic; rather, his explanations of Nigerian law provided context to the investigative steps he took. Because he is not an expert in Nigerian law, the Court will not give any weight to his legal assertions or conclusions. Those portions of his testimony are omitted from the summary to minimize confusion. Both counsel concurred with the Court assessment of this witness' area of expertise. *Id.* at 82.

his experience, he felt confident in his ability to assess Exhibit C-6. For this case, he consulted the Law Library of Congress. He concluded Exhibit C-6 had several suspicious aspects.[28] At the time the witness conducted his analysis, the document (Ex. C-6) had already been the subject of an Overseas Verification Request (OVR), which verified the document was fraudulent.

Separately (and after the case was remanded), the Immigration Officer was asked to examine the 2019 Decree Nisi and Decree Absolute (Ex. C-23).[29] He conducted a comparative analysis between Exhibits C-6 and C-23—specifically, to consider whether Exhibit C-6 would seem suspicious compared against Exhibit C-23.

Later (again, after the case was remanded), the witness was provided with a letter (Ex. R(II)-2) from Nigeria attesting to the authenticity of Exhibit C-23. Based on his expertise, the Immigration Officer had concerns as to the authenticity of Exhibit R(II)-2. As a result of his concerns, he sent an OVR (Ex. C(II)-3) related to the letter (Ex. R(II)-2). The Immigration Officer confirmed the State Department determined the letter (Ex. R(II)-2) was fraudulent. The Nigerian author of the letter personally confirmed he did not draft or send it. The State Department relayed the Nigerian Court had a record of the divorce being initiated, but no record of a final divorce decree for Respondent. After considering the information from the State Department through the OVR (Ex. C(II)-3), the witness concluded that the 2019 Decree Nisi and Decree Absolute (Ex. C-23) and the Nigerian authenticity letter (Ex. R(II)-2) were both fraudulent.

The witness was provided with Exhibit C-15[30] and Exhibit C-16.[31] These documents confirmed his conclusions about the veracity of the 2019 Decree Nisi and Decree Absolute (Ex. C-23). While there was a fire at the Lagos Island Court in October 2020, the Nigerian Court could not locate any record of Respondent's divorce before the fire. *See* Exs. C-15, C-16.

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[28] That is: the basis for the divorce did not seem like a valid basis based on the Immigration Officer's understanding of Nigerian divorce law, the document seemed to be missing information about the marriage being "broken down irretrievably," and there was a red seal on the document, which he did not believe was a common practice. Tr. A, 99–101.

[29] It is worth noting that, at the initial hearing, all parties and the Court treated Exhibit C-23 as a legitimately created Nigerian divorce decree. Indeed, the Court relied on this factual proposition in conducting its analysis in the prior final order. At the hearing on remand, further record development revealed that Exhibit C-23 was also potentially a fraudulently created document.

[30] Correspondence from the Nigerian Court, dated January 2020, indicating they could not locate Respondent's divorce file.

[31] Correspondence dated March 2020 indicated the Nigerian Court could not locate Respondent's divorce file; however, the Nigerian Court confirmed a divorce was initiated. *Supra* Part III.A.2.

b. Consular Officer

The Consular Officer (State Department employee) did not testify at the initial hearing. At the hearing on remand, he testified via WebEx[32] from Washington, DC. Tr. A, 274–333; Tr. B, 257–344.[33] Prior to his current assignment, he served two years at the U.S. Consulate in Lagos, Nigeria as the Fraud Prevention Manager.

As Fraud Prevention Manager, the Consular Officer supervised a team, including a local national Nigerian attorney. The witness had official training on the Nigerian legal system, and on the law pertaining to marriage and divorce in Nigeria. To execute his official duties, the Consular Officer interacted frequently with host nation government agencies, courts, judges, and registrars to verify documents and information. The witness received official requests from various federal agencies to verify information. He waited until he had a sufficient number, and then he brought the requests in batch form to the appropriate Nigerian agency. Using his professional training and experience, the Consular Officer relayed the following information about courts and divorce in Nigeria.

The city of Lagos is in the state of Lagos. In the city of Lagos, there are two state courts. There is a Lagos Island Court (sometimes referred to as the High Court) and the Ikeja Court. The facilities operate independently. They do not have extensive electronic archives, and ordinarily keep paper files for matters in their respective locations. He was familiar with the Registrar's Office at the Lagos Island Court, because he conducted many on-site visits and interacted frequently with Nigerian court personnel. He was in Lagos in October 2020 when the Lagos Island Court was impacted by a fire. The building was damaged, but not destroyed.

In Nigeria, individuals can get married through one of two legally recognized systems: a traditional system and a court system. If a Nigerian couple seeks a divorce, they must obtain it from the same system through which they were married.

To obtain a divorce in Nigeria, an individual first retains an attorney, who will file initial paperwork (and pay a small court fee) on the client's behalf. Filing this initial paperwork generates a suit number, which contains the year the initial paperwork is filed. Next, the other party must be served. After proof of satisfactory service, the Nigerian Court will schedule a hearing. The petitioner is required to appear, and this person may be questioned at the hearing. Following this hearing (typically some days or weeks after), the judge issues an initial ruling, based on the British system. This initial ruling is also called the Decree Nisi. The Decree Nisi contains the tentative decision of the judge. The parties need not be present when this document is issued. The parties can retrieve a copy of the Decree Nisi at any time by paying a fee and obtaining it from the

[32] WebEx is a video-teleconferencing platform.

[33] Due to time constraints and witness availability, this witness testified at the end of the first day, and again in the afternoon of the second day.

Registrar's Office. The judge's tentative decision (outlined in the Decree Nisi) becomes the final decision (barring any intervention by the parties) after 90 days. This final decision is called the Decree Absolute and it is the legal document which formally dissolves the marriage.

The Consular Officer also described his role in this particular case. He received the OVR's from the Immigration Officer. As to the OVR about red seals, he explained the red seal "exists all over the place in Nigeria, and it is in no way a security feature or a feature that adds any value to a document." Tr. B, 268. The Consular Officer personally (along with a member of his Fraud Prevention Team) took the documents attached to the OVR[34] to the Registrar's Office. The Consular Officer explained that when the Registrar's Office receives a verification request, it must pull the specific case file to verify documents. The Consular Officer conducted the verification of the letter which allegedly came from the Registrar's Office (Ex. R(II)-1). The Assistant Chief Registrar (ACR) informed the Consular Officer personally the letter was not authentic.

The Consular Officer confirmed the Nigerian Court has no record of a completed divorce for Respondent. *Id.* at 285. There is a record of a suit number, which means the case was initiated.[35] *Id.* at 294. The witness also confirmed that Exhibit C-16 (from the initial hearing) demonstrated that, as early as March 2020, the Nigerian Court determined that "a case file that would enable [them] to write on the determination of the matter [a divorce petition instituted in 2012 for Respondent] could not be found in the archives." *Id.* at 335.

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[34] That is, the 2019 Decree Nisi and Decree Absolute, with the respective endorsement letter.

[35] The Consular Officer was asked to opine on why someone might initiate a divorce in Nigeria but not complete it. His answer was as follows:

> Yes. So by initiating the request and paying the token fee to start the process, that causes the [Nigerian] Court to generate a suit number . . . [T]here's two things. First off, from somewhere [in] 2013, I think onward, they started having some information available on the online database . . . [Y]ou can type a suit number on the website of the Lagos High Court, . . . it will give you a response if they have something already in their electronic database.
>
> So, sometimes, if somebody only checks that, they don't actually check with the High Court, they could assume that it's a completed divorce when in fact all it means is that paperwork was filed to generate a suit number. So it's just . . . there could be other reasons, but my experience is sometimes people do that just so they can say "Oh, see . . . it's on the website. There's a suit number. It must be real."

Tr. B, 338–39.

2. Complainant Exhibits[36]

The Complainant provided the following exhibits: Exs. C(II)-1, C(II)-2, C(II)-3, C(II)-4, C(II)-5, C(II)-6, and C(II)-7.

Exs. C(II)-1 and Ex. C(II)-2: Investigative Documents from the Immigration Officer. These documents provide timelines and rationale for investigative steps taken in connection with the 2019 Decree Nisi and Decree Absolute (Ex. C-23).

Ex. C(II)-3: OVR issued by the Immigration Officer (sent September 29, 2021). The OVR requested the State Department inquire about that actual status of Respondent's divorce and whether Exhibit C-23 came from the Nigerian Court. On November 19, 2021, the OVR was returned with confirmation that Exhibit C-23 did not come from the Nigerian Court and there are no records of this divorce being finalized, although there are records which show it was initiated.

Ex. C(II)-4: Response from the Nigerian Court to the OVR (Ex. C(II)-3). The October 18, 2021 response states 2019 Decree Nisi and Decree Absolute (Ex. C-23) "did not emanate" from the High Court in Lagos.

Ex. C(II)-5, C(II)-6, and C(II)-7: These three exhibits consist of correspondence and they are duplicative, appearing also as Respondent's exhibits.

3. Respondent Witness Testimony

a. Respondent's Second Nigerian Divorce Attorney (Attorney Adebowale)

Respondent's second Nigerian divorce attorney testified at the initial hearing, and he testified again at the hearing on remand. Tr. B, 11–130. He testified via WebEx from Lagos, Nigeria. The witness has his own law practice. Previously, he worked for another attorney (Attorney Joseph, i.e., Respondent's first Nigerian divorce attorney). Respondent was a client of Attorney Joseph's, and when that attorney left the practice, the witness inherited Respondent's divorce casefile.

Respondent contacted this witness, seeking Respondent's divorce documentation. The witness then reviewed Respondent's inherited internal case file. He claimed the Decree Nisi and Decree

[36] Complainant's rebuttal exhibits are discussed at Part III.C.

Absolute were not in his file. Even so, he claimed internal notes in the file[37] stated: "Judgment had been delivered." *Id.* at 15. He surmised the official Decrees Nisi and Absolute were missing from the file because the first Nigerian divorce attorney "did not apply for [them]." *Id.* at 23. The witness was not surprised to find the internal file did not initially have the Decree Nisi and the Decree Absolute because Respondent did not make his full payment to the office.

To obtain the Respondent's divorce documents, the witness wrote a letter to the Nigerian Court. The Nigerian Court allegedly provided the requested documents several days later. The provided documents (the 2019 Decree Nisi and Decree Absolute, Ex. C-23) were purportedly signed by the Assistant Chief Registrar (ACR). The second Nigerian divorce attorney claimed the alternative signature was a result of the then-presiding judge's departure from the bench. *Id.* at 22. Separately, the witness claimed the ACR informed him that Respondent's Decree Nisi and Decree Absolute could not be retrieved from the Court because the Nigerian Court's official copy burned in the fire. The witness surmised that the ACR disavowed the 2019 Decree Nisi and Decree Absolute[38] simply because the ACR had no court file to cross-reference.

The witness also wrote a letter, dated June 23, 2021 (Ex. R(II)-1), wherein he sought clarification from the Nigerian Court about matters Respondent's divorce. He claims he received correspondence back from the Nigerian Court (Ex. R(II)-2). The witness was unable to explain the curiously high level of factual specificity in this correspondence.[39]

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[37] Respondent's second Nigerian divorce attorney was asked a series of questions about the notes contained in the internal file. The notes did not annotate whether Respondent testified in his Nigerian divorce proceedings. The notes did not contain the name of the presiding judge. Still, this witness was allegedly able to recall the particular judge five years later, *see* Ex. C-23. The witness did not provide these file notes to Respondent for this case. He confirmed the notes are on a physical piece of paper and could have been provided.

[38] The second Nigerian divorce attorney explained the ACR's disavowal as (in part) related to red seals. The witness states these seals, which are issued by a different entity, are required when documents leave the country. The witness confirmed that when he learned the ACR had disavowed the witness's correspondence and provided documents (via the OVR process), the witness confronted the ACR in person. According to the witness, the ACR was confused by the seal.

[39] The correspondence was very specific in describing Respondent's alleged divorce hearing (that Respondent was present and gave testimony in line with his petition). The correspondence back from the Nigerian Court also allegedly confirmed that Respondent was not present on November 4, 2013 when judgment was delivered.

Complainant, through cross-examination, aptly made the point that it was peculiar, and indeed quite suspicious, that an ACR of a large Nigerian Court could recall, purely from memory, the

The second Nigerian divorce attorney opined that "a layperson in Nigeria" would not know the distinction between the Ikeja Court and the Lagos Island Court locations (as they are both in the city of Lagos). *Id.* at 49. When asked if "a layperson would know what the grounds are for a divorce in Nigeria;" he responded "No, we are the ones that formulate the grounds, not the litigant." *Id.* at 50.

b. Nigerian Attorney (Attorney Ashiru)

This Nigerian attorney did not testify at the initial hearing. Tr. B, 134–44. He testified via WebEx from Lagos, Nigeria. The witness stated Respondent contacted him in July 2022 (two months prior to the hearing on remand), requesting the witness verify a "court order," specifically "confirmation of earlier order of matrimonial proceedings." *Id.* at 135–37. This attorney agreed to assist and sent a request to the ACR of the Nigerian Court, *see* Ex. R(II)-4.[40] He received correspondence from the ACR in August 2022 informing him the Nigerian Court would provide an update in September 2022, *see* Ex. R(II)-5. This Nigerian attorney clarified that he had no documents related to Respondent's divorce.

c. Respondent

Respondent was placed under oath and testified. Tr. B, 149–239. He graduated with a B.S. in Economics from Augustine University in 1999. In Nigeria, Respondent worked at a construction company as an engineer. He came to the United States initially to attend a conference about civil engineering developments held in New York City.

Respondent claims he went a total of three times to court in Nigeria for his divorce. His first Nigerian divorce attorney and the second Nigerian divorce attorney (Attorney Adebowale) were both present. The first Nigerian divorce attorney actively represented Respondent during Nigerian court proceedings, and the second Nigerian divorce attorney (Attorney Adebowale) was a spectator. He claims he testified at his Nigerian divorce hearing about his Nigerian wife's infidelity. He did not know the specific grounds for his divorce because he is not an attorney.

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specifics of one, presumably routine divorce that transpired seven years prior, all without having a case file to reference.

[40] The request sought verification of three documents, specifically: the 2021 letter sent by the second Nigerian divorce attorney (Attorney Adebowale); the Nigerian Court's June 2021 response to that attorney's 2021 letter; and the inquiry made by the US Consulate in October 2021. *See* Ex. R(II)-4.

Respondent claimed he received the 2014 Decree Nisi and Decree Absolute (Ex. C-6) through his nephew. He believed the 2014 Decree Nisi and Decree Absolute to be authentic. Respondent did not appreciate that there were several court locations in the city of Lagos. When he first received the Decree Nisi and Decree Absolute (in 2014), he did not notice the documents referenced Ikeja, even though he went to the Lagos Island location. He did notice the typographical error for his children's birthdate.

Respondent renewed his explanation of the version of events wherein he received the fraudulent 2014 documents through his nephew and later learned from USCIS the documents were fraudulent.

On cross-examination, Respondent confirmed that he married his Nigerian wife in September 2009. They had a child together in January 2010, and a second child in October 2011. Respondent filed a petition for divorce in November 2012. Respondent stated he sought divorce because his former spouse was "into infidelity," and because she "didn't fulfill conjugal responsibility." Tr. B, 166–77. He stated that his mother cared for his children as he had physical custody of the children prior to filing for divorce. He requested custody of the children in the divorce petition.

Respondent left Nigeria on October 8, 2013. At the time the divorce was not finalized. He did not inform his first Nigerian divorce attorney (Attorney Joseph) that he was leaving Nigeria. Respondent met his second wife (the U.S. citizen who sponsored his adjustment of status to conditional Lawful Permanent Resident) while in the United States.

Respondent returned to Nigeria on July 18, 2016.

Respondent stated his mother initially had physical custody of his children while he was in the United States. Eventually, his first wife (and the mother of the children) gained custody of the children. When he visited Nigeria in 2016, the children were living with their biological mother (his first wife). The children visited with Respondent during his visit to Nigeria.

Respondent was motivated to obtain his divorce documents because he wanted to get married in the United States. He stated he contacted the first Nigerian divorce attorney directly, and this attorney informed him that the "case had been finalized." The two never discussed the remaining balance due to the attorney, and no official divorce documents were provided to Respondent because of that conversation. Tr. B, 181.

While Respondent appears to have been able to contact the original divorce attorney previously, he claims he lost the contact information for that attorney. For this reason, he sent his nephew to the second Nigerian divorce attorney (Attorney Adebowale).

Respondent claimed his nephew provided a copy of the 2014 Decree Nisi and Decree Absolute to Respondent's Nigerian wife. On this point, Respondent was inconsistent: in one instance, he

indirectly (through his nephew) provided it to her circa 2014; and in another instance, he may have indirectly (through his nephew) provided it to her or inquired about it (with her) more recently.[41]

Respondent was asked to explain the portion of his statement submitted for the initial hearing, *see* Ex. C-37. In that statement (Ex. C-37), he wrote "the copy [of the divorce certificate] matches the one that my ex-wife has, so I had no reason to believe it was not real;" and "I received my final divorce decree in the mail from my lawyer in Nigeria. He also confirmed that my ex-wife was served and received a copy a well." Tr. B, 220, 225.

4. Respondent Exhibits

Respondent provided the following exhibits: Exs. R(II)-1, R(II)-2, R(II)-3, R(II)-4, R(II)-6.

Exs. R(II)-1 and R(II)-2: Letters exchanged in June 2021 between Respondent's second Nigerian divorce attorney and the Nigerian Court. These letters detail an alleged inquiry into Respondent's divorce. The letter in return from the Nigerian Court allegedly affirms Respondent is in fact divorced and the Decree Nisi and Decree Absolute were issued to Respondent.

Ex. R(II)-3: An affidavit from the second Nigerian divorce attorney written August 2022. This affidavit describes a series of events beginning in June 2021. Respondent contacted this attorney and informed this attorney that his correspondence (R(II)-1 and R(II)-2) was disavowed by the Nigerian Court through the State Department OVR process. The affidavit describes the steps this attorney took. He states he personally confronted the Nigerian Court ACR (who disavowed the correspondence). The affidavit explains the ACR's disavowal was simply a misunderstanding related to the red seal placed on the correspondence by the Nigerian attorney's staff.

Ex. R(II)-4: A letter from a different Nigerian attorney (Attorney Ashiru) who was uninvolved in Respondent's Nigerian divorce. This letter sought authentication of prior correspondence related to this case (Exs. R(II)-1, R(II)-2). Exhibit R(II)-6 is the alleged response.

Ex. R(II)-6:[42] A response from the Nigerian Court dated September 21, 2022. The exhibit arrived by way of email to Respondent's counsel on day two of the hearing on remand. It is responsive to the Attorney Ashiru letter (Ex. R(II)-4).

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[41] I.e., in preparation for the hearings in this matter.

[42] The untimely nature of receipt was outside Respondent's counsel's control. DHS did not object to its admission; however, DHS desired an opportunity to provide evidence in rebuttal.

C. POSTHEARING CONFERENCES & ADDITIONAL EVIDENCE

Because of the late-filed nature of R(II)-6, the Court did not close the record at the end of the hearing. Tr. B, 347; *see* 28 C.F.R. § 68.49(a). Mindful that the record remained open after hearing (for Complainant to submit rebuttal evidence), the Court held a series of posthearing conferences.

At these conferences, the Court discussed keeping the record open and the status of Complainant's decision to submit evidence in rebuttal.[43] Prior to the close of the record, Complainant submitted several exhibits in rebuttal, which were admitted over Respondent's objection.[44] These exhibits relate to Complainant's follow-on investigation (including another OVR) about the second Nigerian attorney's letter to the Nigerian Court (Ex. R(II)-6).

The record closed on March 1, 2023 and the parties were placed on a briefing schedule.[45]

IV. POSITIONS OF THE PARTIES[46]

A. COMPLAINANT'S BRIEF

Complainant argues it met its burden by preponderant evidence on the knowledge element as Respondent's actions demonstrate "willful blindness." *See* C's Br. 4–6. "Respondent subjectively believed there was a high probability that the divorce decree he received from his nephew in 2014 was fraudulent and the Respondent took actions to avoid learning of this fact." *Id.* at 6. Complainant offers four errors from the first divorce decree to which "Respondent intentionally turned a blind eye"—the same errors at issue from the initial hearing. *Id.* at 6–8; *see Fasakin*, 14 OCAHO no. 1375b, at 21.

As a matter of fairness, the Court elected not to close the record at the conclusion of the hearing on remand as closing the record, as it would potentially preclude Complainant from submitting rebuttal evidence.

[43] *Fasakin*, 14 OCAHO no. 1375i, at 1; *Fasakin*, 14 OCAHO no. 1375j, at 1 (2023); *Fasakin*, 14 OCAHO no. 1375k, at 1.

[44] *Fasakin*, 14 OCAHO no. 1375k, at 2–3.

[45] *Fasakin*, 14 OCAHO no. 1375k, at 2, 7.

[46] Complainant declined to submit further briefing after receipt of Respondent's filing.

In the alternative, "Respondent was never divorced from his Nigerian wife in 2014 . . . Respondent knew he was still legally married in 2014 when he provided the first fraudulent divorce decree to the [Government] and [knew] that the divorce decree was fraudulent." *Id.* at 9. Complainant cites the following facts in support of this argument: Respondent failed to pay the final installment to complete the divorce; Respondent failed to request documentation showing the completed divorce; and Respondent visited Nigeria in July 2016 (supposedly evidencing a continuing personal relationship with his alleged former spouse).[47] *Id.* at 8–10. Complainant also points to the fraudulent nature of the 2019 Decree Nisi and Decree Absolute. *Id.*
Next, Complainant argued Respondent's witnesses did not testify credibly[48] and the fraudulent documents from Respondent should be given no weight. *Id.* at 15–30.

On penalties, Complainant seeks "an order requiring the Respondent to cease and desist from violating § 274C(a)(2) of the INA" and a penalty of $473. *Id.* at 30.

B. RESPONDENT'S BRIEF

[47] Complainant references Exs. C-24, C-25, C-26. These are photographs of Respondent and his Nigerian wife/ex-wife and biological children, and a photograph of his Nigerian wife/ex-wife and a baby with a date of June 26, 2017. Complainant argues these photographs demonstrate a continuing personal relationship between Respondent and his Nigerian wife/ex-wife, which Complainant contends sheds light on whether Respondent completed his Nigerian divorce. Without more context, the Court is not persuaded. These photographs could, for example, showcase two divorced parents sharing a happy moment with their biological children. Further, the photograph of this same woman posing with an infant (whose father is unknown based on the photograph) does little to assist the Court in determining whether Respondent's divorce was complete and whether he knew it was (or was not) at the time he sought a benefit under the INA.

[48] Complainant characterizes Respondent's testimony as "inconsistent, at times incoherent, unresponsive, and at times, bizarre." C's Br. 16. Complainant notes, for example: the first Nigerian divorce attorney was no longer practicing in 2016, but Respondent's nephew was able to reach him at his law office. *Id.* at 18. Respondent also testified in January 2021 that only he and the first Nigerian divorce attorney attended the divorce proceedings, but in September 2022 he testified that the second Nigerian divorce attorney also attended the proceedings. *Id.* at 20.

As to Respondent's second Nigerian divorce attorney, Complainant claims this witness changed the description of his role in Respondent's divorce proceedings between his January 2021 and September 2022 testimony. *Id.* at 21. Complainant also points to his inability to explain how he obtained a copy of the second divorce decrees "while multiple U.S. government requests for the same documents were met with responses indicating the files were not located." *Id.* at 22.

Respondent argues Complainant did not meet its burden on the knowledge element. R's Br. 6–7. As to willful blindness, Respondent asserts the four identified errors in the 2014 divorce documents are not obvious to a lay Nigerian, even when considered cumulatively.[49] *Id.* at 9–15. Respondent argues: "If the Court does not conclude that [Respondent] is still legally married in Nigeria, the Court should also conclude that Respondent should not have been aware of the fraudulent nature of the first divorce decree." *Id.* at 22.

Respondent argues it presented reliable documentary evidence to support its position. *Id.* at 43. Per Respondent, the 2019 Decree Nisi and Decree Absolute are genuine, and the Nigerian Court's inability to locate the file does not mean documents do not exist. *Id.* at 18. These documents "have been confirmed by the Assistant Chief Registrar and should be given full weight." *Id.* at 41.

On credibility, Respondent argues the second Nigerian divorce attorney is a credible, consistent witness.[50] *Id.* at 29–34. While conceding Respondent's nephew is "not the most credible witness," Respondent maintains the nephew corroborates key components of testimony by Respondent and the second Nigerian divorce attorney.[51] *Id.* at 35. Respondent attributes inconsistencies in his own testimony as misunderstandings or normal memory lapses.[52] *Id.* at 23–28.

Separately, Respondent argues Complainant's witnesses were not credible because they were not impartial and forthcoming. *Id.* at 37–41. The Immigration Officer fabricated conversations and

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[49] For example, a layperson may not recognize there are two courts or divisions within the same court system; the Immigration Officer who approved Respondent's 2015 adjustment of status failed to notice the errors; and a layperson may not know the technical grounds for their divorce. *Id.* Respondent also argued that the date in the document could reference a later date than the hearing—the date a judge issued a decision. *Id.* at 14–15.

[50] Respondent claims the second Nigerian divorce attorney did not change his testimony about his appearance in divorce court. R's Br. 30. As to how he obtained documents the United States Government was unable to obtain, Respondent states: "Attorney Adebowale testified extensively in both 2021 and 2022 regarding the procedures and providing documentation on the exact steps that he took to obtain the second set of divorce documents." *Id.* at 31.

[51] In turn, Respondent would not have been aware that his nephew obtained the divorce decrees from someone other than his attorney. R's Br. 35.

[52] Respondent asserts some issues with Respondent's testimony are due to his accent, which prevented accurate transcription of the record. R's Br. 23–24. Respondent does admit his initial testimony about the source of the divorce decrees was a mistake and asserts that his willingness to admit his mistake "bolsters [his] credibility rather than diminishing it." *Id.* at 27.

refused to acknowledge errors. *Id.* at 39–40. Also, Complainant's investigations took an excessive amount of time, which frustrated Respondent's ability to gather evidence. *Id.* at 37–38.

On penalties, Respondent states "[a]s Complainant has failed to establish any violation of 28 C.F.R. sec 68.52(e) no fine should be assessed against Respondent." *Id.* at 43. To that end, Respondent believes it is entitled to attorney's fees. *Id.*

V. ANALYSIS OF EVIDENCE PRESENTED AFTER REMAND

The Court must carefully analyze the evidence (documentary and testimonial) presented by the parties. The Court must ensure evidence is sufficiently reliable and then it must consider what weight, if any, to assign the evidence based on its probative value.

A. LEGAL STANDARDS

1. Evaluating Documentary Evidence

The proponent of documentary evidence must "authenticate a document by evidence sufficient to demonstrate that the document is what it purports to be[.]" *United States v. Carpio-Lingan*, 6 OCAHO no. 914, 5 (1997) (citations omitted).

Generally, documentary evidence that is complete, signed, sworn under penalty of perjury, dated, authenticated, laid down with foundation contain sufficient indicia of reliability. *See, e.g.*, *United States v. Psychosomatic Fitness LLC*, 14 OCAHO no. 1387a, 5–7 (2021); *United States v. Bhattacharya*, 14 OCAHO no. 1380a, 4–5 (2021).

Affidavits are reliable if "they are sworn and signed by the affiants . . . contain facts that would be admissible in evidence . . . rely on personal knowledge . . . [and] show that the affiants are competent to testify to the matters stated therein." *Nickman v. Mesa Air Grp.*, 9 OCAHO no. 1113, 14 (2004).

2. Evaluating Testimonial Evidence (Credibility)

In assessing the reliability of testimonial evidence, and ultimately, the probative value of that evidence, the Court must consider whether witnesses have testified credibility. As observed by the CAHO in the Order on Remand:

> OCAHO case law illustrates some of the factors relevant to assessing the credibility of witnesses in OCAHO proceedings. *See, e.g.*, *United States v. Kurzon,* 3 OCAHO no. 583, 1829, 1842–43 (1993) ("However, as to Respondent's testimony, I have found the record to be rife with examples of Respondent's incredulous testimony,

> inconsistencies, suspicious memory lapses and blame shifting, leading me to find that Respondent's testimony was not credible."). In finding witnesses not credible, OCAHO ALJs have cited shifting and inconsistent answers, *see United States v. DeLeon Valenzuela*, 8 OCAHO no. 1004, 10 (1998); repeatedly responding to questions by testifying that the witness does not know, does not remember, or does not understand, *see id.* at 11; testifying in a vague and evasive manner, *see id.*; demonstrably false statements, *see id.* at 12; discrepancies between hearing testimony and other record documents, *see Kurzon,* 3 OCAHO no. 583, at 1858–60; a variety of excuses or justifications for inconsistent information, *see id.*; and incorrect or inconsistent information provided by a witness in forms or proceedings unrelated to the central claims in the case, *see id.*

Fasakin, 14 OCAHO no. 1375b, at 12; *see also Davis v. Alaska*, 415 U.S. 308, 318 (1974) (holding that the trier of fact and credibility may draw inferences relating to the reliability of the witness).

3. Lay and Expert Witnesses

"[T]he Federal Rules of Evidence will be a general guide to all proceedings held pursuant to these rules." 28 C.F.R. § 68.40(a). Federal Rule of Evidence 702 provides that a "witness who is qualified as an expert by knowledge, skill, experience, training, or education" may provide opinion testimony if:

> (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
> (b) the testimony is based on sufficient facts or data;
> (c) the testimony is the product of reliable principles and methods; and
> (d) the expert has reliably applied the principles and methods to the facts of the case.

Federal Rule of Evidence 701 provides that lay witness opinion testimony is limited to:

> (a) rationally based on the witness's perception;
> (b) helpful to clearly understanding the witness's testimony or to determining a fact in issue; and
> (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.

"[L]ay testimony must result[] from a processing of reasoning familiar in everyday life," as opposed to a process "which can be mastered only by specialists in the field." *Est. of Knoster v. Ford Motor Co.*, 200 F. App'x 106, 111 (3d Cir. 2006) (citing Fed. R. Evid. 701 Adv. Comm. Notes) (internal quotation cleaned up).

"Expert testimony is opinion testimony that is based on a qualified expert's relevant knowledge, skill, experience, training, or education applied to relevant facts and data." *In re Schaefer*, 331 F.R.D. 603, 609 (W.D. Pa. 2019); *see Jasama v. Shell Oil Co.*, 412 F.3d 501, 513 (3d Cir. 2005) (citations omitted) (Expert opinion testimony "must demonstrate a relevant connection between [the] methodology and the facts of the case.").

4. Evaluating Weight of Evidence (Probative Value)

"Probative value is determined by how likely the evidence is to prove some fact[.]" *United States v. R&SL, Inc.*, 13 OCAHO no. 1333b, 26 (2022) (citations omitted). Federal Rule of Evidence 401 provides the test for relevance; "[e]vidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action." *United States v. Rose Acre Farms, Inc.*, 12 OCAHO no. 1285, 8 (2016).

B. COMPLAINANT'S EVIDENCE

1. Reliability of Documentary Evidence

Upon examination, Complainant's documentary evidence does not raise concerns of reliability. The (signed and dated) written statements from the Immigration Officer,[53] who was subject to cross-examination, are reliable and consistent with the record. The agency reports[54] have sufficient indicia of reliability; they appear to be derived from government platforms and are on standardized forms, and their contents are consistent with the record.

2. Reliability of Testimonial Evidence

The Immigration Officer and Consular Officer testified credibly. The witnesses were consistent with information contained in the record (from the initial hearing and the hearing on remand). The witnesses provided plausible accounts of what transpired, to the best of their recollection, and were not evasive. The Court is not persuaded by Respondent's arguments on credibility for these witnesses. This record does not support the proposition that Complainant's witnesses affirmatively acted with intent to delay the proceedings. Respondent further highlights differences between a version of events between these two witnesses, but this is more convincingly attributed to use of

[53] Exs. C(II)-1, C(II)-2, C(II)-11.

[54] Exs. C(II)-3, C(II)-4, C(II)-8, C(II)-9.

imprecise language or a difference of vantage points in the process (i.e., State Department perspective vice USCIS perspective).[55] The Court gives full weight to these witnesses' testimony.

3. Probative Value of Evidence Presented By Complainant

At the hearing on remand, the CAHO identified the knowledge element of 8 U.S.C. § 1324c(a)(2) as the key issue on remand. Evidence that proves Respondent knew that he provided a false document in 2014/2015 to obtain an immigration benefit has high probative value.

a. Probative Value of Complainant's Documentary Evidence

As to the various OVRs (both from the hearing on remand and rebuttal evidence), these documents have high probative value. They speak to central factual issues in this case, to wit: is this Respondent even divorced in Nigeria, and are the documents provided to USCIS in 2019 (and eventually to this forum) authentic Nigerian documents. They assist the Court in analyzing collateral issues, like the second Nigerian divorce attorney's (Attorney Adebowale) credibility.

In addition to the OVR documents, the written responses they garnered from the Nigerian Court have high probative value. Those responses, when read together, support the factual proposition that Respondent never completed this divorce. *Infra* Part VII.C.1.

b. Probative Value of Complainant's Testimonial Evidence

i. Consular Officer

The reliable evidence provided by this witness was highly probative. The Consular Officer provided testimony about his extensive professional experience working in overseas positions: namely, dealing with different legal systems; training and experience specific to Nigerian court processes and substantive law pertaining to marriage and divorce. He drew on this expertise to provide valuable process information about divorce in Nigeria. His testimony allowed the Court to place particular facts of this case in perspective and draw well-reasoned conclusions about the state of Respondent's divorce proceedings.

While Complainant did not seek qualification of the Consular Officer as an expert under the framework of Federal Rule of Evidence 702, this witness' specialized knowledge did assist the Court in understanding the evidence and analyzing factual issues. Indeed, the witness's assessments and explanations were derived from officially sanctioned State Department training

[55] There was a question of whether the State Department relayed information directly back to the Immigration Officer or did the information flow by way of returning the completed form. In either scenario, the relayed information was consistent across both witnesses.

and sufficient working knowledge gained by his frequent personal and direct interactions with the Nigerian legal system and its personnel. The Court places significant weight on the Consular Officer's explanations about the following: how divorce proceedings occur in general in Nigeria; his opinion on why a Nigerian might seek to initiate, but never complete a divorce in Nigeria (i.e., the value of a suit number); and the minimal value of the red seal present on fraudulent documents.

In addition to providing highly probative evidence on divorce processing, the Consular Officer also provided highly probative evidence about the fraudulent documents in this case, derived from his personal knowledge. This witness is the actual individual who coordinated with the Nigerian Court to ascertain key facts. As early as March 2020, the Nigerian Court determined that the case file for Respondent's divorce could not be found in its archives; the Nigerian Court was damaged, but not completely destroyed by a fire in October 2020; the Nigerian Court had no record of a completed divorce for Respondent (only a suit number); and the witness was present when the ACR for the Lagos Island Court disavowed R(II)-1. Ultimately, this witness' testimony has high probative value because it sheds light on Respondent's knowledge about the status of his divorce.

ii. Immigration Officer

In contrast to the Consular Officer, Complainant did qualify the Immigration Officer as an expert witness by way of stipulation. On remand, the witness provided more clarity on the narrow scope of his expertise, which does not include forensic examination or substantive Nigerian law. The Immigration Officer's expertise instead centers on his ability to conduct initial screening of foreign official documents, and flag those which require further scrutiny. To that end, the witness explained that both sets of Nigerian documents (the 2014 Decree Nisi and Decree Absolute; the 2019 Decree Nisi and Decree Absolute) bore indicia of fraud which warranted further processing.

The Immigration Officer testified credibly and provided probative evidence as to specific facts of this case, but did not provide expert opinion testimony. Specifically, this witness confirmed the documents provided to USCIS in 2014/2015 (Exhibit C-6) were fraudulent. After review of a Nigerian letter which purportedly attested to the authenticity of the 2019 Decree Nisi and Decree Absolute, the witness sent an OVR. The State Department's response to that OVR indicated that this letter was fraudulent. The witness also relayed these facts: the State Department's response indicated that the Nigerian Court had no record of a final divorce decree ever being issued for Respondent; there was a fire in October 2020 at the Lagos Island Court; the Nigerian Court stated it could not locate Respondent's file even before the fire. Ultimately, this witness' testimony has high probative value because it sheds light on Respondent's knowledge about the status of his divorce.

C. RESPONDENT'S EVIDENCE

1. Reliability of Documentary Evidence

a. The 2019 Decree Nisi and Decree Absolute (Exhibit C-23)[56]

The 2019 Decree Nisi and Decree Absolute are fraudulent documents.[57] They were provided to Respondent by Attorney Adebowale. Respondent provided them to USCIS in support of Respondent's application to remove conditions on his permanent residency. These 2019 fraudulent divorce documents were confirmed as such by the State Department. These documents do not originate from the purported source; thus, their contents are not reliable., and cannot support the proposition this Respondent is divorced in Nigeria.[58]

b. Other Documentary Evidence[59]

Exs. R(II)-1 and R(II)-2: These exhibits are not reliable. The contents of the correspondence seek to bolster the authenticity of Exhibit C-23; however the correspondence was also disavowed by the Nigerian Court.[60] Because the alleged source of the correspondence disavowed the contents, R(II)-2 is inherently unreliable for the same reasons Exhibit C-23 is unreliable. While R(II)-1 could be painted with a different stroke (it comes from an individual (the second Nigerian divorce attorney), not the Nigerian Court), it, too, is unreliable. The second Nigerian divorce attorney is not credible as he has a propensity to provide fraudulent documents to influence official proceedings.[61]

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[56] Complainant presented this exhibit at the initial hearing; however, their reliability is analyzed here because Respondent relied upon this exhibit to argue Respondent is divorced in Nigeria. The Respondent also sought, via other evidence, to defend the authenticity of this document.

[57] Again, this is a new development on remand. Following the initial hearing, the Court concluded the 2019 divorce documents were authentic. The Court erroneously relied on this exhibit to conclude the Respondent was divorced in Nigeria. The incorrect conclusion impacted the Court's prior assessment of the second Nigerian divorce attorney (Attorney Adebowale)'s credibility.

[58] The fraudulent 2019 divorce documents also bear on witness credibility discussed below.

[59] Descriptions of these exhibits are found at *supra* Part III.B.4. Given the Court's findings as to these exhibits' reliability, the Court breaks down its analysis into separate sub-sections (similar to the earlier evidentiary analysis at Part III).

[60] The Nigerian Court never received R(II)-1 and indicated it never sent R(II)-2.

[61] As further explained below, this witness is not credible, which necessarily impacts the reliability of documents he submits to this forum.

Ex. R(II)-3: This exhibit is not reliable. This is an affidavit from the second Nigerian divorce attorney. The reliability analysis of Exhibit R(II)-3 is inextricably linked to the credibility assessment of the second Nigerian divorce attorney.[62] For the reasons outlined in the following section on credibility, this individual is not a reliable source of information. Thus, his affidavit cannot be deemed reliable.

Exs. R(II)-4 and R(II)-6: It is admittedly difficult to determine the reliability of these documents. When the record closed on March 1, 2023, Complainant's investigation into R(II)-6 had not concluded. While the January 2023 OVR (Ex. C(II)-9) states that Ex. R(II)-6 originates from its purported author, the January 2023 signed statement from the Immigration Officer (Ex. C(II)-11) challenges the OVR's conclusion on this point (as based on incomplete/inaccurate facts). Absent reasons to the contrary, the Court can deem these exhibits sufficiently reliable such that they can be considered (this is in stark contrast to the exhibits which were disavowed by their alleged Nigerian authors); however concerns about their authenticity do remain an open question.

2. Reliability of Testimonial Evidence

a. Respondent's Second Nigerian Divorce Attorney (Attorney Adebowale)

Respondent's second Nigerian divorce attorney testified at the initial hearing, and he testified again on remand. While the witness testified via WebEx, the Court was able to observe him and there were no technological issues which would have precluded him from understanding or hearing a question. In assessing this witnesses' credibility, the Court did take into account his level of education and profession (i.e., he is a practicing attorney in Nigeria).

Following the initial hearing, the Court concluded the 2019 Decree Nisi and Decree Absolute provided by Respondent were authentic, and this witness testified credibly. In contrast, at the hearing on remand—with a more robustly developed record and effective cross-examination by Complainant—the Court now concludes Respondent's second Nigerian divorce attorney is not credible for the reasons outlined below.

In his testimony, the witness explained he inherited Respondent's divorce file. He then claims the notes in the file (which, curiously, were never provided to the Court), claim the "judgment had been delivered." This is implausible because the "judgment" does not exist. His explanation of

[62] Indeed, the contents of the affidavit present significant overlap with the testimony this individual provided. Further, to the extent the second Nigerian divorce attorney was cross-examined on these similar topics, his responses to those questions were at times implausible or otherwise suspect.

when or to whom delivery occurred was evasive, as were his responses to other questions about the notes in his alleged office file.[63]
This witness is also the source of several fraudulent documents provided to both USCIS and separately, to this Court.

The witness, a practicing Nigerian attorney, knew or should have known the fraudulent 2019 divorce documents were in fact fraudulent.[64] Additionally, the witness provided more fraudulent documents to the Court—and did so presumably for the purpose of impacting the outcome of these proceedings. The witness fabricated a letter from a Nigerian government official in an ineffective attempt to bolster the witness's own credibility and the reliability of the fraudulent 2019 divorce documents he provided. The contents of the letter, disavowed by the alleged author, are also implausible,[65] as Complainant aptly developed on cross-examination.

For these reasons, individually and cumulatively, the Court concludes this witness is not credible. This conclusion colors the analysis of all documents of which this witness is the source.

b. Nigerian Attorney (Attorney Ashiru)

The witness (a Nigerian attorney) did not testify at the initial hearing, but did testify via WebEx at the hearing on remand. While he testified via WebEx, the Court was able to observe him and there were no technological issues which would have precluded him from understanding or hearing a question. In assessing this witnesses' credibility, the Court did take into account his level of education and profession (i.e., he is a practicing attorney in Nigeria).

Unlike the second Nigerian divorce attorney (Attorney Adebowale), it is less clear if this Nigerian attorney is a source of fraudulent documents. There is conflicting rebuttal evidence on whether this witness's correspondence with the Nigerian Court is in fact authentic. Ultimately, there is no glaring reason to conclude this witness is not credible; however as explained in a later section, the information provided through this witness is of little utility to the ultimate issue.

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[63] The Court previously observed that the notes did not annotate whether Respondent testified, nor did they identify presiding judge (who the witness could allegedly name five years later). *Supra* Part III.B.3.a n.37.

[64] He did not obtain them from the Nigerian Court, because they don't exist. Alternatively, as a practicing Nigerian family law attorney, he knows how to get bona fide Nigerian divorce documents and what these documents look like.

[65] The Court earlier observed that it was peculiar, and indeed quite suspicious, that the ACR could recall, after seven years and purely from memory, the specifics of one random (to the ACR at least) person's divorce. *Supra* Part III.B.3.a n.42.

c. Respondent

Respondent was placed under oath and testified at the hearing on remand. As explained in the CAHO Order on Remand, the Court previously determined the Respondent is not credible. The CAHO Order on Remand indicated this conclusion need not be disturbed at the hearing on remand; however, because Respondent did testify, the Court elects to analyze, once more, whether the Respondent is credible (i.e. whether the events of the hearing on remand would cause the Court to disturb its initial assessment). Nothing in Respondent's testimony caused the Court to come to a different conclusion about Respondent's credibility. Respondent is not credible.

Respondent did not resolve any of the concerns outlined in the first final order. Additionally, through cross-examination, Complainant elicited statements which also bear on Respondent's credibility. Respondent claimed he was able to make contact with his first Nigerian divorce attorney after his arrival in the United States, and he claims that this attorney informed him the "case had been finalized." Tr. B, 181. This is highly implausible, as the Nigerian Court had no record of the case being finalized. It is also implausible that Respondent's first attorney never discussed the outstanding balance with the Respondent in the same conversation in which they discussed the "finalized" divorce. Rather, it seems more plausible that the Respondent never interacted with the first Nigerian divorce attorney once Respondent left Nigeria.

Respondent claimed his nephew provided a courtesy copy of the 2014 Decree Nisi and Decree Absolute to Respondent's Nigerian wife. On this point, Respondent was inconsistent. In one instance, he stated that he indirectly (through his nephew) provided it to her circa 2014. In another instance, he stated he may have indirectly (through his nephew) provided it to her or inquired about it (with her) more recently (i.e., in preparation for the hearings on this matter). He was also inconsistent on this point relative to his sworn statement from the initial hearing.[66]

3. Probative Value of Evidence Presented by Respondent

Only reliable evidence merits a probative value assessment. Stated a different way, if the source of the evidence is not trustworthy, its purported weight is irrelevant. *See generally R&SL, Inc.*, 13 OCAHO no. 1333b, at 42.

In sum, very little evidence presented by Respondent was reliable. Thus, the Court is unable to assess the probative value of almost all Respondent's evidence. The Court does note an exception, namely that Nigerian Attorney Ashiru did provide documentary evidence and testimony about his

[66] The Court previously observed that in the written statement, Respondent wrote that the copy of the divorce decree matched that of his Nigerian wife, but that Respondent also confirmed (through his attorney) that his ex-wife was served a copy. *Supra* Part III.B.3.c.

correspondence with the Nigerian Court in July 2022, and the evidence provided on that point was reliable enough for consideration. Yet, even if reliable, this information is too tangential to the issue of knowledge to have much utility in the analysis. This evidence is of low probative value.

VI. FINDINGS OF FACT

The Court has analyzed and assigned weight to the evidence provided. The Court is now poised to make findings of fact. Accordingly, based on the entirety of the record, the Court makes the following factual findings.[67]

A. RESPONDENT'S BIOGRAPHICAL INFORMATION (PRIOR TO ADMISSION)

1. Respondent is a native and citizen of Nigeria. Remand Joint Stip. 3.[68]

2. Respondent is an "alien" as defined in Section 101(A)(3) of the Act, 8 U.S.C. § 1101(a)(3). Remand Joint Stip. 2.

3. In 2009, Respondent married another Nigerian national in Nigeria. Ex. C-4, *see* Initial Hr'g Tr. B, 114, 131.

4. Respondent and his Nigerian wife had two children together, one born in 2010 and a second born in 2011. Ex. C-4; *see* Initial Hr'g Tr. B, 132.

5. Respondent completed a university level education, receiving a B.S. in economics. Tr. B, 229–30; Ex. C-4.

6. In Nigeria, Respondent worked for a construction company as an engineer. Tr. B, 230.

B. STANDARDS & PROCEDURES FOR DIVORCE IN LAGOS, NIGERIA

1. In Lagos City, there are two state courts: Lagos Island Court and Ikeja Court. Tr. A, 280.

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[67] Facts may appear at multiple locations within the record. Headings in this section are provided as a convenience to the reader and do not preclude the Court from relying on facts in any particular section to conduct analysis or derive conclusions in this case.

[68] There are two Joint Stipulations of Fact. The Initial Joint Stipulation of Fact was provided by the parties on January 5, 2021. The Remand Joint Stipulation of Fact was provided by the parties on September 1, 2022. These two documents do not have significant overlap.

2. The two facilities operate independently from one another. Tr. A, 280.

3. The two facilities do not have extensive electronic archives, and mainly keeps paper files for matters in their respective locations. Tr. A, 280–81.

4. In October 2020, the Lagos Island Court was impacted by a fire; specifically, the fire damaged a section of the building, but did not completely destroy it. Tr. A, 320.

5. Individuals can get married in Nigeria through one of two legally recognized systems (a traditional system and a court system). Tr. A, 282–83.

6. If a Nigerian couple seeks divorce, they must obtain it from the same system through which they were married. Tr. A, 282–83.

7. In Nigeria, an individual can obtain a court divorce by first retaining an attorney who will file initial paperwork (and pay a small court fee) on the client's behalf. Tr. A, 283.

8. Filing this paperwork generates a suit number, which contains the year the initial paperwork is filed. Tr. A, 326.

9. Next the other party must be served, which can be accomplished a number of ways including posting the information on the door of the opposing party's last known address. Tr. A, 283.

10. After satisfactory service, the Nigerian Court will schedule a hearing. Tr. A, 328.

11. The person petitioning for the divorce is required to appear at a hearing, and this person may be questioned at that hearing. Tr. A, 283–84.

12. Following this Nigerian divorce hearing (typically some days or weeks after), the Nigerian presiding judge issues an initial ruling. Tr. A, 284–85.

13. This initial ruling is also called the Decree Nisi, which contains the tentative decision of the Nigerian presiding judge. Tr. A, 284.

14. The parties need not be present when the Decree Nisi is issued. Tr. A, 285–86.

15. The parties can retrieve a copy of the Decree Nisi at any time by paying a fee and obtaining it from the Nigerian Court Registrar's Office. Tr. A, 286.

16. This tentative decision becomes the final decision, barring intervention by the parties, typically after ninety days. Tr. A, 284.

17. This final decision is called the Decree Absolute, and it is the legal document which formally dissolves the marriage. Tr. A, 284.

18. After 2013, the Lagos High Court provided a public-facing searchable database wherein the public could search for a divorce and see that the matter in the system. Tr. B, 338–39.

19. In Nigeria, some individuals who pay the token fee to receive a suit number do so with the intention of never completing the divorce process. Tr. B, 338–39.

C. RESPONDENT'S INCOMPLETE DIVORCE PROCESSING IN NIGERIA

1. In 2012, Respondent hired his first Nigerian divorce attorney (Attorney Joseph). Ex. R-18.

2. The first Nigerian divorce attorney informed Respondent that Respondent was to pay a total of 400,000 naira for the complete divorce processing. Ex. R-18.

3. Respondent was expected to pay 250,000 at the outset of the proceedings. Ex. R-18.

4. Respondent was expected to pay 150,000 at the "end of the case." Ex. R-18.

5. On November 17, 2012, Respondent provided an affidavit to his first Nigerian divorce attorney, which outlined Respondent's understanding of the basis for a divorce. Ex. R-18.

6. On February 7, 2013, the first Nigerian divorce attorney generated a filing, the purpose of which was to inform the Nigerian Court that the case was ready for a trial date. Ex. R-19.

7. Lagos Island Court assigned a suit number to Respondent's case. Tr. B, 338–39; Ex. C-16.

8. On March 4, 2020, (as confirmed through the State Department) Respondent had only a suit number, but no actual file at Lagos Island Court. Tr. B, 338–39; Ex. C-15, Ex. C-16.

D. RESPONDENT OBTAINS B-1 VISITOR VISA TO ENTER THE UNITED STATES

1. On September 12, 2013, Respondent applied at the U.S. embassy in Abuja, Nigeria for a nonimmigrant visa (B1/B2 visitor visa) to enter the United States. Initial Joint Stip. 4.

2. On September 13, 2013, Respondent attended an interview at the U.S. Consulate in Abuja, Nigeria in support of his application for a visa. Initial Joint Stip. 8.

3. At his consular interview, Respondent informed the State Department Respondent was married. Initial Joint Stip. 5.

4. At his consular interview, Respondent stated he would attend an architectural conference in New York City for one week. Initial Joint Stip. 9.

5. On October 8, 2013, Respondent entered the United States with inspection and admission as a nonimmigrant visitor (B1). Initial Joint Stip. 13.

E. RESPONDENT'S ADJUSTMENT OF STATUS – CONDITIONAL LAWFUL PERMANENT RESIDENT

1. On July 17, 2014, Respondent married a U.S. citizen. Initial Joint Stip. 14.

2. On November 4, 2014, Respondent and his U.S. citizen spouse concurrently filed with USCIS a Form I-130, Form I-485, Form G-325A, and supporting documentation to obtain Lawful Permanent Residence status for Respondent. Initial Joint Stip. 3, 14; Ex. C-4.

3. On November 4, 2014, Respondent sought employment authorization concurrently with his application to adjust status. Initial Joint Stip. 22.

4. Respondent submitted all forms and documents associated with his application to USCIS via the mail. Initial Joint Stip. 19; Ex. C-5.

5. Included in the November 4, 2014 mail submission were a purported 2014 Decree Absolute and Decree Nisi issued by a Nigerian court. Initial Joint Stip. 21.

6. On February 5, 2015, USCIS granted Respondent employment authorization for a one-year period. Initial Joint Stip. 24.

7. On April 9, 2015, USCIS interviewed Respondent and his U.S. citizen spouse petitioner in connection to his adjustment of status application. Initial Joint Stip. 25.

8. At his adjustment of status interview, Respondent informed his interviewer he was divorced from his former Nigerian wife. Initial Joint Stip. 28.

9. At his adjustment of status interview, Respondent referenced the previously mailed purported 2014 Decree Absolute and Decree Nisi. Initial Joint Stip. 28.

10. On April 9, 2015, the same day as his interview, USCIS granted Respondent adjustment of status to that of a conditional Lawful Permanent Resident pursuant to INA sections 245 and 216. Initial Joint Stip. 29.

11. Respondent was granted conditional Lawful Permanent Resident status, from April 9, 2015 to April 7, 2017. Initial Joint Stip. 30.

F. RESPONDENT'S APPLICATION TO REMOVE CONDITIONS ON LAWFUL PERMANENT RESIDENT STATUS & USCIS FRAUD INVESTIGATION

1. On January 13, 2017, Respondent filed a USCIS Form I-751 seeking to remove conditions on his permanent residence. Initial Joint Stip. 32; Ex. C-7.

2. USCIS learned, by way of a site visit for an unrelated matter, that Respondent did not live at the marital address listed on the Form I-751. Ex. C-7.

3. On November 28, 2017, USCIS (for the first time) suspected the 2014 Decree Absolute and Decree Nisi were fraudulent. Ex. C-7.

4. On December 27, 2017, USCIS sent an OVR to the U.S. Consulate (State Department) in Lagos, Nigeria. Exs. C-7, C-16.

5. On March 5, 2018, after receiving confirmation from the U.S. Consulate the documents (2014 Decree Nisi and Decree Absolute) were fraudulent, USCIS generated a Statement of Findings finding fraud. Ex. C-7.

6. On March 15, 2019, USCIS interviewed Respondent in support of his Form I-751 application. Initial Joint Stip. 33.

7. At the March 15, 2019 interview, USCIS confronted Respondent with their finding of fraud for the Nigerian documents he provided in support of the 2015 adjustment of status. Initial Joint Stip. 41.

8. On March 15, 2019, USCIS requested additional divorce documentation from Respondent via a Request for Evidence. Initial Joint Stip. 43.

9. On April 25, 2019, Respondent provided, via FedEx, a new version of what purported to be a Decree Absolute and Decree Nisi for a divorce between Respondent and his Nigerian wife. Initial Joint Stip. 45; Ex. C-23.

10. Respondent received these documents from his nephew, who claimed he received them from the second Nigerian divorce attorney. Initial Joint Stip. 44.

11. On September 9, 2019, Complainant served Respondent with a Notice of Intent to Fine. Initial Joint Stip. 49; Ex. C-1.

12. Also of note, on November 14, 2018, Respondent submitted a Form N-400 to USCIS in an attempt to naturalize and become a United States citizen. Ex. C-22.

G. FINDINGS OF FACT RELATED TO DOCUMENTS PROVIDED IN THIS HEARING

1. On July 1, 2021, Complainant contacted the Immigration Officer to request his review of Exhibit C-23 (the second Decree Absolute and Decree Nisi provided in 2019). Tr. A, 106; Ex. C(II)-1.

2. The Immigration Officer concluded the 2019 divorce documents could be fraudulent. Tr. A, 109–10; Ex. C(II)-2.

3. The Immigration Officer recommended an OVR. Tr. A, 110–11; Ex. C(II)-2.

4. The Immigration Officer sent an OVR to the U.S. Consulate in Lagos to determine the authenticity of the 2019 divorce documents (also Ex. C-23). Tr. A, 111–14; Ex. C(II)-3.

5. On November 19, 2021 the OVR confirmed the 2019 divorce documents did not come from the Nigerian Court. Tr. A, 114; Ex. C(II)-4.

6. On November 19, 2021, the OVR confirmed there are no records of Respondent's divorce being finalized, although records show it was initiated. Tr. A, 114; Ex. C(II)-4.

VII. LAW & ANALYSIS

With the Findings of Fact now established by way of reliable evidence, the Court can turn to applying those facts to the law to resolve the remaining issue before it—whether Respondent had knowledge of the fraudulent nature of the documents.[69]

A. BURDENS OF PROOF & EVIDENTIARY STANDARDS

As the CAHO explained, "The burden of proof of establishing all four elements of a violation of 8 U.S.C. § 1324c(a)(2), including knowledge, always rests with the complainant. Once the complainant has introduced prima facie evidence of those elements, the burden of production shifts to the respondent to introduce evidence of its own to controvert the complainant's evidence." *Fasakin*, 14 OCAHO no. 1375b, at 19 n.25.

"If the respondent fails to introduce any such evidence, the unrebutted evidence introduced by the [complainant] may be sufficient to satisfy its burden of proof." *Id.* (citing *United States v. Durable, Inc*., 11 OCAHO no. 1231, 5 (2014)) (which "explain[s] the difference between the burden of proof and the burden of production").

Specific to this case, Complainant must demonstrate by preponderant evidence,[70] that Respondent knew the document was fraudulent at the time he submitted it. If Complainant can demonstrate

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[69] Complainant bears the burden to prove four elements in order to establish a violation of 8 U.S.C. § 1324c(a)(2). Those elements are as follows:

> (1) respondent used . . . the forged, counterfeit, altered or falsely made documents;
> (2) knowing the documents to be forged, counterfeit, altered or falsely made;
> (3) after November 29, 1990; and
> (4) for the purpose of obtaining a benefit under the INA.

Fasakin, 14 OCAHO no. 1375b, at 8 (citing Prior Final Order, at 8). At the initial hearing, the Court established that Respondent used forged, counterfeit, altered or falsely made divorce documents after November 29, 1990 in order to obtain adjustment of status, which is a benefit under the INA. *Id*.

[70] "To prove an element by a preponderance of the evidence simply means to prove that something is more likely than not . . . [it also] means the greater weight of the evidence. [That] refers to the quality and persuasiveness of the evidence[.]" *Zajradhara v. Ranni's Corp.*, 16 OCAHO no. 1426d, 6 n.9 (2023) (citation omitted).

this, it has met its burden of proof. The burden of production then shifts to Respondent to controvert Complainant's evidence.

B. KNOWLEDGE ELEMENT

In his Order on Remand, the CAHO provides discussion and analysis on how Complainant could meet its burden as to the element of "knowledge." *See Fasakin*, 14 OCAHO no. 1375b, at 18–21. Specifically, the CAHO stated:

> A violation of 8 U.S.C. § 1324c(a)(2) requires, *inter alia*, conduct performed knowingly, namely that the respondent knew the relevant documents to be forged, counterfeit, altered or falsely made . . . [F]or purposes of 8 U.S.C. § 1324c, the "knowingly" mens rea encompasses either actual knowledge or constructive knowledge . . . . Actual knowledge is awareness of something in fact [and] . . . is "more than 'potential, possible, virtual, conceivable, theoretical, hypothetical, or nominal.'"
>
> In contrast, "the law will sometimes impute knowledge—often called 'constructive' knowledge—to a person who fails to learn something that a reasonably diligent person would have learned. . . ."[71] [*Intel Corp. Inv. Policy Comm. v. Sulyma*, 140 S. Ct. 768, 776 (2020).]
>
> [There are] three ways in which actual knowledge may be proven in litigation. *Id.* at 799. First, actual knowledge may be shown by direct evidence, i.e., an admission. *See id*. Second, actual knowledge may be proven by inference from circumstantial evidence. *Id*. Finally, evidence of "willful blindness"[72] may also show actual knowledge. *Id*. . . .
>
> Accordingly, to establish a violation of 8 U.S.C.§ 1324c(a)(2), a complainant must demonstrate, *inter alia*, the respondent's either actual or constructive knowledge of the relevant document's status as one that has been forged, counterfeited, altered or

[71] *See Ortiz*, 6 OCAHO no. 889, at 719 (clarifying that once the complainant establishes a prima facie case of knowledge, the burden of production shifts to the respondent to introduce evidence of its own to controvert the complainant's evidence. If the respondent does not meet this burden, the unrebutted evidence introduced by the complainant satisfies the burden of proof).

[72] *See Fasakin*, 14 OCAHO no. 1375b, at 20 n.27 (citation omitted) (willful blindness requires: "(1) The defendant must subjectively believe that there is a high probability that a fact exists and (2) the defendant must take deliberate actions to avoid learning of that fact.").

> falsely made, and a complainant may prove either form of knowledge by direct evidence, circumstantial evidence, or evidence of willful blindness.

Id. at 18–20 (internal citations omitted, with internal spacing and quotation modified).

C. ANALYSIS

1. Respondent Was Not Divorced

Based on the new evidence from the State Department and the new analysis pertaining to the 2019 Decree Nisi and Decree Absolute, the Court is left to conclude that Respondent is not actually divorced, rather he only initiated divorce proceedings in Nigeria.[73] The evidence clearly indicates the Respondent's proceedings went no further than obtaining a suit number – a fact verified by the State Department and consistent with Exhibit R-18,[74] a letter from the first Nigerian divorce attorney.

2. Respondent Knew He Was Not Divorced

[73] The Lagos Island Court had no record of a completed divorce for Respondent, even before the "red herring" fire October 2020.

[74] While Complainant went to great effort to verify certain documents from Nigeria in this case, it declined to do so for Exhibit R-18, leaving the Court to conclude Complainant does not believe its authenticity is at issue.

Further, the letter comes from the first Nigerian divorce attorney, who did not participate in these proceedings, and at no time had his credibility called into question.

Again, Exhibit R-18 demonstrates Respondent retained a divorce attorney, and completed what appears to be an initial affidavit related to a divorce. Yet, the exhibit shows that no hearing or trial date had been affirmatively requested from or selected by the Nigerian Court.

From Exhibit R-18, the Court can divine that as of February 2013, Respondent's first divorce attorney was poised to inform the Nigerian Court the matter was ready to proceed. This is the last meaningful and reliable update in the Respondent's divorce process. In Nigerian divorce proceedings, there are several steps between requesting the initial hearing and a being issued a Decree Absolute. (e.g., ensuring service, providing evidence on the merits, issuance of the Decree Nisi, possibility of intervention before issuance of the Decree Absolute, and then issuance of the Decree Absolute). *See generally* Tr. A, 282–90.

The Court also concludes Respondent is aware of his marital status—i.e., he is not actually divorced in Nigeria. Respondent initiated divorce proceedings in 2012. Later, after obtaining his suit number, he interviewed at the U.S. Consulate in Nigeria to obtain a visa to come to the United States. At the interview, Respondent demonstrated an actual and clear understanding that he was still married. Understanding his interview responses were verifiable and of consequence, Respondent told the State Department he was married (because he was). He even made a separate comment that his Nigerian wife had good reason for missing the interview. When the interview occurred, Respondent had a Nigerian divorce suit number, but he chose not to disclose that information to his interviewer. The Court concludes he omitted mention of his Nigerian divorce suit number because he understood that merely possessing a suit number is not the equivalent of being divorced. Put another way, Respondent directly informed the United States Government he was married at the time of his visa interview because he was, and he knew he was.

Respondent also understood his marital status would be critical to an adjustment of status based on a "valid" marriage to a U.S. citizen. This Respondent—college-educated, and savvy enough to navigate consular processing for a visa and savvy enough to adjust status in the United States—is also savvy enough to understand that a person is still married until a divorce is final. These conclusions are separately supported by the contents of the letter from Respondent's first Nigerian divorce attorney (Ex. R-18). *See supra* p. 41 n. 74; s*ee also* Ex. R-20. [75] Additionally, the Consular Officer explained that some Nigerians obtain only a suit number to create the appearance of a complete divorce, without actually obtaining one.[76] This additional context seems consistent with what may have transpired in this case.

As further analysis, the Court notes Respondent left Nigeria for the United States in 2013 (the year after he filed for divorce), again, with only a suit number for his divorce. Somehow, he allegedly obtained a Decree Nisi and Decree Absolute in 2014. The record lacks credible evidence that Respondent engaged with his first Nigerian divorce attorney either before or after receiving the (now known to be fraudulent) 2014 Decree Nisi and Decree Absolute[77] from his nephew. Such

[75] The documents prepared by the first Nigerian Divorce Attorney indicate the matter was ready for initial hearing; however, the spaces for the hearing date were blank. Based on the explanation of the process provided by the Consular Officer, this is just enough to secure a suit number.

[76] The Consular Officer testified that a Nigerian person may obtain a suit number to show a case status on the Nigeran Court's website (causing a reviewer to erroneously conclude the divorce "[m]ust be real"). Tr. B, 338–39.

[77] Indeed, Complainant presented credible testimony that issuance of a Decree Nisi (the preliminary divorce decree) is not a "rubber stamp" following the issuance of a suit number and the divorce petitioner's initial hearing before a judge. Tr. A, 283–85. It is also unclear how many times Respondent appeared in court for his divorce, if at all.

an inquiry is something a reasonable person would have done after receiving these documents without making final payment to the divorce attorney – especially given the known ambiguity surrounding his divorce status. Stated another way: Respondent deliberately avoided confirming whether he was divorced, understanding there was a high probability he was not.

3. A Valid Decree Absolute For A Divorce Not Yet Final Is Factually Impossible[78]

The record demonstrates there is no completed divorce. This is a fact Respondent knew; or, subjectively believed had a high probability of existing, and deliberately avoided inquiry in the face of obvious circumstances.

The Court is left to consider how Respondent could have provided a valid Decree Absolute to USCIS in 2014 (Ex. C-6). The most straightforward explanation is that he could not because no one (to include this Respondent) can produce valid final documentation for a legal proceeding not yet completed.
By building a record that supports each of these propositions by preponderant evidence (Respondent is not divorced; he knew he was not divorced; and producing a "final" divorce decree is impossible for a yet to be completed divorce), Complainant has met its burden. Respondent knew, at the time he placed those fraudulent documents in the mail to USCIS in November 2014, that they were fraudulent.

4. Respondent Is Unable To Controvert Complainant's Evidence

As the CAHO explained, the analysis does not simply end with Complainant's presentation of evidence. The burden, specifically the burden of production, shifts to Respondent, who can controvert Complainant's evidence. On this record, Respondent failed to meet its burden of production, because implied within that burden is underlying principle that produced evidence must be credible and reliable.

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[78] As a detour (and to ensure matters raised by the CAHO are adequately addressed), the Court notes the CAHO reviewed the undersigned's analysis of the text of the 2014 fraudulent Nigerian divorce documents. The analysis done within the first final order was based on the premise Respondent was divorced, and that the 2019 Nigerian documents were a useful comparator example of authentic Nigerian divorce documents.

The Court, now with a superior vantage point due to a more robustly developed record, concludes the 2014 and 2019 Decrees Nisi and Decrees Absolute (Exs. C-6, C-23) are fraudulent, and that Respondent knew it was factually impossible to possess valid divorce documents in 2014. Accordingly, the Court is disinclined to analyze the text of the 2014 documents as a matter of judicial economy. The conclusion that DHS met its burden would remain unchanged by that additional analysis.

Respondent himself, who attempted to provide alternate explanations through his testimony, is not a credible source of evidence. A witness who is not credible cannot be the source of reliable evidence. Respondent also offered the testimony of the second Nigerian divorce attorney; but, for the reasons outlined above, this witness is also not credible. While Respondent did provide an additional Nigerian attorney to testify on his behalf, the contents of that testimony (and the related documentary evidence), even if credible (and reliable) do nothing to move the needle on the ultimate issue of knowledge; rather at best they would be an attempt to bolster Attorney Adebowale's credibility; which is simply not salvageable for all the reasons outlined above.

Further, the majority of the documents provided by Respondent also proved to be unreliable. Complainant provided reliable evidence to rebut the authenticity of the Respondent's documentary evidence. With minimal credible and reliable evidence available, the Respondent cannot meet its burden of production, and thus cannot controvert the Complainant's evidence.

VIII. CONCLUSION & PENALTY ASSESSMENT

Following the framework provided by the CAHO Order on Remand, the Court concludes the Respondent knew he was not divorced, and he knowingly submitted a fraudulent Decree Absolute (a final divorce decree equivalent) to USCIS on November 4, 2014. He provided fraudulent documents for the purposes of adjusting his status to lawful permanent resident (a benefit under the Act). The Court finds Respondent violated 8 U.S.C. § 1324c(a)(2) as outlined in the Complaint.[79]

[79] The CAHO explained the following on penalty calculation, *Fasakin*, 14 OCAHO no. 1375b, 1 n.1:

> The original Notice of Intent to Fine issued by DHS contained only one alleged violation, occurring on November 4, 2014. Ex. C-1, 5. Although the complaint filed with OCAHO added a second alleged violation occurring on April 9, 2015, both alleged violations pertain to the same document. Because the statute assesses a civil money penalty for "each document that is the subject of a violation," 8 U.S.C. § 1324c(d)(3), the addition of the second alleged violation does not potentially subject Respondent to an additional civil money penalty. *Cf. United States v. Rubio-Reyes*, 14 OCAHO no. 1349a, 7 (2020) (OCAHO "does not have discretion to set a penalty for only one document when the [decision] finds a violation involving two documents," even if the proposed penalty is set based on only one document).

See Tr. A, at 26–28.

Having found a violation, the Court must now assess a penalty. The Court clearly advised the parties that posthearing briefs should present argument on penalty.[80]

To that end, Complainant stated in its post-hearing brief only that the Court "should issue an order requiring the Respondent to cease and desist from violating § 274C(a)(2) of the INA and impos[e] a monetary penalty in the amount of $473.00, as requested in the complaint." C's Br. 30. On penalties, Respondent only stated: "As Complainant has failed to establish any violation of 28 C.F.R. § 68.52(e) no fine should be assessed against Respondent."[81] R's Br. 43.

With only these arguments presented by the parties to assist the Court in assessing a penalty, the Court is now left to craft an appropriate penalty, and will do so based on statute, regulation, OCAHO precedent, and the record.

The statute at 8 U.S.C. § 1324c(3) states the following with respect to assessing a civil penalty for a violation of subsection (a): "[T]he order under this subsection shall require the person or entity to cease and desist from such violations and to pay a civil penalty in the amount of – (A) not less than $250 and not more than $2,000 for each document that is the subject of a violation under subsection (a)."[82]

Pursuant to 28 C.F.R. § 68.52(e)(1)(i), if the violation occurred between March 27, 2008, and November 2, 2015,[83] the minimum civil penalty would be $375, and the maximum civil penalty would be $3,200. *See also* 8 C.F.R. § 270.3(b)(1)(ii)(A); *United States v. DeJesus Corrales-Hernandez*, 17 OCAHO no. 1454e, 4 (2023) (CAHO Order).

OCAHO precedent also provides guidance on § 1324c penalty assessments. *See, e.g.*, *DeJesus Corrales-Hernandez*, 17 OCAHO no. 1454e, at 4, 8–15. To make this assessment, the Court

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[80] *Fasakin*, 14 OCAHO no. 1375k, at 7 (citing 28 C.F.R. § 68.52(e)).

[81] The Court declines to address Respondent's arguments on attorney's fees (5 U.S.C. § 504), but notes Complainant provided reliable and probative evidence to substantiate its allegation, as required by the APA. 5 U.S.C. § 556(d); *see* 28 C.F.R. § 68.52(e)(4) ("An award of attorney's fees shall not be made if the [ALJ] determines that the complainant's position was substantially justified[.]").

[82] This is distinct from 8 U.S.C. § 1324a(e)(5), which mandates the ALJ duly consider five enumerated statutory factors when assessing a paperwork violations penalty. *Bhattacharya*, 14 OCAHO no. 1380a at 3 (2021).

[83] The date the fraudulent document was first provided to USCIS is November 4, 2014 (it was provided again on April 9, 2015). Both of these dates predate the November 2, 2015 cut-off.

employs "a judgmental approach under a reasonableness standard[.]" *United States v. Davila*, 7 OCAHO no. 936, 29 (1997) (collecting OCAHO cases utilizing this approach). When utilizing this approach, the Court balances factors and adjusts the proposed penalty accordingly.[84] Different factors are presented in individual cases, resulting in a fact-specific penalty analysis and conclusion. Here, the Court considered several factors in determining an appropriate penalty.

First, Respondent at no point took responsibility for providing a fraudulent document when trying to secure a benefit under the INA.[85] This factor does not augur in favor of a lower penalty.

During the pendency of Respondent's I-751 process, Respondent elected to provide more fraudulent documents (the 2019 Decree Nisi and Decree Absolute) for the purpose of supporting his inaccurate contentions about his marital status.[86] In addition to the two instances wherein Respondent provided fraudulent divorce documents to USCIS, Respondent also provided to this Court, fraudulently-produced evidence (Nigerian correspondence, which was disavowed by the Nigerian Court) in an effort to minimize liability these proceedings.[87] This factor does not augur in favor of a lower penalty.

The Court also considered the inherent value of the benefits sought by this Respondent. Respondent's application for work authorization is intrinsically connected to his (conditional)

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[84] The ALJ is not beholden to a DHS proposed penalty as a ceiling. *United States v. Edgemont Grp., LLC*, 17 OCAHO no. 1450b, 8 n.13 (2023) (CAHO Order) (internal citation and parenthetical omitted) ("[N]othing prohibits an ALJ from 'assessing' a higher penalty if warranted by the evidence in a particular case."); *e.g.*, *United States v. El Paso Paper Box, Inc.*, 17 OCAHO no. 1451b, 1 (2023) (Order Declining to Modify, Vacate, or Remand the Chief Administrative Law Judge's Order on Penalties) (when conducting a thorough review of the case, the CAHO did not disturb the ALJ's adjustment of the penalty to greater than that proposed by DHS).

[85] *See United States v. Dominguez*, 8 OCAHO no. 1000, 1, 2, 45 (1998) (CAHO declined to modify or vacate that ALJ's final order, with the final order attached) (ALJ considered the respondent's lack of remorse in determining § 1324c penalty).

[86] The Complainant did not amend the Complaint, and the Court will not, then, consider whether these additional documents might also meet the elements of a 274C violation. With that caveat in mind, these 2019 documents may still impact the penalty as they shed light on the Respondent's state of mind and level of contrition following his decision to provide fraudulent documents in 2014/2015.

[87] *See United States v. Villatoro-Guzman*, 4 OCAHO no. 652, 9 (1994) (ALJ characterized the respondent's procurement of counterfeit documents, and subsequent use of those documents, as a serious offense that interferes with the congressional scheme to deter illegal immigration).

Lawful Permanent Resident status (a status to which he was not entitled).[88] Separately, conditional permanent residency is a valuable status as it affords qualified individuals with a host of rights and benefits. Respondent filed a USCIS Form N-400, which may have been adjudicated favorably had the Complainant not discovered the fraudulent nature of the Nigerian divorce documents. The ultimate benefit he sought, the privilege of becoming a citizen of the United States, is, by many measures, the most valuable one in the Act. This factor does not augur in favor of a lower penalty.

Respondent raised nothing, by way of evidence or argument, relative to adjusting the penalty.[89] Even so, the Court conducted its own review of the record to determine whether an adjustment downward was appropriate. To that end, the Court considered that Respondent appears to have no criminal convictions, and this appears to be his first instance of engaging in document fraud. None of these additional factors significantly impact the assessment, but they are worth noting because they were considered. The Court also considered Respondent's level of education, but did not find that this factor warranted an adjustment downward of the penalty.[90]

Based on this rationale, the Court concludes a civil penalty of $1,800 is appropriate, and will order Respondent to cease and desist from further violations of 8 U.S.C. § 1324c(a)(2). *See* 8 U.S.C. § 1324c(d)(3).

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[88] *See United States v. Diaz-Rosas*, 4 OCAHO no. 702, 985, 993 (1994) (ALJ considered the respondent's use of a fraudulent document in order to gain employment); *see also United States v. Remileh*, 6 OCAHO no. 825, 24, 39 (1994) (noting that work authorization "is considered in Section 274A and should thus logically also be considered in Section 274C cases").

[89] For example, Respondent could have raised an inability to pay the proposed penalty. *See, e.g.*, *United States v. Velarde*, 14 OCAHO no. 1384, 5–6 (2020).

[90] *See Davila*, 7 OCAHO no. 936, at 29–30 (ALJ was concerned that because the respondent was a college-educated person who spoke and understood English, a "valid, work-authorized individual or citizen" could be denied a work opportunity).

V. CONCLUSIONS OF LAW

A. JUNE 2021 CHIEF ADMINISTRATIVE HEARING OFFICER (CAHO) ORDER

1. The CAHO noted Complainant must prove four elements to establish a violation of 8 U.S.C. § 1324c(a)(2). *United States v. Fasakin*, 14 OCAHO no. 1375b, 8 (2021) (citing 8 U.S.C. § 1324c(a)(2)).

2. The CAHO observed the ALJ had found that the first, third, and fourth elements of 8 U.S.C. § 1324c(a)(2) had been established. *United States v. Fasakin*, 14 OCAHO no. 1375b, 8 (2021) (internal citation omitted).

3. The CAHO identified: "There is no dispute over the first, third, and fourth elements of [§ 1324c(a)(2)]," but that "the principal issue under review" is "the second element, Respondent's knowledge." *United States v. Fasakin*, 14 OCAHO no. 1375b, 18 (2021) (internal citation omitted).

4. The CAHO remanded the matter for further record development related to element two. *United States v. Fasakin*, 14 OCAHO no. 1375b, 25 (2021).

5. The CAHO provides discussion and analysis pertaining to determining whether and how Complainant can meet its burden as to the element of "knowledge." *United States v. Fasakin*, 14 OCAHO no. 1375b, 18–20 (2021) (citations omitted).

6. Nothing in the CAHO Order indicated a need to disturb the ALJ's conclusions about the credibility of Complainant's witnesses; nothing that transpired at the hearing on remand causes the Court to disturb these conclusions now. *United States v. Fasakin*, 14 OCAHO no. 1375b, 13 (2021).

7. Nothing in the CAHO Order indicated a need to disturb the ALJ's conclusions about Respondent and Respondent's nephew's credibility; nothing that transpired at the hearing on remand causes the Court to disturb these conclusions now. *See United States v. Fasakin*, 14 OCAHO no. 1375b, 9, 13 (2021).

8. The CAHO stated further record development was required to properly assess the credibility of Respondent's Nigerian divorce attorney witness (Attorney Adebowale). *See United States v. Fasakin*, 14 OCAHO no. 1375b, 12–18 (2021).

9. The CAHO reviewed the ALJ's analysis of the text of the 2014 fraudulent Nigerian divorce documents. On remand, the Court concluded Respondent knew it was factually

impossible to possess valid divorce documents in 2014. Therefore, the Court is disinclined to analyze this issue as a matter of judicial efficiency (i.e., the conclusion that DHS met its burden would remain unchanged). *See United States v. Fasakin*, 14 OCAHO no. 1375a, 2 (2021).

B. BURDENS OF PROOF

1. "The burden of proof of establishing all four elements of a violation of 8 U.S.C. § 1324c(a)(2), including knowledge, always rests with the complainant. Once the complainant has introduced prima facie evidence of those elements, the burden of production shifts to the respondent to introduce evidence of its own to controvert the complainant's evidence." *United States v. Fasakin*, 14 OCAHO no. 1375b, 19 n.25 (2021).

C. PROBATIVE VALUE OF EVIDENCE

1. Evidence that proves whether Respondent knew he provided a false document in 2014/2015 to obtain an immigration benefit has probative value. *See generally United States v. Fasakin*, 14 OCAHO no. 1375b, 1 (2021); *United States v. R&SL, Inc.*, 13 OCAHO no. 1333b, 26 (2022) (citations omitted); *United States v. Rose Acre Farms, Inc.*, 12 OCAHO no. 1285, 7 (2016) (citing Fed. R. Evid. 401).

2. Only reliable evidence merits a probative value assessment. *See generally United States v. R&SL, Inc.*, 13 OCAHO no. 1333b, 24 (2022).

3. The Court is unable to assess the probative value of almost all Respondent's evidence because very little evidence presented by Respondent was reliable. *See generally United States v. R&SL, Inc.*, 13 OCAHO no. 1333b, 24 (2022).

D. COMPLAINANT'S DOCUMENTARY EVIDENCE

1. Complainant's documentary evidence does not raise concerns of reliability. *See United States v. Carpio-Lingan*, 6 OCAHO no. 914, 5 (1997) (citations omitted); *United States v. Psychosomatic Fitness LLC*, 14 OCAHO no. 1387a, 5–7 (2021); *United States v. Bhattacharya*, 14 OCAHO no. 1380a, 4–5 (2021); *Nickman v. Mesa Air Grp.*, 9 OCAHO no. 1113, 14 (2004).

2. The (signed and dated) written statements from the Immigration Officer, who was subject to cross-examination, are reliable and consistent with the record. *See Nickman v. Mesa Air Grp.*, 9 OCAHO no. 1113, 14 (2004).

3. The agency reports have sufficient indicia of reliability as they appear to be derived from government platforms and are on standardized forms. *United States v. Carpio-Lingan*, 6 OCAHO no. 914, 5 (1997) (citations omitted); *United States v. Psychosomatic Fitness LLC*, 14 OCAHO no. 1387a, 5–7 (2021); *United States v. Bhattacharya*, 14 OCAHO no. 1380a, 4–5 (2021).

4. The Overseas Verification Reports (OVRs) have high probative value. *See United States v. Fasakin*, 14 OCAHO no. 1375b, 14 (2021); *United States v. R&SL, Inc.*, 13 OCAHO no. 1333b, 24 (2022).

5. The written responses from the Nigerian Court, that were garnered from the OVRs, have high probative value; when read together, the responses support the factual assertion that Respondent never completed this divorce. *See United States v. Fasakin*, 14 OCAHO no. 1375b, 14 (2021); *United States v. R&SL, Inc.*, 13 OCAHO no. 1333b, 24 (2022).

E. COMPLAINANT'S TESTIMONIAL EVIDENCE

1. The Immigration Officer and Consular Officer testified credibly: they were consistent with information contained in the record; provided plausible accounts of what transpired, to the best of their recollection; and were not evasive. *United States v. Fasakin*, 14 OCAHO no. 1374b, 9, 13 (2021) (citations omitted); *see also Davis v. Alaska*, 415 U.S. 308, 318 (1974).

2. The Court gives full weight to the Immigration Officer and Consular Officer's testimony. *United States v. Fasakin*, 14 OCAHO no. 1374b, 13 (2021) (citations omitted); *see also Davis v. Alaska*, 415 U.S. 308, 318 (1974).

Consular Officer

6. The Consular Officer's testimony was highly probative; it allowed the Court to place particular facts of this case in perspective and draw well-reasoned conclusions about the state of Respondent's divorce proceedings (i.e., whether Respondent knew he was divorced, based on how his case proceeded at the Lagos Island Court). *See* 8 U.S.C. § 1324c(a)(2); *see United States v. Fasakin*, 14 OCAHO no. 1375b, 9, 13 (2021); *United States v. R&SL, Inc.*, 13 OCAHO no. 1333b, 24 (2022).

3. While Complainant did not seek qualification of the Consular Officer as an expert under the framework of Federal Rule of Evidence 702, this witness' specialized knowledge did assist the Court in understanding the evidence and determining facts at issue (i.e., was Respondent even divorced in Nigeria). Fed. R. Evid. 701, 702; *see United States v. Fasakin*, 14 OCAHO no. 1375b, 9, 13 (2021).

4. The Consular Officer also provided highly probative evidence about the fraudulent documents in this case. Fed. R. Evid. 701; *see Est. of Knoster v. Ford Motor Co.*, 200 F. App'x 106, 111 (3d Cir. 2006) (citation omitted); *see United States v. Fasakin*, 14 OCAHO no. 1375b, 9, 13 (2021).

Immigration Officer

5. Because the Immigration Officer is not an expert in Nigerian law, the Court will not give any weight to his legal assertions or conclusions on that subject. Fed. R. Evid. 702; *see Est. of Knoster v. Ford Motor Co.*, 200 F. App'x 106, 111 (3d Cir. 2006) (citation omitted); *In re Schaefer*, 331 F.R.D. 603, 609 (W.D. Pa. 2019); *Jasama v. Shell Oil Co.*, 412 F.3d 501, 513 (3d Cir. 2005) (citations omitted).

6. To the extent that the Immigration Officer provided expert witness testimony, it was minimal and of little probative value. Fed. R. Evid. 702; *see United States v. Fasakin*, 14 OCAHO no. 1375b, 9, 13 (2021).

7. The Immigration Officer provided highly probative testimony about events in this case, where he had personal knowledge based on his direct involvement. Fed. R. Evid. 701; *see United States v. Fasakin*, 14 OCAHO no. 1375b, 9, 13 (2021).

8. The Immigration Officer's testimony based on personal knowledge has some probative value in determining whether Respondent completed his divorce (based on the available Nigerian court records). Fed. R. Evid. 701; *see United States v. Fasakin*, 14 OCAHO no. 1375b, 9, 13 (2021).

F. RESPONDENT'S DOCUMENTARY EVIDENCE

1. As the 2019 Decree Nisi and Decree Absolute do not originate from the purported source (they are fraudulent documents), the contents of the document are not reliable. *See United States v. Carpio-Lingan*, 6 OCAHO no. 914, 5 (1997) (citations omitted).

2. The letters exchanged in June 2021 between Respondent's second Nigerian divorce attorney and the Nigerian Court (Exhibits R(II)-1 and R(II)-2) are not reliable; the Court letter was disavowed by the alleged author and has implausible contents. *See United States v. Carpio-Lingan*, 6 OCAHO no. 914, 5 (1997) (citations omitted).

3. The affidavit from Respondent's second Nigerian divorce attorney (Exhibit R(II)-3) is not reliable. *See United States v. Carpio-Lingan*, 6 OCAHO no. 914, 5 (1997) (citations omitted); *Nickman v. Mesa Air Grp.*, 9 OCAHO no. 1113, 14 (2004).

4. Absent reasons to the contrary, the Court can deem Exhibits R(II)-4 and R(II)-6 sufficiently reliable that they can be considered; however concerns about their authenticity do remain an open question. *See United States v. Carpio-Lingan*, 6 OCAHO no. 914, 5 (1997) (citations omitted); *see generally United States v. R&SL, Inc.*, 13 OCAHO no. 1333b, 24 (2022).

G. RESPONDENT'S TESTIMONIAL EVIDENCE

Respondent's Second Nigerian Divorce Attorney (Attorney Adebowale)

1. While the second Nigerian divorce attorney testified via WebEx, the Court was able to observe him and there were no technological issues which would have precluded him from understanding or hearing a question. *See United States v. Fasakin*, 14 OCAHO no. 1374b, 13–15 (2021) (citations omitted).

2. In assessing the second Nigerian divorce attorney's credibility, the Court did take into account his level of education and profession (i.e., he is a practicing attorney in Nigeria). *See United States v. Fasakin*, 14 OCAHO no. 1374b, 13 (2021) (citations omitted).

3. The Court now concludes the second Nigerian divorce attorney is not credible: he provided implausible and evasive testimony, and is the source of multiple fraudulent documents (including a letter to presumably impact the outcome of these proceedings). *See United States v. Fasakin*, 14 OCAHO no. 1374b, 13–15 (2021) (citations omitted).

4. The Court cannot rely on information or evidence that comes from a purveyor of fraudulent documents (i.e., the second Nigerian divorce attorney); this conclusion colors the analysis of all documents of which this witness is the source. *See Davis v. Alaska*, 415 U.S. 308, 318 (1974); *United States v. R&SL, Inc.*, 13 OCAHO no. 1333b, 24 (2022).

Nigerian Attorney (Attorney Ashiru)

4. There is no glaring reason to conclude this Nigerian attorney is not credible. *See United States v. Fasakin*, 14 OCAHO no. 1374b, 13–15 (2021) (citations omitted).

5. The information provided through this Nigerian attorney is of little utility to the issue of knowledge and has minimal probative value; rather at best it would be an attempt to bolster Attorney Adebowale's (unsalvageable) credibility. *See United States v. Fasakin*, 14 OCAHO no. 1374b, 13–15, 21 (2021) (citations omitted).

Respondent

6. Because Respondent did testify, the Court elects to analyze, once more, whether Respondent is credible. *See United States v. Fasakin*, 14 OCAHO no. 1374b, 12 (2021) (citations omitted).

7. The Court again concludes Respondent is not credible: he did not resolve any of the concerns raised in the first final order (the less than forthcoming answers about his Nigerian marriage/divorce at the consular interview, and the inconsistency in who sent him divorce documents). *See United States v. Fasakin*, 14 OCAHO no. 1374b, 16–18 (2021) (citations omitted).

8. Respondent's claims that he was able to make contact with his first Nigerian divorce attorney after his arrival in the United States, and that this attorney informed him the "case had been finalized," are implausible and inconsistent. *See United States v. Fasakin*, 14 OCAHO no. 1374b, 6–7 (2021) (citations omitted).

9. It seems more plausible that Respondent never interacted with his first Nigerian divorce attorney once Respondent left Nigeria. *See United States v. Fasakin*, 14 OCAHO no. 1374b, 6–7 (2021) (citations omitted).

10. Respondent was inconsistent about how the 2014 Decree Nisi and Decree Absolute were provided to Respondent's Nigerian wife; he was also inconsistent on this point relative to his sworn statement from the initial hearing. *See United States v. Fasakin*, 14 OCAHO no. 1374b, 17 (2021) (citations omitted).

H. KNOWLEDGE ELEMENT ANALYSIS

Respondent Was Not Divorced

1. Based on the new evidence from the State Department and the additional analysis pertaining to the 2019 Decree Nisi and Decree Absolute, Complainant demonstrated Respondent initiated divorce proceedings. *See United States v. Fasakin*, 14 OCAHO no. 1375b, 14 (2021) (citations omitted).

2. The record supports the conclusion Respondent did not complete his divorce. *See United States v. Fasakin*, 14 OCAHO no. 1375b, 14–15 (2021) (citations omitted).

Respondent Knew He Was Not Divorced

3. Respondent declined to provide his Nigerian divorce suit number at his consular interview, presumably because he understood that merely possessing a suit number is not the equivalent of being divorced. *See United States v. Fasakin*, 14 OCAHO no. 1375b, 16, 18–20 (2021) (citations omitted).

4. Respondent directly informed the United States Government he was married at the time of his visa application because he was, and he knew he was. *See* 8 U.S.C. § 1324c(a)(2); *United States v. Fasakin*, 14 OCAHO no. 1375b, 16 (2021) (citations omitted).

5. Respondent understood his marital status would be critical to an adjustment of status based on a "valid" marriage to a U.S. citizen; a process which he pursued in 2014-2015. *See* 8 U.S.C. § 1324c(a)(2).

6. This Respondent is savvy enough to understand that a person is still married until a divorce is final. *United States v. Fasakin*, 14 OCAHO no. 1375b, 5, 16 (2021) (citations omitted).

A Valid Decree Absolute For A Divorce Not Yet Final Is Factually Impossible

7. Respondent knew his divorce was not completed; or, subjectively believed his marital status (i.e. still married) had a high probability of existing, and deliberately avoided inquiry in the face of obvious circumstances. *See* 8 U.S.C. § 1324c(a)(2); *United States v. Fasakin*, 14 OCAHO no. 1375b, 20 (citations omitted).

8. By building a record that supports each of these propositions by preponderant evidence (Respondent is not divorced; he knew he was not divorced; and producing a "final" divorce decree is impossible for a yet to be completed divorce), Complainant has met its burden. *See United States v. Fasakin*, 14 OCAHO no. 1375b, 19 n.25 (citations omitted); *see also Zajradhara v. Ranni's Corp.*, 16 OCAHO no. 1426d, 6 n.9 (2023) (citation omitted).

Respondent Is Unable To Controvert Complainant's Evidence

9. On this record, Respondent failed to meet its burden of production, because implied within the burden of production is underlying principle that produced evidence must

be credible and reliable. *See United States v. Fasakin*, 14 OCAHO no. 1375b, 19 n.25 (2021) (citations omitted).

10. The additional Nigerian attorney witness's testimony did nothing to move the needle on the ultimate issue of knowledge. *See* 8 U.S.C. § 1324c(a)(2); *United States v. Fasakin*, 14 OCAHO no. 1375b, 20 (2021).

I. CONCLUSION AND PENALTY ASSESSMENT

Liability

1. Respondent, who knew he was not divorced, knowingly submitted a fraudulent Decree Absolute (a final divorce decree equivalent) to USCIS on November 4, 2014. He provided fraudulent documents for the purposes of adjusting his status to lawful permanent resident (a benefit under the Act). 8 U.S.C. § 1324c(a)(2).

2. The Court finds Respondent violated 8 U.S.C. § 1324c(a)(2) as outlined in the Complaint. 8 U.S.C. § 1324c(a)(2); *see also United States v. Fasakin*, 14 OCAHO no. 1375, 1 n.1 (2021).

Penalty Assessment

1. The Court declines to address Respondent's arguments on attorney's fees (5 U.S.C. § 504), but does note Complainant provided reliable and probative evidence to substantiate its allegation, as required by the APA. 5 U.S.C. § 556(d); *see* 28 C.F.R. § 68.52(e)(4).

2. The Court is left to craft an appropriate penalty and will do so based on statute, regulation, OCAHO precedent, and the record. U.S.C. § 1324c(3); 28 C.F.R. § 68.52(e)(1)(i); *United States v. Davila*, 7 OCAHO no. 936, 29 (1997) (collecting OCAHO cases); *see also* 8 C.F.R. § 270.3(b)(1)(ii)(A); *United States v. DeJesus Corrales-Hernandez*, 17 OCAHO no. 1454e, 4 (2023).

3. Pursuant to 28 C.F.R. § 68.52(e)(1)(i), if the violation occurred between March 27, 2008, and November 2, 2015, the minimum civil penalty would be $375, and the maximum civil penalty would be $3,200. *See also* 8 C.F.R. § 270.3(b)(1)(ii)(A); *United States v. DeJesus Corrales-Hernandez*, 17 OCAHO no. 1454e, 4 (2023).

4. OCAHO precedent also provides guidance on § 1324c penalty assessments. *See, e.g.*, *United States v. DeJesus Corrales-Hernandez*, 17 OCAHO no. 1454e, 1 (2023).

5. For a § 1324c penalty assessment, the Court employs "a judgmental approach under a reasonableness standard[.]" The Court balances factors and adjusts the proposed penalty accordingly. Different factors are presented in individual cases, resulting in a fact-specific penalty analysis and conclusion. *See United States v. Davila*, 7 OCAHO no. 936, 29 (1997).

6. The ALJ is not beholden to a DHS proposed penalty as a ceiling. *United States v. Edgemont Grp., LLC*, 17 OCAHO no. 1450b, 8 n.13 (2023) (CAHO Order); *see United States v. El Paso Paper Box, Inc.*, 17 OCAHO no. 1451b, 1 (2023) (Order Declining to Modify, Vacate, or Remand the Chief Administrative Law Judge's Order on Penalties).

7. Respondent at no point took responsibility for providing a fraudulent document when trying to secure a benefit under the INA—this factor does not augur in favor of a lower penalty. *See United States v. Dominguez*, 8 OCAHO no. 1000, 1, 2, 45 (1998) (CAHO Order).

8. The Court considered that Respondent also provided fraudulently produced evidence in an effort to minimize liability in these proceedings—this factor does not augur in favor of a lower penalty. *See United States v. Villatoro-Guzman*, 4 OCAHO no. 652, 9 (1994).

9. The Court also considered the inherent value of the benefits sought by this Respondent (i.e., conditional Lawful Permanent Residence and potential future U.S. citizenship) — this factor does not augur in favor of a lower penalty. *See United States v. Diaz-Rosas*, 4 OCAHO no. 702, 985, 993 (1994); *see also United States v. Remileh*, 6 OCAHO no. 825, 24, 39 (1994).

10. Respondent raised nothing, by way of evidence or argument, relative to adjusting the penalty. *See, e.g.*, *United States v. Velarde*, 14 OCAHO no. 1384, 5–6 (2020).

11. The Court conducted its own review of the record to determine whether a downward adjustment of penalty was appropriate. The Court considered: that Respondent appears to have no criminal convictions; this appears to be his first instance of engaging in document fraud; his level of education —these factors did not significantly impact the analysis. *See United States v. Davila*, 7 OCAHO no. 936, 29 –30 (1997).

The Court concludes a civil penalty of $1,800 is appropriate, and will order Respondent to cease and desist from further violations of 8 U.S.C. § 1324c(a)(2). *See* 8 U.S.C. § 1324c(d)(3).

SO ORDERED.

Dated and entered on July 6, 2023.

Honorable Andrea R. Carroll-Tipton
Administrative Law Judge

Appeal Information

This order shall become the final agency order unless modified, vacated, or remanded by the Chief Administrative Hearing Officer (CAHO) or the Attorney General.

Provisions governing administrative reviews by the CAHO are set forth at 8 U.S.C. § 1324c(d)(4) and 28 C.F.R. pt. 68. Note in particular that a request for administrative review must be filed with the CAHO within ten (10) days of the date of this order, pursuant to 28 C.F.R. § 68.54(a)(1) (2012).

Provisions governing the Attorney General's review of this order, or any CAHO order modifying or vacating this order, are set forth at 8 U.S.C. § 1324c(d)(4) and 28 C.F.R. pt. 68. Within thirty (30) days of the entry of a final order by the CAHO, or within sixty (60) days of the entry of an Administrative Law Judge's final order if the CAHO does not modify or vacate such order, the Attorney General may direct the CAHO to refer any final order to the Attorney General for review, pursuant to 28 C.F.R. § 68.55.

A petition to review the final agency order may be filed in the United States Court of Appeals for the appropriate circuit within forty-five (45) days after the date of the final agency order pursuant to 8 U.S.C. § 1324c(d)(5) and 28 C.F.R. § 68.56.