

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

September 24, 2020

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

ORDER ON SUMMARY DECISION

This case arises under the document fraud provisions of the Immigration and Nationality Act (INA), as amended by the Immigration Reform and Control Act of 1986, 8 U.S.C. § 1324c (2018). On November 4, 2019, the United States Department of Homeland Security, Immigration and Customs Enforcement (Complainant or the government) filed a complaint against Respondent, Samuel Tominiyi Fasakin (Respondent). The complaint reflects that on September 9, 2019, the government served a Notice of Intent to Fine Under Section 274C of the INA, and Respondent timely requested a hearing. Respondent filed an answer to the complaint on December 11, 2019.

Pending before the Court is a motion for dismissal filed by the Respondent on September 3, 2020, to which Complainant filed an opposition on September 9, 2020.

I. BACKGROUND

Complainant asserts in its complaint that Respondent, a native and citizen of Nigeria, used two counterfeit Nigerian divorce certificates for the purpose of obtaining the benefit of adjustment of status. Compl. at 2–3. The Complaint charges Respondent with two counts of violating § 274C(a)(2) of the INA which renders it unlawful to 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 requirement or obtain a benefit under the INA. Complainant seeks \$473.00 in penalties. Respondent does not dispute that he submitted Nigerian divorce certificates in support of his application for adjustment of status, but denies the allegation of fraud.

II. THE PARTIES' POSITIONS

A. Respondent's Motion

Respondent's motion consists of a series of factual statements by counsel detailing the process by which the Respondent applied for adjustment of status, the circumstances under which he obtained the Nigerian Divorce certificates, and concludes that the Complainant has not provided any evidence to demonstrate that the documents are forged, or that Complainant knew the documents were forged. Respondent did not submit any exhibits. Motion to Dismiss (Mot.).

B. Complainant's Response

Complainant responds that the motion should be denied because it is, in form, a motion for summary decision, and there are two genuine issues of material fact: whether the documents are forged and whether the Respondent knew they were forged. Complainant seeks a hearing on these two issues. Complainant's Opposition to Respondent's Motion to Dismiss (Op.).

III. LEGAL STANDARDS

A. Motion to Dismiss

"OCAHO's rules permit dismissal of a complaint for failure to state a claim upon which relief may be granted[.]" *United States v. Spectrum Tech. Staffing Servs., Inc.*, 12 OCAHO no. 1291, 8 (2016) (citations omitted); 28 C.F.R. § 68.10. Section 68.10 is modeled after Federal Rule of Civil Procedure 12(b)(6). *Id.*; see 28 C.F.R. § 68.1 ("The Federal Rules of Civil Procedure may be used as a general guideline" in OCAHO proceedings.). When considering a motion to dismiss, the Court must "liberally construe the complaint and view 'it in the light most favorable to the [complainant].'" *Id.* (quoting *Zarazinski v. Anglo Fabrics Co.*, 4 OCAHO no. 638, 428, 436 (1994)). OCAHO's rules of practice and procedure merely require the complaint to contain "[t]he alleged violations of law, with a clear and concise statement of facts for each violation alleged to have occurred." 28 C.F.R. § 68.7(b)(3).

Generally, when "considering a motion to dismiss, the [C]ourt must limit its analysis to the four corners of the complaint." *Jarvis v. AK Steel*, 7 OCAHO no. 930, 111, 113 (1997) (citations omitted).

B. Summary Decision

Under the OCAHO rules, the Administrative Law Judge (ALJ) "shall enter a summary decision for either party if the pleadings, affidavits, material obtained . . . show that there is no genuine

issue as to any material fact and that a party is entitled to summary decision.” 28 C.F.R. § 68.38(c).¹ Section 68.38(c) is similar to and based on Rule 56(c) of the Federal Rules of Civil Procedure, which provides for the entry of summary judgment in federal cases. Accordingly, OCAHO jurisprudence looks to federal case law interpreting that rule for guidance in determining when summary decision is appropriate. *See United States v. Candlelight Inn*, 4 OCAHO no. 611, 212, 222 (1994).

“An issue of fact is genuine only if it has a real basis in the record” and “[a] genuine issue of fact is material if, under the governing law, it might affect the outcome of the suit.” *Sepahpour v. Unisys, Inc.*, 3 OCAHO no. 500, 1012, 1014 (1993) (citing *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586–87 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)).² The party seeking summary decision assumes the initial burden of demonstrating the absence of a genuine issue of material fact. *United State v. Sihombing*, 7 OCAHO no. 944, 361, 363 (1997). In determining whether the moving party has met its burden of proof, all evidence and reasonable inferences are drawn in favor of the nonmoving party. *Id.* Once the moving party has met its burden, the opposing party must come forward with specific facts showing there is a genuine issue of material fact. *Id.*; *see* 28 C.F.R. § 68.38(b) (“a party opposing the motion may not rest upon the mere allegations or denials of such pleading . . . [s]uch response must set forth specific facts showing that there is a genuine issue for trial.”).

IV. DISCUSSION

In order to prove a violation of section 274C(a)(2) of the Act, 8 U.S.C. § 1324c(a)(2), complainant must demonstrate that: (1) the respondent used, attempted to use, possessed, obtained, accepted, or received or provided 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 satisfying any requirement of the INA. *United States v. Zapata-Cosio*, 5 OCAHO no. 822, 774, 782 (1995).

¹ *See* Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2016).

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>.

The Court finds that, to the extent Respondent's motion is a motion to dismiss, Complainant sufficiently pled a violation of section 274(a)(2) of the Act. Complaint alleged that Respondent knowingly used counterfeit Nigerian divorce certificates on November 4, 2014, and April 9, 2015, in order to obtain adjustment of status. This pleading satisfies the elements of a violation of section 274C(a)(2) of the Act.

To the extent the motion is a motion for summary decision, Respondent did not submit any evidence in support of the motion, but denied the allegations through counsel. Mot. Respondent submitted the divorce decree documents at issue in this case with its Answer.

In its opposition, Complainant submitted the divorce decrees, as well as a "Record of Action" (ROA) report and affidavit authored by Jonathan L. Casper, Immigration Officer with the United States Department of Homeland Security, United States Citizenship and Immigration Services, Fraud Detection and National Security, Fraud Division. Op. Tabs A-D. In the affidavit and ROA, Mr. Casper provides an analysis of the documents and identifies multiple areas of concern, concluding that a reasonable person would not believe the documents to be genuine. Op. Tabs C and D.

As an initial matter, given the lack of evidence, Respondent has not met his burden to demonstrate that there is no genuine issue of material fact. Further, the affidavit and ROA raise a genuine issue of material fact regarding whether the divorce decrees are fraudulent. Mr. Casper makes a number of observations about the face of the document, as well as draws upon his research into Nigerian divorce proceedings to draw other conclusions. Opp. Tab C and D. Without making any determination as to whether the Complainant met its burden to establish that the documents are forged, counterfeit, or falsely made, the affidavit and ROA are, at the least, sufficient to raise a genuine issue of material fact. As to the knowledge element, as noted by Complainant, the knowledge element is generally established through the drawing of factual inferences, and summary judgment is usually an inappropriate means of resolving such an issue. *United States v. Ortiz*, 6 OCAHO no. 889, 713, 718 (1996). The Court in *Ortiz* also noted that knowledge may be inferred when a party deliberately avoids or ignores evidence of unlawful circumstances. *Id.* at 719. Given the issues noted in Tabs C and D evidence, the evidence presented by Complainant raises a genuine issue of material fact regarding what knowledge the Respondent possessed. *See* Opp. Tab C and D.

As Respondent's motion does not support his argument with evidence that there is no genuine issue of material fact, and Complainant sufficiently pled the elements of a section 274C(a)(2) violation and produced evidence establishing that there are genuine issues of material fact, Respondent's motion is DENIED.

The Court VACATES the trial date currently set for October 13, 2020, due to a scheduling conflict. The Court will schedule a prehearing conference to select a new hearing date.

SO ORDERED.

Dated and entered on September 24, 2020.

Jean C. King
Chief Administrative Law Judge