

**Matter of Lopez v N.Y.C. Dept. of Health & Mental
Hygiene**

2012 NY Slip Op 30245(U)

January 31, 2012

Sup Ct, NY County

Docket Number: 105345/2011

Judge: Saliann Scarpulla

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SCANNED ON 2/2/2012
SUPREME COURT OF THE STATE OF NEW YORK – NEW YORK COUNTY

PRESENT: Saliann Scarpulla

PART 19

Index Number : 105345/2011
LOPEZ, ALFREDO
vs.
NYC DEPARMENT OF HEALTH
SEQUENCE NUMBER : 001
ARTICLE 78

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

This motion to/for _____

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause – Affidavits – Exhibits ...

Answering Affidavits – Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

FILED

FEB 02 2012

NEW YORK
COUNTY CLERK'S OFFICE

Dated: 1/31/12

Saliann Scarpulla
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

SUBMIT ORDER/ JUDG.

SETTLE ORDER/ JUDG.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: CIVIL TERM: PART 19

----- X
IN THE MATTER OF THE APPLICATION OF
ALFREDO LOPEZ,

Petitioner,

Index No.: 105345/2011

Submission Date: 11/30/2011

- against-

**DECISION, ORDER AND
JUDGMENT**

N.Y.C. DEPARTMENT OF HEALTH AND
MENTAL HYGIENE,

Respondent.

----- X

Petitioner *pro se*:
Alfredo Lopez
681 Courtlandt Avenue, Apt. 12F
Bronx, NY 10451

For Respondent:
Michael A. Cardozo, Corporation Counsel of the City of N.Y.
100 Church Street, Room 5-315
New York, NY 10007

FILED

FEB 02 2012

**NEW YORK
COUNTY CLERK'S OFFICE**

Papers considered in review of this petition:

Notice of Petition 1
Affidavit in Partial Opposition. 2

HON. SALIANN SCARPULLA, J.:

In this Article 78 proceeding, petitioner Alfredo Lopez ("Lopez") seeks to amend the records of the N.Y.C. Department of Health and Mental Hygiene in reference to his birth certificate.

Lopez was born in 1956. His birth certificate provided no first name, listed his last name as "Rosa," and provided no information about his father. His parents never corrected the errors. He was baptized as Alfredo Lopez and obtained a social security card and voter registration card under that name. Lopez sought assistance from New York State Assembly Member Carmen E. Arroyo to amend his birth certificate. Assembly Member Arroyo wrote a letter to the Department of Health in October 1998

requesting that Lopez's case be carefully reviewed and that the Department of Health grant him permission to amend his birth certificate. No response was received.

Lopez commenced this proceeding seeking to amend the following items on his birth certificate: Item 1, Full Name of Child, amended to read "Alfredo Lopez" instead of "Rosa;" Item 8, Father's Full Name, amended to read "Victor Lopez" instead of "BLANK;" Item 10, Father's Age at the Time of Birth, amended to read "21" instead of "BLANK;" and Item 11, Father's Birthplace, amended to read "Puerto Rico" instead of "BLANK." He argues that without a birth certificate reflecting his name, he is unable to purchase plane tickets to visit his relatives in Puerto Rico and will be unable to establish eligibility for governmental benefits once he reaches retirement age.

In support of his petition, Lopez submits, *inter alia*, (1) an affidavit; (2) a copy of his birth certificate; (3) a copy of his social security card; (4) an Acknowledgment of Paternity form signed by his mother and Victor Lopez; (5) a notarized letter from Victor Lopez acknowledging that he is Lopez's father; and (6) a notarized letter from Lopez's mother Carmen Maria Rosa acknowledging that she is Lopez's mother and that she "gave custody of Alfredo to his father and paternal grandfather when he was born."

In opposition to the petition, the N.Y.C. Department of Health and Mental Hygiene ("DOHMH") maintains that it opposes Lopez's petition only to the extent that he seeks to amend Items 8, 10, and 11 on his birth certificate. DOHMH argues that Lopez has failed to produce sufficient evidence to establish that an error was made with respect to the

father's information on his birth certificate in that (1) the Acknowledgment of Paternity Form was not certified or filed with DOHMH; (2) Acknowledgment of Paternity Forms are only appropriate for children under the age of 18 and Lopez was over 40 years old when the form was signed; (3) the affidavit of Lopez's mother provides that she gave custody of Lopez to his "father" but does not identify Victor Lopez as Lopez's father; and (4) the affidavit from Victor Lopez claiming paternity is insufficient to establish paternity.¹

Discussion

As the portion of Lopez's petition seeking to amend his birth certificate to reflect his name as "Alfredo Lopez" instead of "Blank Rosa" is unopposed, the Court grants that portion of his petition.

However, the Court finds that Lopez fails to meet the statutory requirements to amend a birth certificate with respect to Items 8, 10 and 11 on the birth certificate. New York City Health Code Section 207.01(c) provides that amendment would be warranted only if "the evidence submitted shows the true facts and that an error or omission was made at the time of preparing and filing of the certificate or confidential medical report of death, or that the name of a person named in a birth certificate has been changed pursuant to court order." Lopez fails to meet his burden of providing sufficient proof of "the true facts and that an error or omission was made at the time of preparing and filing of the

¹ According to DOHMH, Lopez stated in a phone conversation with DOHMH that Victor Lopez is now deceased.

certificate” with respect to the father’s information. As DOHMH properly notes, the Acknowledgment of Paternity Form was not filed with DOHMH and, in any event, an Acknowledgment of Paternity form is not proof of paternity, it is merely an acknowledgment of same. *See Matter of Malkiat G. v Department of Health Div. of Vital Record-Corrections*, 33 Misc. 3d 1206A (Sup. Ct. N.Y. Co., 2011). Lopez has not submitted other sufficient evidence to prove that Victor Lopez should be named as his father on his birth certificate. *See generally Johnson v. New York City Dep't of Health*, 257 A.D.2d 399 (1st Dept. 1999).

In accordance with the foregoing, it is hereby

ORDERED and ADJUDGED that the petition of Alfredo Lopez is granted only to the extent that the New York City Department of Health and Mental Hygiene is directed to issue him a new birth certificate in the name of “Alfredo Lopez” instead of “Blank Rosa” and the petition is otherwise denied and the proceeding is dismissed.

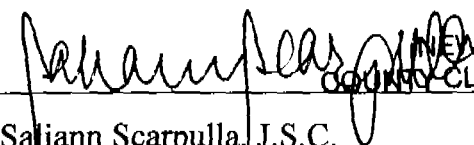
This constitutes the decision, order and judgment of the Court.

Dated: New York, New York
January 31, 2012

FILED

ENTER:

FEB 02 2012


NEW YORK
COUNTY CLERK'S OFFICE
Saliann Scarpulla, J.S.C.