

Pellegrino v CHOKSHI
2021 NY Slip Op 31105(U)
April 7, 2021
Supreme Court, New York County
Docket Number: 150120/2021
Judge: Eileen A. Rakower
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Hon. EILEEN A. RAKOWER

PART 6

Justice

In the Matter of the Application of

TARA S. PELLEGRINO,

Petitioner,

- against -

**INDEX NO. 150120/2021
MOTION DATE
MOTION SEQ. NO. 1
MOTION CAL. NO.**

DECISION AND ORDER

**DAVE A. CHOKSHI, MD, MSc
Commissioner, New York City
Department Of Health and Mental Hygiene,**

Respondent.

The following papers, numbered 1 to _____ were read on this motion for/to

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

Answer — Affidavits — Exhibits _____

Replying Affidavits

PAPERS NUMBERED

█
█
█
█

Cross-Motion: Yes X No

Petitioner Tara S. Pellegrino (“Petitioner”) seeks an Order pursuant to Article 78, compelling Respondent Dave A. Chokshi, MD, MSc, the Commissioner of the New York City Department of Health and Mental Hygiene (“DOHMH” or “Respondent”) to issue a long-form, certified signed and sealed copy of the birth certificates of Vincent Pellegrino, Linda J. Miller, Luigi Pellegrino a/k/a Louis Pellegrino, and Angelina Calapinto a/k/a Angelina Colapinto, to Petitioner. DOHMH opposes the application.

Background Facts/Parties’ Contentions

According to the Verified Petition, Petitioner states that she plans on applying to “the Republic of Italy for recognition of Italian origin and citizenship through the civil law doctrine of jure sanguinis (the “JS Procedure”) as the lineal descendant of her great-grandfather, Giuseppe Pellegrino, born in Venosa, Italy, through her father, Vincent Pellegrino, and grandfather, Luigi Pellegrino a/k/a Louis Pellegrino.” Petitioner asserts that to demonstrate “legal entitlement to Italian citizenship under the JS Procedure, Petitioner must submit to the Republic of Italy a long-form,

certified signed and sealed copy of the birth, marriage, and death certificates for each of her parents, grandparents, and great-grandparents.”

Petitioner asserts that she must present a certified copy of a long-form birth certificate for the following family members:

- a. Father: Vincent Pellegrino, born in Queens County, New York, on [redacted] 1946; and
- b. Mother: Linda J. Miller, born in Queens County, New York, on [redacted] 1952; and
- c. Grandfather, Luigi Pellegrino a/k/a Louis Pellegrino, born in Queens County, New York, on [redacted] 1923; and
- d. Grandmother, Angelina Calapinto a/k/a Angelina Colapinto, born in New York County, New York on [redacted] 1922.

In opposition, DOHMH argues that Petitioner did not provide any supporting documentation with her Verified Petition. DOHMH contends that prior to the commencement of the action, Petitioner provided it with copies of:

- a. Petitioner’s own birth certificate (a copy is annexed hereto as Exhibit “B.”);
- b. A document purported to be a copy of a Connecticut death certificate for Petitioner’s grandmother, “Angelina Pellegrino” (a copy is annexed hereto as Exhibit “C”);
- c. A “familysearch.org” screenshot, which appears to indicate that Petitioner’s grandfather, Louis Pellegrino, died in Nassau County, New York on November 11, 1991 (annexed hereto as Exhibit “D”);
- d. DOHMH Birth Certificate Applications¹ for Luigi Pellegrino a/k/a Louis Pellegrino and Angelina

Calapinto a/k/a Angelina Colapinto (collectively annexed hereto as Exhibit “E”); and

- e. A “Family Tree/Link to Decedent,” showing Petitioner’s relation to Luigi Pellegrino a/k/a Louis Pellegrino and Angelina Calapinto a/k/a Angelina Colapinto (annexed hereto as Exhibit “F”)

DOHMH opposes Petitioner’s request for long-form certified copies of the birth certificates of her parents Vincent Pellegrino and Linda J. Miller because they are still living. DOHMH asserts that “Petitioner is not an entitled party to the Certificates of Vincent Pellegrino and Linda Miller, and cannot usurp Vincent Pellegrino’s and Linda Miller’s authority over their own vital records and private information.” DOHMH cites to New York City Health Code, Title 24 RCNY § 3.25, which states that a person may obtain records from the Department of Health and Mental Hygiene “provided that individually identifiable information pertaining to another person is not disclosed.” DOHMH argues that “Petitioner is explicitly asking for the disclosure of information pertaining to two other, living, individuals.” DOHMH argues that “Petitioner also failed to name Vincent Pellegrino and Linda Miller as parties to this proceeding.” DOHMH cites to CPLR § 1001(a), which states that a person or entity must be joined as a party in an action if such person’s interest may be adversely affected by a potential judgment or if complete relief between the parties to the action cannot be accorded without such person. DOHMH asserts that “[p]ursuant to CPLR § 1001, Vincent Pellegrino and Linda Miller are necessary parties to any proceedings regarding their own Certificates.

Additionally, DOHMH opposes Petitioner’s request for long-form certified copies of the birth certificates of her grandparents Luigi Pellegrino a/k/a Louis Pellegrino and Angelina Calapinto a/k/a Angelina Colapinto. DOHMH cites to Administrative Code § 17-169, which states that “[i]f the person for whom the record of birth relates is deceased, the department may allow family members of the person to have access to a certified copy of the record of birth.” DOHMH further cites to Title 24 RCNY § 3.25(2), which states that a person seeking birth records of a deceased relative must submit “a legally appropriate written request or consent, and proof of identity satisfactory to the Department” before such records can be released. DOHMH argues that the Birth Certificate Applications Petitioner submitted for Luigi Pellegrino a/k/a Louis Pellegrino and Angelina Calapinto a/k/a Angelina Colapinto (Exhibit “E”) “were not notarized as required and therefore, Petitioner has failed to comply with the requirements of Title 24 RCNY § 3.25(2).” DOHMH further argues that even if the applications were notarized, “DOHMH would still

oppose Petitioner's request for her grandparents' birth certificates pursuant to Title 24 RCNY § 207.11(a)(2)."

DOHMH cites to Title 24 RCNY § 207.11(a)(2), which provides that a grandchild seeking a deceased grandparent's birth records must, inter alia, submit "proof of death" which "may include, but is not limited to, certified copies of death certificates and letters testamentary." DOHMH asserts that "Petitioner's request for the birth certificate of her grandfather Luigi Pellegrino a/k/a Louis Pellegrino, Petitioner has failed to provide sufficient 'proof of death,' as Petitioner's 'familysearch.org' screenshot is not a certified copy of a death certificate or letters testamentary." DOHMH asserts that Petitioner has provided insufficient "proof of death" for her grandmother Angelina Calapinto a/k/a Angelina Colapinto. DOHMH argues that Petitioner provided an "electronic copy of a Connecticut Certificate of Death for her grandmother (Exhibit 'B'), DOHMH has not received a 'certified copy' or original death certificate for Angelina Calapinto a/k/a Angelina Colapinto and therefore, Petitioner has failed to comply with the requirements of Title 24 RCNY § 207.11(a)(2)."

In reply, Petitioner argues that DOHMH's "objections to the production of birth certificates for Luigi Pellegrino a/k/a Louis Pellegrino and Angelina Calapinto a/k/a Angelina Colapinto are without legal basis." Petitioner asserts that "Luigi Pellegrino a/k/a Louis Pellegrino died on November 11, 1991, and Angelina Calapinto a/k/a Angelina Colapinto died on May 24, 2015." Petitioner contends that she has provided DOHMH with proof of Luigi Pellegrino a/k/a Louis Pellegrino and Angelina Calapinto a/k/a Angelina Colapinto's death, as well as a sworn family tree. Petitioner asserts that she "is unable to produce a certified copy of the death certificate of Luigi Pellegrino a/k/a Louis Pellegrino at this time, as Petitioner is caught in a classic 'Catch 22' – Petitioner needs the birth certificate to prove lineage in order to obtain the death certificate (as Mr. Pellegrino passed away outside of New York City), and [DOHMH] is requiring a death certificate in order to produce the birth certificate." Petitioner argues that she has provided "sufficient documentary evidence and a sworn affirmation to confirm that Luigi Pellegrino a/k/a Louis Pellegrino died thirty years ago." Petitioner contends that "[t]he undersigned attended his funeral, and reaffirms that he has, in fact, passed on. Petitioner argues that DOHMH has stated that "New York City Health Code, Title 24 RCNY § 207.11(a)(2) provides that sufficient proof of death may take many forms, and is not limited solely to certified copies of a death certificate and/or letters testamentary. Petitioner argues that she "is not required to produce notarized applications until such time as Petitioner actually applies to the Department of Health for issuance of the certificates."

Moreover, Petitioner argues that DOHMH's "objections to the production of birth certificates for Vincent Pellegrino and Linda Miller are similarly without merit." Petitioner cites to Administrative Code § 17-169 provides that a certified long-form birth certificate may be issued either "upon order of a court of competent jurisdiction" or "upon a specific request therefor by the person" listed on the birth certificate. Petitioner cites to N.Y. Comp. Codes Rules & Regs. Title 10, Subchapter A, Section 35.2(b), which provides that "[a] certification of birth shall be issued when required for a proper purpose". Petitioner further cites to New York City Health Code, Title 24 RCNY § 207.11, which also provides that vital records may be inspected or copied upon a showing of a proper purpose. Petitioner argues that she "has established by way of sworn affirmation that the documents will be used for a proper purpose (application for dual citizenship) and for no other purpose."

Petitioner argues that "Vincent Pellegrino and Linda Miller are not indispensable parties to this litigation." Petitioner asserts that "their consent is not required under New York law in order to release the birth certificates." Petitioner argues that "[t]he issuance of the birth certificates to Petitioner will not create, impair, or alter any rights of her parents." Petitioner asserts that DOHMH fails to identify "individually identifiable information" that must be protected from the release of the documents to Petitioner. Petitioner contends that she "has access to the information contained therein (including their dates/places of birth and their parents' information) by way of her own birth certificate and other genealogical documents compiled by Petitioner." Petitioner contends that should the Court determine that Vincent Pellegrino and/or Linda Miller are interested parties, Petitioner requests leave to join the parties as Respondents.

Legal Standards

PHL § 4173(2) states:

A certified copy or certified transcript of a birth record shall be issued only upon order of a court of competent jurisdiction or upon a specific request therefor by the person, if eighteen years of age or more, or by a parent or other lawful representative of the person to whom the record of birth relates including an authorized representative of the office of children and family services or a local social services district if the person is in the care and custody or custody and guardianship of such entity.

The New York City Administrative Code § 17-169 provides as follows:

a. Upon request the department shall issue a certified copy of the birth record or a certification of birth under the following conditions:

1. A certified copy of the record of birth shall be issued only upon order of a court of competent jurisdiction or, if the person for whom the record of birth relates is still living, upon a specific request therefor by the person, if eighteen years of age or more, or by a parent or to the legal representative of the person to whom the record of birth relates or by an attorney of law authorized in writing by the person if of the age of eighteen years or over to whom the record of birth relates. If the person for whom the record of birth relates is deceased, the department may allow family members of that person to have access to a certified copy of the record of birth. The department may issue a certified copy of a birth record of any person for official use upon the request of a department, agency, or officer of any state government or subdivision thereof or the United States government.

New York City Health Code, Title 24 Rules of the City of New York (“RCNY”) § 3.25 relates to the inspection, or obtaining of, *inter alia*, birth certificates and states in relevant part:

(2) A person, upon submission of a legally appropriate written request or consent, and proof of identity satisfactory to the Department if deemed necessary by the Department, may inspect, or obtain a copy of, or authorize his or her attorney or representative to inspect or obtain a copy of a file, record, report, proceeding of the Department or any other document, whether oral, written, electronic, visual or in any other form which contains individually identifiable information pertaining to such person; provided that individually identifiable information pertaining to another person is not disclosed.

Furthermore, New York City Health Code, Title 24 RCNY § 207.11 further provides for the inspection of vital records and states in relevant part:

(a) ... Requests ... for any individually identifiable information contained in the Department's vital records maintained pursuant to this Title, or for verifications thereof, shall specify the official use to which the requested information will be put and why the information is necessary for a proper purpose. The request may be granted only if the Commissioner or the Commissioner's designee agree that the requested information is necessary for a proper purpose. Inspection of any vital records or data for the collection of information for sale or release to the public, or for other speculative purposes shall not be deemed a proper purpose

New York City Health Code, Title 24 RCNY § 207.11(a)(2) states that certain individuals, including grandchildren, may apply for a relative's birth certificate upon submission of proof his or her relative's death, stating:

A request for a certification of birth made by the following persons must be accompanied by proof that the individual named on such certification of birth is deceased: spouse, domestic partner, parent of a child over the age of 18, child, sibling, niece, nephew, aunt, uncle, grandchild, great grandchild, grandniece, or grandnephew. Proof of death for this purpose may include, but is not limited to, certified copies of death certificates and letters testamentary.

Discussion

Regarding Petitioner's request for the long-form certified copies of the birth certificates of her grandparents Luigi Pellegrino a/k/a Louis Pellegrino and Angelina Calapinto a/k/a Angelina Colapinto, is denied. DOHMH avers that Petitioner submitted Birth Certificate Applications for Luigi Pellegrino a/k/a Louis Pellegrino and Angelina Calapinto a/k/a Angelina Colapinto, which were not notarized. DOHMH determined that Petitioner failed to comply with the requirements of Title 24 RCNY § 3.25(2). Furthermore, DOHMH state that Petitioner's request also fails to comply with Title 24 RCNY § 207.11(a)(2). DOHMH has determined "that [with respect to] Petitioner's request for the birth certificate of her grandfather Luigi Pellegrino a/k/a Louis

Pellegrino, Petitioner has failed to provide sufficient ‘proof of death.’ Petitioner provided DOHMH with a ‘familysearch.org’ screenshot. DOHMH opposes Petitioner’s request for the birth certificate of her grandmother because Petitioner failed to provide sufficient “proof of death.” Petitioner provided DOHMG with an electronic copy of a Connecticut Certificate of Death for her grandmother, however; DOHMH states “that it has not received a ‘certified copy’ or original death certificate for Angelina Calapinto a/k/a Angelina Colapinto and therefore, Petitioner has failed to comply with the requirements of Title 24 RCNY § 207.11(a)(2).”

Petitioner’s request for the long-form certified copies of the birth certificates of her parents Vincent Pellegrino, Linda J. Miller is also denied. DOHMH determined that “Petitioner is not an entitled party to the Certificates of Vincent Pellegrino and Linda Miller, and cannot usurp Vincent Pellegrino’s and Linda Miller’s authority over their own vital records and private information.” Pursuant to New York City Health Code, Title 24 RCNY § 3.25, a person may obtain records from the Department of Health and Mental Hygiene “provided that individually identifiable information pertaining to another person is not disclosed.” Therefore, the Petition is denied.

Wherefore it is hereby,

ORDERED that the Petition is denied; and it is further

ORDERED that the Petition is dismissed and the Clerk is directed to enter judgment accordingly.

This constitutes the decision and order of the court. All other relief requested is denied.

Dated: April 7, 2021

ENTER: 
J.S.C.

HON. EILEEN A. RAKOWER

Check one: X FINAL DISPOSITION NON-FINAL DISPOSITION