

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

D56648  
L/htr

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Submitted - June 14, 2018

REINALDO E. RIVERA, J.P.  
CHERYL E. CHAMBERS  
BETSY BARROS  
VALERIE BRATHWAITE NELSON, JJ.

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2018-01872

DECISION & ORDER

In the Matter of Noely Diaz, appellant, v Gus  
Rodriguez, respondent.

(Docket No. O-3347-17)

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Larry S. Bachner, New York, NY, for appellant.

Ruiz Law Group, P.C., Jackson Heights, NY (Frances Ruiz of counsel), for  
respondent.

In a proceeding pursuant to Family Court Act article 8, the petitioner appeals from  
an amended order of the Family Court, Queens County (Marilyn L. Zarrello, Ct. Atty. Ref.), dated  
January 17, 2018. The amended order, after a hearing, denied the family offense petition and  
dismissed the proceeding.

ORDERED that the amended order is affirmed, without costs or disbursements.

The petitioner filed a family offense petition alleging, inter alia, that her uncle, the  
respondent, had committed the family offenses of harassment in the second degree, menacing in the  
third degree, and disorderly conduct. After a hearing, the Family Court denied the petition and  
dismissed the proceeding. The petitioner appeals.


The allegations in a family offense proceeding must be “supported by a fair  
preponderance of the evidence” (Family Ct Act § 832; *see Matter of Tulshi v Tulshi*, 118 AD3d 716;  
*Matter of Jarrett v Jarrett*, 102 AD3d 695; *Matter of Scanziani v Hairston*, 100 AD3d 1007). The  
determination of whether a family offense was committed is a factual issue to be resolved by the  
Family Court, and that court’s findings regarding the credibility of witnesses are entitled to great  
weight on appeal unless clearly unsupported by the record (*see Matter of Tulshi v Tulshi*, 118 AD3d

at 716; *Matter of Pearlman v Pearlman*, 78 AD3d 711, 712; *Matter of Gray v Gray*, 55 AD3d 909).

The Family Court's determination that the petitioner failed to establish, by a fair preponderance of the evidence, that the respondent committed the family offenses alleged in the petition hinged on issues of credibility and is supported by the record (*see Matter of Giresi-Palazzolo v Palazzolo*, 127 AD3d 752). Accordingly, we find no basis to disturb the court's determination.

RIVERA, J.P., CHAMBERS, BARROS and BRATHWAITE NELSON, JJ., concur.

ENTER:

  
Aprilanne Agostino  
Clerk of the Court