

**Matter of Gentile v New York City Dept. of Health
Mental Hygiene**

2013 NY Slip Op 30441(U)

March 1, 2013

Supreme Court, New York County

Docket Number: 104473/12

Judge: Cynthia S. Kern

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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: _____
Justice

PART _____

Index Number : 104473/2012
GENTILE, GLENN
vs.
NYC DEPARTMENT OF HEALTH
SEQUENCE NUMBER : 001
OTHER RELIEFS

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

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

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). _____

Answering Affidavits — Exhibits _____ | No(s). _____

Replying Affidavits _____ | No(s). _____

Upon the foregoing papers, it is ordered that this motion is

is decided in accordance with the annexed decision.

UNFILED JUDGMENT

This judgment has not been entered by the County Clerk and notice of entry cannot be served hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).

RECEIVED

MAR 05 2013

CLERK OF THE COURT

CR

Dated: 3/1/13

_____, J.S.C.

1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 55

-----X

In the Matter of the Application of

GLENN GENTILE,

Petitioner,

Index No. 104473/12

For leave to change, amend, or correct the records of
the Bureau of Vital Statistics, N.Y.C. Dept. of Health
and Mental Hygiene

ORDER/JUDGMENT

UNFILED JUDGMENT

This judgment has not been entered by the County Clerk
and notice of entry cannot be served based hereon. To
obtain entry, counsel or authorized representative must
appear in person at the Judgment Clerk's Desk (Room

-against-

NEW YORK CITY DEPARTMENT OF HEALTH AND
MENTAL HYGIENE,

Respondent.

-----X

HON. CYNTHIA S. KERN, J.S.C.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion
for : _____

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	<u>1</u>
Answering Affidavits.....	<u>2</u>
Replying Affidavits.....	<u>3</u>
Exhibits.....	<u>4</u>

Petitioner Glenn Gentile brings the instant petition to amend his Certificate of Birth (the
"Certificate"). Respondent New York City Department of Health and Mental Hygiene
("DOHMH") opposes the petition on the ground that there is insufficient evidence to amend the
birth certificate. For the reasons set forth below, petitioner's petition is granted in part and
denied in part.

Petitioner brings the instant petition to amend the Certificate as follows: (1) Item Number
1 should read "Glenn" instead of being left blank; (2) Item Number 8 should read "Ignazio"

* 3]

instead of "Philip"; and (3) Item Number 3 should read "Filipina Corso" instead of "Fannie Bruzinskas." In support of his petition to amend the Certificate, petitioner provides (1) the Certificate he seeks to amend; (2) a letter from respondent denying petitioner's request for amendment; (3) an immunization record, dated March 18, 1964, for Glenn Gentile; (4) a Social Security Card for Glenn Gentile; (5) a Baptismal Certificate for Glenn Gentile, listing his parents as Ignazio Gentile and Fannie Corso, dated April 9, 1964; (6) a Certificate of Birth, Document No. 28597 issued to Fillippa-Helen Corso, born August 18, 1928; (7) a Certificate of Birth, Document No. 156-81-852336 issued to Ignazio Gentile, born August 13, 1925; (8) a Certificate of Marriage Registration for Glenn Gentile and Dawn Lee Weiner, dated March 23, 2003; (9) a High School Equivalency Diploma for Glenn Gentile, dated November 2003; (10) an insurance policy for Glenn Gentile payable to Filipina and Ignazio; and (11) a Driver License issued to Glenn Gentile.

The Rules of the City of New York provide that "[n]o application [to amend a birth certificate] shall be approved unless the Commissioner or [his] designee is satisfied that 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..." 24 RCNY § 207.01(c). In the instant action, petitioner's petition is granted in part and denied in part. As an initial matter, that portion of petitioner's petition which seeks to amend Item 1 to read "Glenn" instead of a blank space is granted as this court finds that as it is clear that petitioner is the "Gentile" to whom the original certificate was issued. Petitioner provided his Social Security card and his Driver License to show that his name is, in fact, "Glenn Gentile." Petitioner also provided his immunization record, Baptismal Certificate, Certificate of Marriage Registration, High School Equivalency Diploma and childhood insurance policy, all listing his full name as "Glenn Gentile."

However, that portion of petitioner's petition which seeks to amend Item 8 to read "Ignazio Gentile" instead of "Philip Gentile" is denied. Petitioner has not offered any evidence or explanation as to why his father's name was listed as "Philip" instead of "Ignazio" on the Certificate. Petitioner provides a Certificate of Birth issued to a "Ignazio Gentile" who he claims is his father. Item 4a. of this Certificate of Birth lists "Ignazio Gentile's" date of birth as August 13, 1925, making his age at the time of petitioner's birth 38 years old. This information is also supported by the insurance policy for Glenn Gentile provided by petitioner, which lists Ignazio Gentile's age as 42 years old three years after petitioner's birth. However, Item 9 of the Certificate lists the father's age in February 1965 as 27 years old. Further, Item 5a. of the Certificate of Birth issued to "Ignazio Gentile" lists his place of birth as Brooklyn, New York but Item 10 of the Certificate lists the father's place of birth as Italy. Petitioner has offered no explanation for these discrepancies and thus, it is not clear based on the evidence provided that Ignazio Gentile is actually petitioner's father.

Finally, that portion of petitioner's petition which seeks to amend Item 12 to read "Filipina Corso" instead of "Fannie Bruzinkas" is denied. Petitioner has not offered any evidence or explanation as to why his mother's last name is listed as "Bruzinkas" rather than "Corso" on the Certificate. Further, petitioner provides a Certificate of Birth issued to "Fillippa-Helen Corso" who he claims is his mother but does not explain why he seeks to amend his Certificate to read "Filipa Corso." Moreover, Item 13 of the Certificate lists the mother's age as 21 years old at the time of petitioner's birth. However, the Certificate of Birth provided for "Fillippa-Helen Corso" shows that she was born on August 18, 1928, which would make her 36 years old at the time of petitioner's birth. Additionally, Item 14 of the Certificate lists the mother's place of birth as Lithuania. However, the Certificate of Birth for "Fillipa-Helen Corso"

