

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

2013 NY Slip Op 32131(U)

September 10, 2013

Supreme Court, New York County

Docket Number: 100881/13

Judge: Cynthia Kern

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

Index Number : 100881/2013

MUHAMMAD, ASMA

vs

NYC DEPARTMENT OF HEALTH

Sequence Number : 001

OTHER RELIEFS

PART _____

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.

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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 141B).

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

Dated: 9/10/13

CR, 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

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

-----x

In the Matter of the Application of

ASMA MUHAMMAD,

Petitioner,

Index No. 100881/13

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

-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 Asma Muhammad brings the instant petition to amend her 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 support the requested amendment. For the reasons set forth below, the petition is denied.

Petitioner brings the instant petition to amend the Certificate so that Item 8a, "Father's Full Name" should read "Dwight York" instead of "Omar Muhammad" and Item 8c, "Father's

Birthplace” should read “Boston, Massachusetts” instead of “Brooklyn, New York.” Along with her petition, petitioner submits a signed and notarized statement asserting that she is the daughter of Dwight York, a “public figure,” who has allegedly used several aliases throughout his life and is currently incarcerated in a federal prison. The statement further claims that petitioner’s father’s legal birth name was “Dwight York,” that “his legal name is currently Malachi York” and that her mother listed his name on the Certificate as “Omar Muhammad” because that was the name he was using at the time of her birth. Petitioner asserts that an amendment to the Certificate is necessary because she is unable to visit or correspond with her father in prison without such an amendment.

In support of her petition to amend the Certificate, petitioner provides (1) the Certificate she seeks to amend; (2) a letter from respondent denying petitioner’s request to amend the Certificate along with the relevant Birth Certificate Correction Application Form; (3) an “Acknowledgment of Paternity” allegedly signed by “Malachi Z. York” on December 8, 2003 and Marie Tinsley; (4) petitioner’s United States Passport, social security card and driver’s licenses from the states of Florida and Georgia; (5) petitioner’s marriage certificate; (6) petitioner’s application to respondent for a copy of the Certificate; (7) a copy of a Commonwealth of Massachusetts Certificate of Birth for a child with the last name of “York,” born June 26, 1945; (8) documents showing that petitioner has had correspondence sent to “Dwight York” returned to her by the Federal Bureau of Prisons; (9) a letter from “Dr. Malachi Z. York-El” to his “beloved daughter”; (10) a photograph dated July 10, 2010 from “Dad” to “Asma”; (11) a photograph dated “1989” and signed by “Dr. York”; (12) “Inmate Locator” information for Dwight D. York from the website of the Federal Bureau of Prisons; and (13)

documents appearing to show that petitioner searched several databases for the “Omar Muhammad” born in Brooklyn, New York in 1948 listed as her father on the Certificate.

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 to amend the Certificate is denied. Petitioner has not offered any evidence to demonstrate that the Certificate should be corrected to read Father’s Name as “Dwight York” as petitioner has provided no evidence to establish that that is her father’s actual name. Additionally, petitioner has failed to provide any evidence to demonstrate that the Certificate should be corrected to read Father’s Birthplace as “Boston, Massachusetts.” Furthermore, petitioner has offered no evidence to establish that she is the daughter of “Dwight York” other than her assertion that Omar Muhammad, her father’s name on the Certificate, was her father’s name at the time of her birth. The Massachusetts Certificate of Birth of a person named “York,” born June 26, 1945, does not list a first name and does not in any way show that this person is petitioner’s father or is the same person as Omar Muhammad.

It is hereby

ORDERED that petitioner’s petition to amend the Certificate of Birth is denied without prejudice with leave to renew upon providing this court with DNA proof that Omar Muhammad is indeed petitioner’s father, a certified copy of Dwight York’s certificate of birth and an affidavit from petitioner’s father and/or mother explaining the circumstances surrounding the use of the name “Omar Muhammad” on the Certificate and attesting to the truth of the facts alleged in the

