

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

2024 NY Slip Op 33093(U)

September 3, 2024

Supreme Court, New York County

Docket Number: Index No. 160787/2023

Judge: Shahabuddeen Abid Ally

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. SHAHABUDDEEN ABID ALLY
Justice

PART 16TR

In the Matter of the Application of

JULIE BRUNO,

Petitioner,

for leave to correct the records of the Bureau of Vital
Statistics, New York City Department of Health and Mental
Hygiene,

-against-

NEW YORK CITY DEPARTMENT OF HEALTH AND
MENTAL HYGIENE,

Respondent.

INDEX NO. 160787/2023

MOTION DATE 1/8/2024

MOTION SEQ. NO. 001

DECISION & ORDER

The following e-filed documents, listed by NYSCEF document number, were read on this motion (Seq. No. 1) to/for **ARTICLE 78 (BODY OR OFFICER)**: 1-13, 16-21

In this Article 78 proceeding petitioner JULIE BRUNO ("Bruno") seeks an order compelling respondent NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE (the "Health Department") to amend the birth certificate of her grandmother, Francia A. Luisa a/k/a Frances Luisa ("Frances"), to allegedly correct the name and birthdate of Frances's father, changing his name from "Matau A. Luisa" to "Matteo Aloise," and changing his age from 37 or 39 to 38.

The Health Department opposes the petition on multiple grounds pursuant to New York City Health Code § 207.01, which governs the amendment of birth certificates in New York City. Section 207.01 provides, in relevant part:

- (a) Application for amendment of a birth certificate may be made only by the person whose birth certificate is to be corrected if such person is 18 years of age or over, or by the parents or surviving parent of a child that is deceased, [or] by the legal

guardian of the person whose birth certificate is to be corrected

- (b) Every application shall be accompanied by supporting documentary evidence. . . .
- (c) No application shall be approved unless the Commissioner or the Commissioner's 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 . . . or that the name of a person named in a birth certificate has been changed pursuant to court order.

24 RCNY § 207.01(a)-(c). The Health Department argues that Bruno is not a person authorized under the governing regulation to request an amendment of Frances's birth certificate, and that Bruno, in any event, has failed to provide sufficient evidence to support the requested amendments.

Here, Bruno is neither Frances, whose birth certificate is to be amended, nor her parent. Nor has Bruno demonstrated that she is Frances's legal guardian. Thus, under the plain language of § 207.01(a), Bruno has no standing to seek an amendment to Frances's birth certificate. *See Spiezia v. N.Y.C. Dep't of Health & Mental Hygiene*, No. 155196/22, 2022 WL 2967867, at *1 (N.Y. Sup. Ct. N.Y. Cty. July 26, 2022) ("The language of the statute cited above [24 RCNY § 207.01] does not contemplate that a grandchild could change his grandparents' birth certificates and petitioner did not cite any binding caselaw that gives petitioner the power to make those changes."). Notably, in her reply, Bruno does not even attempt to address the Health Department's argument that Bruno is not authorized under the regulations to seek amendment of her grandmother's birth certificate or to offer any binding caselaw demonstrating that she has such authority or standing.

In *Spiezia*, a proceeding involving facts very similar to those involved here, the Honorable Arlene Bluth, J.S.C., explained the concerns that could arise from allowing the kind of changes to an ancestor's birth certificate that Bruno seeks via her petition:

The requested changes here raise numerous questions about the effects these changes could have. To grant the changes here would affect marriage certificates, birth certificates of the grandparents' children and death certificates that might mention these ancestors. If the Court were to change the birth certificate of petitioner's grandfather, then, presumably, every birth, marriage and death certificate for every one of his grandfather's children would have to be changed. Otherwise, all of those

records would contain contradictory information. The Court declines to create such chaos.

Id. The Court agrees with Justice Bluth's reasoning in *Spiezia* and declines to create the potential chaos that could result from finding that Bruno has standing to seek to amend Frances's birth certificate.

Further, Bruno's petition must be denied for another, independent reason. "Article 78 relief in the form of mandamus to compel may be granted only where a petitioner establishes a clear legal right' to the relief requested." *Council of City of N.Y. v. Bloomberg*, 6 N.Y.3d 380, 388 (2006); *N.Y.C. Civil Liberties Union v. State of N.Y.*, 4 N.Y.3d 175, 184 (2005) ("Mandamus is available . . . only to enforce a clear legal right where the public official has failed to perform a duty enjoined by law."). In addition, "there must exist a corresponding nondiscretionary duty on the part of the administrative agency to grant that relief." *Scherbyn v. Wayne-Finger Lakes Bd. of Co-op. Educ. Servs.*, 77 N.Y.2d 753, 757 (1991). "[M]andamus does not lie to enforce the performance of a duty that is discretionary, as opposed to ministerial." *N.Y.C. Civil Liberties Union*, 4 N.Y.3d at 184. "A discretionary action 'involve[s] the exercise of reasoned judgment which could typically produce different acceptable results whereas a ministerial act envisions direct adherence to a governing rule or standard with a compulsory result.'" *Id.* (quoting *Tango v. Tulevech*, 61 N.Y.2d 34, 41 (1983)).

"Review of the governing regulation indicates that the granting of an application to amend a birth certificate requires some measure of discretion." *Estate of Abraham Rombom v. N.Y.C. Dep't of Health & Mental Hygiene*, No. 161076/20, 2021 WL 2141355, at *2 (N.Y. Sup. Ct. N.Y. Cty. May 25, 2021) (internal quotation marks and citation omitted). Here, the Health Department, in the exercise of its discretion, states that Bruno has failed to provide sufficient documentation connecting the individual identified as "Matteo Aloise" with individual identified as "Matau A. Luisa" on Frances's birth certificate. The Court cannot find that the Health Department's reasons are arbitrary or capricious.

Accordingly, it is hereby:

ORDERED and ADJUDGED that the Verified Petition and Notice of Petition (Seq. No. 1) are **DENIED**, and this proceeding is **DISMISSED**; and it is further

ORDERED that the Clerk shall mark Motion Sequence No. 1 decided in all court records;
and it is further

ORDERED that the Clerk shall mark this proceeding disposed in all court records.

This constitutes the order of the Court.


SHAHABUDDEEN ABID ALLY, A.J.S.C.

September 3, 2024

DATE

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
APPLICATION:	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/> DENIED	<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
				<input type="checkbox"/> REFERENCE