

CIVIL COURT OF THE CITY OF NEW YORK — NEW YORK COUNTY

PRESENT:

HON. PETER H. MOULTON

PART 61

Civil Court Judge

In the Matter of the Application of

L [REDACTED] V [REDACTED]

Index Number NC 2579/12

For Leave to Assume the name of

C [REDACTED] V [REDACTED]

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

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	_____
Order to Show Cause and Affidavits	_____
Answering Affidavits.....	_____
Replying Affidavits.....	_____
Exhibits.....	_____
Other.....	_____

Petitioner seeks to change her name without having to document her immigration status.

Petitioner was born in the town of Iguala de la Independencia, which is located in Guerrero State in Mexico. Though her birth certificate reflects that she was born a biological male, she identifies as a woman. Petitioner seeks through this name change petition to adopt a name that is consistent with her identification as a woman.

The petition sets forth all the information required by Civil Rights Law § 61. It provides the given name, date of birth, place of birth, and residence of the petitioner. It sets forth the name petitioner wishes to assume. The petitioner swears that she has not been convicted of a crime or adjudicated a bankrupt, that there are no liens or judgments against her, and that there are no actions or proceedings pending in which she is a party. These statutory criteria are designed to ensure that a name change petitioner does not seek to perpetrate a fraud or interfere with the rights of others. (See Matter of Winn-Ritzenberg, 26 Misc3d 1.)

The Civil Rights Law states only that a petitioner must state her “residence.” In most legal contexts, residence is a less specific designation than “domicile” or “nationality.” (E.g. Antone v General Motors Corp., 64 NY2d 20, 28-30.) A person may have more than one residence.

The Civil Rights Law does not require any statement by a petitioner of her citizenship or immigration status. (See Matter of Novogorodskaya, 104 Misc2d 1006; Matter of Lipschutz, 178 Misc 113.) The court finds that the statutory language controls and declines to follow Matter of Boquin (24 Misc3d 473) and Matter of Mohomed (3 Misc3d 402), both of which engrafted a requirement onto name change petitions that a petitioner state his immigration status and intent to remain in the United States. These requirements do not appear in the statute. The legislature has amended Article Six of the Civil Rights Law since the decisions in Boquin and Mohomed and has not adopted the reasoning of those decisions by amending the statute. Assuming for argument’s sake, without making any such finding, that petitioner is currently in this country illegally, that fact by itself is not sufficient to demonstrate that the petitioner seeks to change her name for

fraudulent purposes. By availing herself of the courts of this state, by agreeing to the publication of the name change, and by fulfilling the requirement of this court that she notify U.S. Citizenship and Immigration Services of her name change, petitioner demonstrates that she is proceeding openly and without prevarication.

It has long been the policy of this state that persons should be able to seek the aegis of the courts to assert or protect their rights irrespective of their immigration status. (See Catalanotto v Palazzolo, 46 Misc2d 381.) The animating principle of this policy is that persons who are without judicial protection become invisible to the state and are consequently vulnerable to exploitation. Name change petitions are no exception to this public policy, as recognized by New York Civil Court's Chief Clerk's Memo CCM 150-a which provides that no prior notification of a non-citizen's name change petition shall be provided to the U.S. Citizenship and Immigration Services.

For the reasons stated the petition is granted. Petitioner shall publish the name change in The Irish Echo, one of the newspapers approved by the Unified Court System for this purpose, and shall serve the U.S. Citizenship and Immigration Services with a copy of this order and supporting papers, within sixty days of entry of this order.

This constitutes the decision and order of the court.

Dated: December 28, 2012


Peter H. Moulton, C.C.J.

HON. PETER H. MOULTON