

SURROGATE'S COURT, BRONX COUNTY

September 18, 2014

IN THE MATTER OF THE ADOPTION OF
CHILDREN WHOSE FIRST NAMES ARE ZALKIND AND SARA
File Nos.: 77X-1931 and 78X-1931

This is an application by an academician, a "criminologist," for access to records contained in sealed adoption files that he avers will be useful to him in connection with a biography that he is writing about the adoptees' alleged biological father. Notarized statements are filed from the adoptee's alleged daughter and the fiduciary of the estate of an alleged brother of the biological father that they do not object to unsealing these records. The petitioner notes that the adoptions predate the 1938 enactment of DRL § 114 (2) and contends that these files now constitute archival records for which the general purposes of DRL 114 (2) no longer apply and, "given the public interest aspects of the application, the instant petition should not be separately sealed as it comes from a third party source, none of the materials are confidential, and these pleadings belong in the "public domain."

In New York State, the sealing of adoption records has been mandated since 1938, but courts have had discretionary power to seal such

records since 1924. Adoption records remain sealed pursuant to DRL § 114 to protect confidentiality “which is vital to the adoption process” to provide anonymity to the natural parents, enable the adoptive parents to form a close bond with their adopted child, protect the adopted child from possibly disturbing information that might be found in his records, and allow the state to foster an orderly and supervised adoption system (see *Matter of Linda F. M.* 52 NY2d at 236 [1981], appeal dismissed 454 US 806 [1981]; *Matter of Candy, M.M.M.* (38 Misc 3d 1228 [A]; 2013 NY Slip Op 50312 [U] [Sur Ct, Nassau County 2013]; *Matter of Hayden*, 106 Misc 2d [Sup Ct, Albany County 1981]).

Nonetheless, adoption records may be unsealed pursuant to DRL § 114 (2), usually for medical grounds, upon the application of the adoptee or the adoptive parents, after a showing of “good cause” accompanied by a certification from a physician licensed to practice medicine in New York State that the records are required to address a serious physical or mental illness, upon due notice to the adoptive parents and to such additional persons as the court may direct (see *Matter of Peter B.*, 12 Misc 3d 1184 [A] [Sur Ct, Nassau County 2006]). Good cause has been found for non-medical reasons, such as to establish Hungarian lineage for purposes of citizenship (see *Matter of Victor M. I. II.*, NYLJ, Mar. 30, 2009, at 25, col 1 [Sur Ct, Nassau County 2009]), apply for Turkish citizenship after a close relationship was established with the birth mother (see *Matter of S. P.*, NYLJ, May 13, 2010, at 38, col 3 [Sur Ct, Bronx County 2010]), or to establish

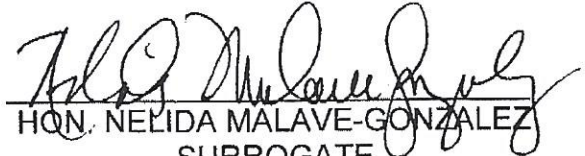
membership in the Hopi Tribe (see Matter of Merri H. F., NYLJ, May 27, 2005, at 5, col 1 [Sur Ct, Kings County 2005]).

No good cause warranting unsealing was found for the following purposes: to establish Puerto Rican heritage in order to participate in a basketball draft (see Matter of C. C., NYLJ, Jan. 7, 2010 at 40, col 4 [Sur Ct, Kings County 2010], learn the identities of biological relatives (see Matter of Linda F. M. 52 NY2d at 240), make the adoptee aware of a biological brother (see Matter of Robert R. B., 147 Misc 2d 569 [Fam Ct., Schoharie County 1990]), or ascertain the birth mother's religion (see Matter of Alica L. L. T. (38 Misc 3d 966 [Sur Ct, Nassau County 2012])).

In weighing the request for disclosure against the privacy interests at stake, the petitioner must spell out a "concrete and compelling need that is credibly connected to the adoptee's lack of knowledge of his parentage (see Matter of Theodore, NYLJ, June 15, 2012, at 22, col 4 [Sur Ct, New York County 2012])). No such compelling reasons exist here. The petitioner is not a party to the adoption or related to the adoptive or biological relatives, and his stated purpose is to obtain information concerning the biological father for publication in the father's biography. That the adoption records are old do not support unsealing. Otherwise, the statute's requirement of good cause would become a nullity and adoption records could be unsealed after the mere passage of time (see Matter of R. S., NYLJ, Oct. 25, 2006, at 32, col 1 [Sur Ct, Kings County 2006])).

Accordingly, the application is denied. The Chief Clerk shall

mail a copy of this decision, which constitutes the order of the court, to the petitioner.


HON. NELIDA MALAVE-GONZALEZ
SURROGATE