

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

In the Matter of the Application of

MINISTRY OF PATRIOTS AND VETERANS AFFAIRS
OF THE REPUBLIC OF KOREA,

Index No.

PETITIONER,

For Permission to Remove the Remains of
CARL K. WHANG, deceased from the
Mount Olivet Cemetery,

VERIFIED PETITION

- against -

MOUNT OLIVET CEMETERY,

RESPONDENT.

The Petitioner, MINISTRY OF PATRIOTS AND VETERANS AFFAIRS OF THE REPUBLIC OF KOREA, through its legal counsel, Law offices of Youngsoo Choi, P.C., respectfully shows and alleges as follows by this Petition:

1. Petitioner, the Ministry of Patriots and Veterans Affairs of Republic of Korea is a government agency of the Republic of Korea which governs administration to honor and serve those who have dedicated their lives and sacrificed for Republic of Korea, and to preserve and promote their patriotic spirit. The Consul General of the Consulate General of the Republic of Korea in New York is duly authorized to represent the Petitioner in this action on behalf of the Ministry of Patriots and Veterans Affairs of the Republic of Korea.
2. Petitioner is filing this instant Petition to disinter **Carl K. Whang's** remains and transfer them to the Daejeon National Cemetery of the Republic of Korea located at 251, Hyeonchungwon-ro, Yuseong-gu, Deajeon, South Korea.

3. Respondent, Mount Olivet Cemetery is a cemetery located at 65-40 Grand Avenue, Maspeth, NY 11378 and Respondent has administered and maintained the burial and grave of **Carl K, Whang's** remains which are still buried at the same location to this date. The specific location of the remains is **Westlawn 2484** of the Respondent cemetery premises. Attached herewith as **Exhibit A** are the photos of the current grave yard and the grave stone at the Respondent cemetery.
4. The decedent **Carl K. Whang** was awarded a Patriotic Medal (Order of Merit for National Foundation) by the Republic of Korea, one of the highest national honors the Republic of Korean government can award to her national pursuant to Article 11 of National Award Act.
5. The Patriot **Carl K. Whang** whose Korean name is **Gihwan Whang** was born on an unknown date and year in Korea and died of heart disease on April 17, 1923 in Queens County, New York while he was residing in New York and buried at the Respondent cemetery. Attached herewith as Exhibit B are the photos of decedent and his grave stone.
6. The Patriot **Carl K. Whang** volunteered to join the United States military in May 1919 during the World War I and served as the Secretary to Kyusik Kim, a representative of Korea to the 1919 Paris Peace Conference, the meeting of the Allied victors, following the end of World War I to set the peace terms for the defeated Central Powers following the armistices of 1918.
7. He also served as a Diplomat of the Ministry of Foreign Affairs to the Provisional Government of the Republic of Korea in England in 1920 and 1921 and further founded the Friends of Korea to promote foreign affairs in England.
8. He served the Foreign Affairs Committee to the Provisional Government of the Republic of Korea which was administering foreign affairs with the United States and European countries in 1921.
9. His story and patriotic service for the Republic of Korea was not known until a church member to a local Korean church in New York found him from the church's members list and confirmed his burial at the Respondent cemetery in 2010.

10. Upon recognition of the decedent, the Petitioner came to investigate the decedent's case in 2013 and recommended him for the honorable Patriot Medal (Order of Merit for National Foundation) and came to resolve that the remains be brought to his mother country to most properly honor him and preserve his patriotic spirit in Korea.

11. Public Health Law §4201(2)(a) provides the controlling rule for the right to administer the disposition of his remains. PHL §4201(2)(a), in pertinent part, states that:

the following persons in descending priority shall have the right to control the disposition of the remains of such decedent:

(i) the person designated in a written instrument executed pursuant to the provisions of this section;

(ii) the decedent's surviving spouse; (ii-a) the decedent's surviving domestic partner;

(iii) any of the decedent's surviving children eighteen years of age or older;

(iv) either of the decedent's surviving parents.

12. Petitioner made a diligent search on the persons in descending priority prescribed in the Public Health Law §4201(2)(a), utilizing the government documents and database and personal visit to the Respondent through its counsel beginning July 1, 2016, but it has failed to locate any of the persons who have the right to control the disposition of the remains of the decedent under PHL §4201(2)(a).

13. Absent such persons, Petitioner believes that the government of Republic of Korea is the party who feels obligated to honor the decedent's patriotic deeds and his dedication to serve the country in which he was born and of a citizen and to take most appropriate actions to permanently remember his legacy in the most honorable place, the Daejeon National Cemetery of the Republic of Korea in Korea.

14. Accordingly, Petitioner prays that your honorable court permits Respondent to disinter the remains of the decedent pursuant to N-PCL §1510(e) which provides that: *A body interred in a*

lot in a cemetery owned or operated by a corporation incorporated by or under a general or special law may be removed therefrom, with the consent of the corporation, and the written consent of the owners of the lot, and of the surviving wife, husband, children, if of full age, and parents of the deceased. If the consent of any such person or of the corporation cannot be obtained, permission by the county court of the county, or by the supreme court in the district, where the cemetery is situated, shall be sufficient.

15. With the foregoing reasons, Petitioner believes that his transferred burial at the Daejeon National Cemetery in Korea will negate the concerns that *the quiet of the grave and the repose of the dead are not lightly to be disturbed. Good and substantial reasons must be shown before disinterment is to be sanctioned. See Currier v. Woodlawn Cemetery, 300 NY 162, 164 (1949).*

16. Petitioner further believes that the transferred burial in the national cemetery in Korea which will be administered and maintained by the Korean government will constitute a controlling public reason especially under the circumstances that there are no relatives who can give more proper care and treatment for his burial and that the decedent's patriot deeds and services are most appropriately remembered and permanently honored in most honorable manner. The court ruled that *"while the repose of the dead should not lightly be disturbed, where there is a controlling public reason or a superior private right, the court should not hesitate to permit a disinterment."* See Application of Peruso, 58 Misc 2d 915, 916 (Queens Co., 1969)

17. If this Petition is granted, Petitioner will retain Central Funeral Home to handle the transfer of the remains. Central Funeral Home is well known for handling the remains without relatives. Central Funeral Home would also assist Petitioner in completing an application for a disinterment permit from New York City Department of Health.

18. As stated above, the decedent, Carl K. Whang had no surviving family members. Petitioner knows of no other relative who would object to the relief sought herein.

19. Upon information and belief, the parties interest and entitled by law to notice of this application and their post office addresses are:

Name of Entitled Party

Address of Entitled Party

MOUNT OLIVET CEMETERY 65-40 Grand Avenue, Maspeth, NY 11378

No one, other than the entity above-mentioned, is interested in this application and on other parties are entitled to notice thereof.

20. Petitioner has served a copy of the Petition to the Mount Olivet Cemetery by U.S. Priority Mail at least sixteen (16) days prior to filing same with the Court Clerk and Affidavit of Service is attached to this Petition.

WHEREFORE, the Petitioner respectfully prays for an Order of this Court:

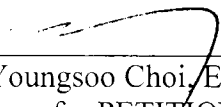
i) granting Petitioner permission to disinter and remove the remains of decedent, **Carl K. Whang** located at Mount Olivet Cemetery for transfer and interment at the Daejeon National Cemetery in Daejeon, Korea;

ii) directing Respondent to permit such disinterment, removal and transfer; and

iii) granting Petitioner such other and further relief as may be just, proper and equitable.

Dated: November ~~27~~²⁹, 2019
Queens, New York

Law Offices of Youngsoo Choi, P.C.



By: Youngsoo Choi, Esq.
Attorney for PETITIONER
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VERIFICATION

STATE OF NEW YORK)
)ss.:
COUNTY OF QUEENS)

HYO SUNG PARK, being duly sworn, hereby deposes and says:


I am the Consul General of the Consulate General of the Republic of Korea in New York duly authorized to sign the instant Petition in this action on behalf of the MINISTRY OF PATRIOTS AND VETERANS AFFAIRS OF THE REPUBLIC OF KOREA, and I have read the annexed:

PETITION

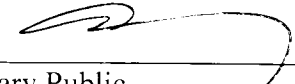
and know the contents thereof to be true to my own knowledge, with the exception of those matters therein stated to be alleged upon information and belief, and to those matters I believe them to be true.

Dated: Queens, NY

November 29, 2019



Sworn to before me this 29 day of November 2019



Notary Public

YOUNGSOO CHOI
Notary Public for New York
Commission Expires August 20, 2021

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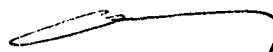
MOUNT OLIVET CEMETERY,

RESPONDENT.

PETITION

To the best of the undersigned's knowledge, information and belief formed after an inquiry reasonable under the circumstances, the within documents(s) and contentions contained herein are not frivolous as defined in 22 NYCRR §130-1.1-a.

Law Offices of Youngsoo Choi, P.C.



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