

MAZZESCHI

ITALIAN IMMIGRATION & CITIZENSHIP

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NEWS, UPDATES AND CURIOSITIES ON ITALIAN
IMMIGRATION AND CITIZENSHIP



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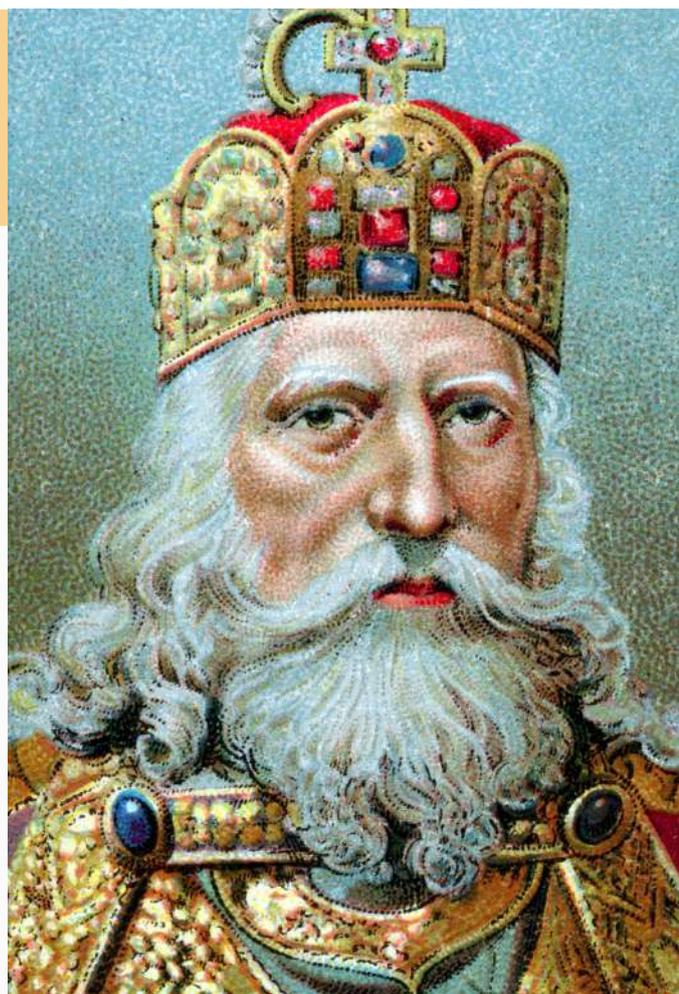
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DNA TEST: CAN I USE IT FOR MY ITALIAN CITIZENSHIP?

Few months ago I received a bizarre query: a person sent me a DNA test confirming that he was a descendant of Pippin (769–811 a.C.), the son of Charlemagne(742–814 a.C.). He asked whether this proof could support his application to become an Italian citizen. Pippin was in fact made “king of Italy” after his father’s conquest of the Lombards and crowned by Pope Hadrian I.

Italian citizenship is based upon the principle of “jure sanguinis”. This means that a child who is born to an Italian father or mother, is also an Italian citizen, no matter where the child is born.



People with an Italian ancestor may be eligible for citizenship, depending on a number of factors such as the date and place of birth of their parents, grandparents, and even great-grandparents. An individual can apply for Italian citizenship with no limit to the number of generations.

Yet, the the answer to Pippin's query was NO. Why?



1. "ITALY" DID NOT EXIST UNTIL 1861!!!!



Italy was unified and become Kingdom of Italy only on March 17, 1861, with the royal family of Piedmont-Sardinia as the new ruling monarchs of Italy.

Since then, the current shape of the country has also changed several times, due to the annexation or loss of some territories.

Venetia was annexed in 1866 following the Austrian defeat in the Austro-Prussian War. The Papal States (in central Italy) and Rome were annexed in 1870. The north east territories (Trento and Trieste) were annexed after WW1, together with the cities of Pola (Istria) and Zara (Dalmatia). The city of Fiume (in Croatia) was annexed only in 1924.

After WW2, the territories of Istria and Dalmatia and the city of Fiume were lost and assigned to the former Yugoslavia.

Italy has also possessed for some time colonies such as Eritrea and Somalia (1890–1945, Ethiopia (1936–1945) and Lybia (1912–1945). Individuals born during the time these territories were "italian" can be also entitled, under different conditions, to citizenship.

Since WW2, the territory of Italy, which on June 2 1946 changed its constitutional status from monarchy to republic, has remained unchanged.

Accordingly:

- until 1861 there was no Italian State and it is not possible to talk of Italian citizenship. Thus, with some exceptions, the oldest Italian ancestor from whom Italian citizenship can be derived must have been a person who acquired Italian citizenship in or after 1861;
- the fact that a territory (such as Istria and Dalmatia) was only temporarily part of the Italian territory can impact — depending of several other factors — on the possible eligibility;
- Italian Law is very precise and requires the applicant to prove eligibility by means of several certificates and DNA test is not specifically listed;
- last but not least, eligibility requirements have varied in consequence of the enforcement of different laws regulating the attribution and loss of citizenship (the most important being the 1865 Civil Code, Law 55/1912, 1948 Constitution and Law 91/1992).

2. DUAL CITIZENSHIP WAS NOT ALLOWED UNTIL 1992

Demonstrating to be 100% Italian for ancestry (i.e. to have an Italian mother or father) is not enough to obtain citizenship. In fact, until 1992 Italian Law did not allow dual citizenship. Accordingly, citizenship was automatically lost if someone naturalized (i.e. become citizen) of another country.

Naturalization in another country can happen voluntarily, i.e. an individual who willingly accept to acquire a second citizenship, but also for other factors which can vary upon the laws of the country where the individual has moved.

For example, in some countries a foreigner automatically acquires citizenship by (i) marrying a national; (ii) being born in the country (*ius soli*); (iii) serve in the State's Army or taking a job with the Government; (iv) taking residency and living in a country for a certain number of years.





Accordingly, an individual may be in a situation where he acquired a second citizenship (and therefore lost the Italian one) even without his knowledge or his will. The most recent example is the Australian parliamentary eligibility crisis where fifteen sitting politicians were ruled ineligible by the High Court of Australia or resigned pre-emptively. The Court in fact held that a dual citizen, irrespective of whether they knew about their citizenship status, will be disqualified from Parliament unless they are irremediably prevented by foreign law from renouncing the foreign citizenship and have taken all steps that are reasonably required to renounce that foreign citizenship

If you think this is discriminating between women and men, don't worry! The Italian Supreme Court agrees with you.

In 2009, it established that it is unconstitutional to discriminate between women and men even in citizenship matters. All descendants born anytime from an Italian parent, father or mother, are Italian citizens by birth right.

Unfortunately, this judgement did not have any consequences on the Consular behaviour and if you fall into the "1948 cases" and submit a request of recognition of Italian citizenship Jure Sanguinis, Consulates will strictly apply the Italian nationality law and will reject your application. Consequently, you can only proceed through a legal proceeding at the Italian Court in Rome.

3. UNTIL 1948 WOMEN COULD NOT PASS CITIZENSHIP TO THEIR DESCENDANTS

Under the 1912 Citizenship Law, only men were able to transfer their Italian lineage to children, while women could hold but not pass citizenship to their descendants. The principles of gender equality were laid down only on January 1, 1948 when the Italian Constitution entered into force. Unfortunately, the new legislation was not retroactive and so children born to an Italian mother before 1948 are not automatically Italian.

CAN I OBTAIN CITIZENSHIP IF I DO NOT HAVE ITALIAN ANCESTORS?

There are other ways to obtain citizenship, the most common are by marriage and by naturalization through residency.

1. Marriage or same sex civil union: Italian citizenship may be obtained by marriage to an Italian citizen. This is an actual right of all spouses and can only be denied to those who have a criminal record for a serious crime committed either in or outside of Italy. It can also be denied to those who are considered a threat to the national security and public order. Following your marriage to an Italian citizen certain requirements must be met under Italian law to enable you to obtain Italian citizenship; for instance, legal residency in Italy for a period of at least two years, or three years if you and your spouse are living abroad (both terms are halved if the couple has children). The marriage must subsist throughout the entire process of applying for citizenship and recently a language test has been introduced.



2. Naturalization by residency: legal residents of Italy may be able to acquire citizenship. Procedure and time vary depending on a number of factors, such as their nationality, the length of time they have legally resided in Italy, their birthplace and the nationality of their parents and grandparents. The application can be filed: after 1 year of residency, for those who have held Italian citizenship at some point in the past; after 3 years of residency, for those who were born in Italy or who have parents/grandparents that are Italian citizens; after 4 years of residency, for European Union (EU) citizens; after 10 years of residency, for NON-EU citizens.



WHAT IF MY ANCESTORS LOST THEIR ITALIAN CITIZENSHIP?



There are often situations where an Italian citizen moved to USA and naturalized as US citizen before having children. This (i.e. the acquisition of a second citizenship) caused the interruption of the Italian lineage by blood. Citizenship was not therefore automatically transferred to his descendants.

However, do not lose any hope. Italian Law is quite benevolent with anyone who can prove to have an Italian parent or grandparent! In fact, individuals who fall within this situation are still entitled to acquire Italian citizenship by taking residency in Italy, with a reduced term of 3 years, instead of 10 years, proving to have an Italian minimum income and pass a language test.

Be aware of frauds and of people who says that you can do it quickly and you need to stay in Italy only few weeks!

The procedure requires the applicant to have an accommodation in Italy (it can be a rented apartment/room) and register with the local City Hall. But is not enough to declare the intention of residing in a particular place: residency is a serious matter in Italy and is based on objective grounds, i.e. the place must become the person's main centre of interests. Moving residency to Italy brings also some tax consequences which must be carefully evaluated.



1861, 1912,
1948, 1992:
WHY EXACT
DATES ARE SO
IMPORTANT FOR
ITALIAN
CITIZENSHIP?



Italian citizenship is passed on from parent to child without limitation of generation, but there are some limitations and conditions.

If you have some Italian ancestors you can be entitled to obtain Italian citizenship.

The general principle is that citizenship is passed on from parent to child without limitation of generation, on the condition that neither the Italian parent nor the Italian ancestors ever renounced their citizenship.

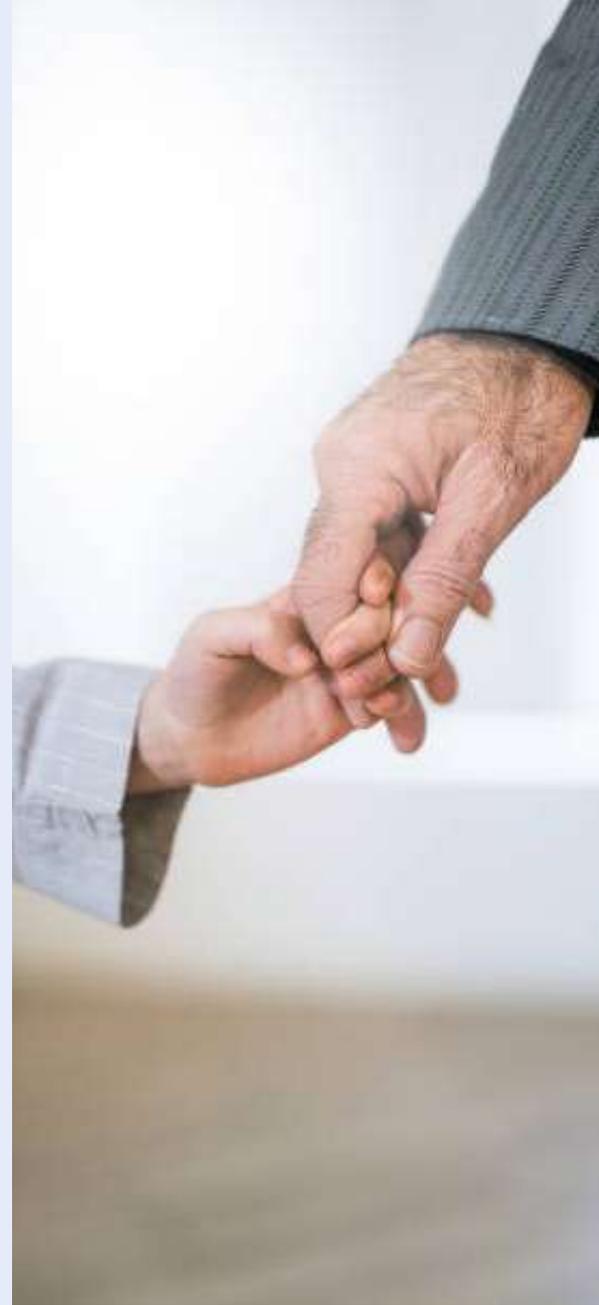
There are however some conditions and a number of factors and limitations.

·The Kingdom of Italy was formed only on March 17, 1861, and some territories were annexed later. Accordingly, people who were born in a territory before its annexation to Italy may be not be entitled to citizenship:

- Ancestors born in Trentino and Alto Adige
- Ancestors born in Istria and Dalmazia
- Ancestors born in the island of Rhodes

Since 1861 various citizenship laws were enacted (most notable in 1865, 1912, 1992) and rules and conditions for acquiring citizenship have changed.

Check also the Gov. website



Examples:

1) THE ITALIAN ANCESTOR, BORN IN ITALY, ACQUIRED A NEW CITIZENSHIP BEFORE JULY 1, 1912

Italian ancestor, Primo, was born in Milan on August 9, 1880, emigrated to USA in 1902 and acquired US citizen in 1911.

His son, Secondo, was born in USA in 1908.

His grandchild, Terzo, was born in USA in 1942.

Primo was Italian at the time of Secondo's birth. However, Secondo lost Italian citizenship in 1911 with his father, and cannot transmit Italian citizenship. Terzo and his descendants are not entitled to Italian citizenship.

2) THE ITALIAN ANCESTOR ACQUIRED A NEW CITIZENSHIP AFTER JULY 1, 1912 AFTER HIS/HER CHILD BIRTH.

Italian ancestor, Primo, was born in Florence on February 15, 1878, emigrated to Brazil in 1900 and became Brazilian citizen in 1920.

His son, Secondo, was born in Brazil in 1915.

His grandchild, Terzo, was born in Brazil in 1940.

Primo emigrated to Brazil, was Italian at the moment of Secondo's birth. Primo naturalized when Secondo was minor. Terzo is eligible to apply for Italian citizenship, proving that Primo and Secondo have never renounced Italian citizenship.

3) THE ITALIAN ANCESTOR ACQUIRED A NEW CITIZENSHIP AFTER JULY 1, 1912 BEFORE HIS/HER CHILD BIRTH

Italian ancestor, Primo, was born in Milan on August 9th, 1907 and became U.S. citizen in 1935.

His daughter, Seconda, was born in USA on 1937 (after her father naturalization).

Seconda was born to an U.S. citizen, she did not acquire Italian citizenship and her descendants are not entitled to Italian citizenship.

4) A MEMBER OF THE ITALIAN LINEAGE ACQUIRED A NEW CITIZENSHIP PRIOR TO 1992, BEFORE THE DESCENDANT'S BIRTH

Italian ancestor, Primo, was born in Milan on August 9th, 1907, emigrated to USA and never obtained US citizenship.

His son, Secondo, was born in USA on 1937 and voluntarily acquired Polish citizenship on 1960.

His grandchild, Terzo, was born in USA on 1962.

Secondo lost his right to Italian citizenship on 1960, therefore Terzo and his descendants are not entitled to the Italian citizenship.

SOME EXCEPTIONS AND SPECIAL RULES

1. Those who have in their Italian lineage a child born by an Italian mother, before January 1st, 1948 can obtain the Italian citizenship only through a legal process to be taken at the Court House in Rome.
2. An Italian woman married to a foreign husband before January 1st, 1948 (who, accordingly to his foreign law, transmitted the foreign citizenship to the wife as an automatic effect of the marriage) is entitled to transfer Italian citizenship to her children and their descendants only through a legal process to be taken at the Court House in Rome.





3. Children of Italian citizens born between April 27th, 1965 and May 17th, 1967 may not be eligible to acquire Italian citizenship whether before the age of 19 years old they did not explicitly choose to retain Italian citizenship. The eligibility may be subject to the place of birth of the descendants (Jus soli or Jure sanguinis Country). Under these circumstances, we should contact the relevant Italian Consulate abroad and Italian Town Hall to know their orientation concerning this issue.

4. In case the Italian ancestor naturalized citizen of another country during the minor age of his/her child, 2 different rules — leading to completely different scenario — may be applicable (art. 12 Law 555/1912 or art. 7 Law 555/1912). The “minor case” issue has been ruled by two articles within the Italian citizenship law 555/1912: art. 12 is the one regarding the general rule “The non-emancipated children of the person who lost the Italian citizenship become foreign citizens [...]”, while art. 7 is a specific rule declaring “[...] the Italian citizen born and resident abroad, deemed citizen of that country by right of birth, maintain the Italian citizenship unless they decide to give the citizenship up once adult or emancipated”. If the Italian ancestor naturalized when the child was still a minor, it will be of key importance to double check if the minor acquired the foreign citizenship by birth on a jus soli Country or if — as opposite — he/she was born in a iure sanguinis Country. Only in the first case, Italian descendants may be entitled to Italian citizenship (Italian judges have different interpretation of this issue).



ITALIAN
CITIZENSHIP &
NAME CHANGES



The famous actor Rodolfo Valentino was an Italian immigrant whose real name was Rodolfo Alfonso Raffaello Pierre Filibert Guglielmi di Valentina D'Antonguolla.

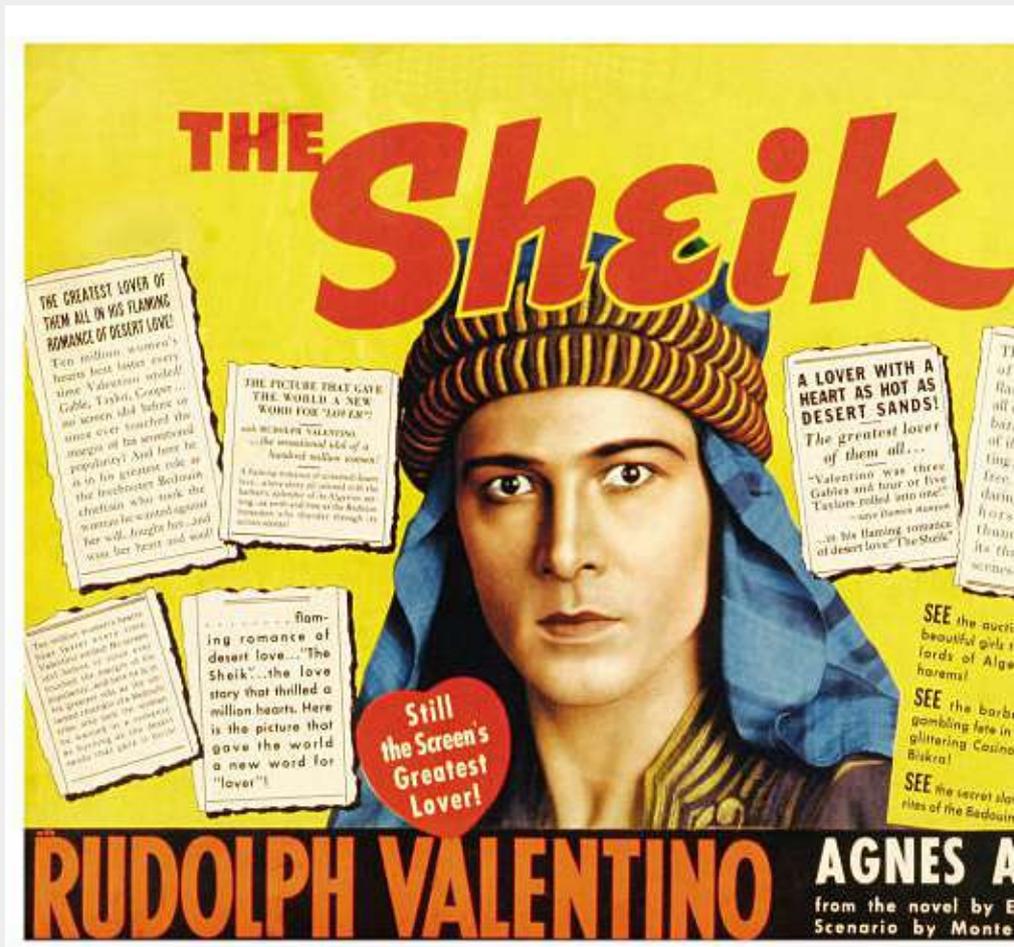
He is still recognized and pictured as the stereotype of the Italian "Latin Lover", even though an actor who appeared with Rudolph Valentino in 1921's "The Four Horsemen of the Apocalypse," dismissed Rudy's much-touted magnetism by saying

"All he thought about was Italian food"!!!!

**A BAD WOUND MAY HEAL,
BUT A BAD NAME WILL KILL!**

Valentino and many other celebrities changed their names for various reasons. For example, "Katy Perry and Emma Stone opted for a change to avoid clashing with stars who shared their birth names. Others, like Bruno Mars and Michael Caine, were simply inspired. Some stars, including Halsey and G-Eazy, didn't like their birth names".

Valentino changed his name because it was definitively too long and difficult to pronounce. His screen name became a bit of a conundrum. The hard-to-remember "Guglielmi" was shed in favor of "di Valentini," but that was put through a veritable wringer of different spellings: "di Valentina," "De Valentina," "Volantino," "Valentine" and "De Valentine," all of which might be paired with "Rodolfo," "Rudolpho," "Rodolph," or "Rudolf" with careless abandon. Eventually he settled on "Rudolph Valentino," which certainly had flair—and asked that his friends call him Rudy. (*)



ITALIAN CITIZENSHIP BY DESCENT

Emigrants to a new country had other and more serious reasons for the changing their names. Adopting names that could sound more “friendly” in the new country could help them to speed assimilation, avoid detection, deter discrimination or just be better for the businesses they hoped to start in their new homeland (*)

What can be the impact of a name change or discrepancy in a citizenship application?

Individuals who are applying for Italian citizenship by descent are required to produce many documents, such as birth certificates, marriage certificates, death certificates.

In fact, they need to prove that the ancestor who expatriated and his/her direct descendants maintained their right to Italian citizenship (aka never renounced Italian citizenship) and — in the event that their Italian parent was a naturalized citizen — were born before that parent renounced Italian citizenship via naturalization.

These vital records have often names or dates discrepancies, not only because many immigrants changed their names but also because their name was mistakenly recorded.

In many cases, the mistake was done not upon arrival but at the shipping line’s station in Europe, by clerk who wrote the passenger’s name in the ship’s manifest. (*)



WHAT HAPPENS IF THERE ARE DISCREPANCIES OR MISTAKES?

Italian law is quite formal and does not leave much flexibility or discretion to the the Office that need to decide upon the adjudication, in case submitted documents have discrepancies or mistakes.

In fact, any documents containing:

- errors (misspellings, incorrect dates, incorrect boxes checked, etc), must be corrected/amended BEFORE submitting the citizenship application
- discrepancies on ancestral documents — discrepancies should be corrected when and where possible so that the documents reflect the same information on the ancestor’s birth certificate.
- discrepancies on applicant’s documents — applicant’s vital records (marriages and births of any children under 18) must reflect his/her information (first name, any middle names, last name, and date of birth) as it appears on his/her original birth certificate. Any discrepancies or errors must be corrected BEFORE submitting documentation.



HOW TO OBTAIN THE CORRECTION OF MISTAKES OR DISCREPANCIES?

Procedure to obtain the correction of a certificate or vital record change from country to country. Italian offices generally do not accept affidavits or sworn self-declarations. In some cases, correction can be done directly by the Office of Vital Statistics but when this is not doable the correction shall be obtained through a Court proceeding, which can be lengthy and the outcome unpredictable.

WHAT CAN I DO IF I CANNOT FIND MY ASCENDANTS'S CERTIFICATES?

Consulates suggest the applicant to obtain a written statement from the vital records office where the certificate was requested stating that the document does not exist. The statement must clearly explain the reason why the record does not exist. The office where application is filed will discretionary assess whether the statement can be taken into account and be considered as validly replacing the missing certificate.

CAN I SUBMIT A BAPTISMAL CERTIFICATE OR CHRISTENING RECORD?

If there were no registries in existence at the time of your ancestors' birth, applicant can submit:

- a baptismal certificate issued by the Parish with the authentication of the pastor's signature by the authorised bishop's office;
- the written response from the town hall (Comune) in Italy confirming the non-existence of a registry office on the date in question.





ITALIAN CITIZENSHIP
AND DELAYS
CAUSED BY THE
CONSULATE: WHAT
CAN BE DONE?



The Court of Rome has recently established that in those cases where the Italian consulate has not ensured a response in a reasonable time, it becomes possible to obtain the recognition of the citizenship directly from the judge in Italy.

An interesting path has been opened for those individuals who are seeking to obtain the Italian citizenship by "iure sanguinis" that are currently living in countries where the application numbers are high (such as Brazil and USA) and therefore, the processing time of their applications are very long.

The Court of Rome, by judgement of December 10th 2020, while addressing the issue of the unreasonable waiting time required by some Consulates, upheld the action brought by some Brazilian citizens for the obtainment of the citizenship, even though it hasn't even passed 2 years since the submission of the application to the Embassy.

This judgement is particularly relevant for those subjects that live under the jurisdiction of Consulates affected by major temporal dysfunctions in the definition of citizenship applications, as they will now be able to obtain their citizenship in about 2 years.

Facts of the case

In 2017, a family composed by Brazilian citizens had applied for the recognition of the Italian citizenship by "iure sanguinis" to the Italian Consulate in Curitiba, which is competent for the family's place of residency. All the applicants were descendants from an Italian man who had emigrated to Brazil, died there, and he had never given up to his Italian citizenship, therefore he has never been naturalised as a Brazilian citizen



In accordance with art. 3 D.P.R. 362/1994, the Consulate has 2 years to process the case and to give an answer.

Instead of waiting the 2-year-period within which the Consulate would have had to decide either by approving or rejecting their request, the Brazilian family has requested the Court of Rome to process their citizenship application by alleging that they had filed their application to the Italian Consulate in Curitiba, a diplomatic representation that normally takes around 10 years to process such applications.

Court's findings

The Court of Rome, following a previously consolidated path, has deemed the Consulates' unreasonable response time a denial of justice and it has acknowledged the request of the claimants necessity to resort to the judge, and it declared them Italian citizens.

When appealing to the judge, it presupposes an accurate and meticulous preparation of the allegations and the documents on which these are based.



RIGHT



ITALIAN CITIZENSHIP AND RESIDENCY RIGHTS TO SAME- SEX PARTNERS

Since 2016 Italy has allowed civil partnerships "Formazioni Sociali Specifiche" between same-sex couples. The rights and obligations for such partnerships are very similar to those of marriage, with the exception of adoption (stepchild adoption) which is prohibited.

Same-sex spouses of foreign national have residency rights in Italy

The foreign same-sex spouse of a foreign national normally resident in Italy is entitled to obtain a residence permit for family reasons as long as the relationship is well-established and registered.

Non-EU same-sex spouse of an Italian citizen has the right to obtain Italian citizenship

Non-EU nationals who have entered into a legally registered civil partnership with an Italian national can also apply for Italian Citizenship. An application can be made 2 years after the marriage if residing in Italy or 3 years after if residing abroad. The law also requires knowledge of Italian to at least B1 level of the Common European Framework of Reference for Languages (CEFRL). Those who have a long-term EU residence permit, those who comply with the Integration Agreement provisions or those who have a qualification from an Italian state school or state-recognized private school, are exempt from this requirement.



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