

MAZZESCHI

ITALIAN IMMIGRATION & CITIZENSHIP

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NEWS, UPDATES AND CURIOSITIES ON ITALIAN
IMMIGRATION AND CITIZENSHIP



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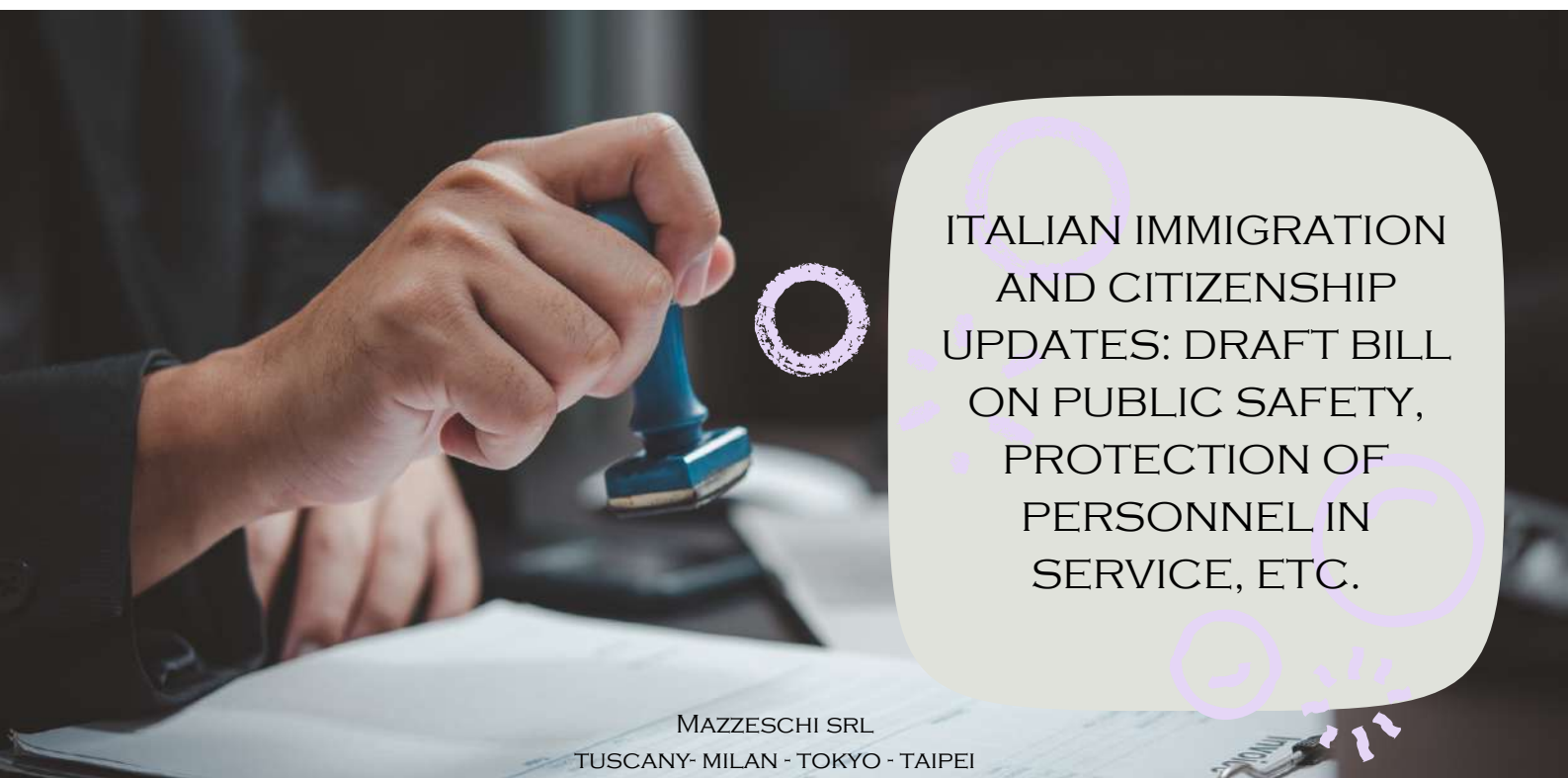
ITALIAN IMMIGRATION

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ITALIAN CITIZENSHIP

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OUR WEBSITE WWW.MAZZESCHI.IT



ITALIAN IMMIGRATION
AND CITIZENSHIP
UPDATES: DRAFT BILL
ON PUBLIC SAFETY,
PROTECTION OF
PERSONNEL IN
SERVICE, ETC.

A draft bill has been presented to the Chamber of Deputies, containing provisions related to public safety, the protection of personnel in service, victims of usury, and the penitentiary system.

This draft bill also includes some legal provisions regarding Italian immigration and citizenship laws. However, these new rules don't change much from the current provisions, instead, they were introduced for the purpose of regulatory alignment.

NEW PROVISIONS REGARDING ITALIAN IMMIGRATION LAW:

Amendments to article 14 of the consolidated text referred to in the legislative decree of 25 July 1998, n. 286, for the strengthening of the security of detention and reception facilities for migrants (Art. 19):

Engaging in the organization, promotion, or leadership of revolts or resistance to given orders involving three or more people is punishable by imprisonment ranging from one to six years.

Furthermore, aggravating circumstances are also provided. (i.e. participation in revolts, use of weapons, causing serious injuries, or resulting in deaths, may lead to more severe penalties)

NEW PROVISIONS REGARDING ITALIAN CITIZENSHIP LAW:

On the revocation of citizenship (Art. 7):

The revocation of the citizenship of a person convicted of serious crimes will be possible within 10 years of the final conviction and only if the person has the citizenship of another State.

It is important to note that these provisions are part of a draft bill and have not yet been officially enacted.



ITALY – ALBANIA: AGREEMENT ON PENSIONS AND UNEMPLOYMENT BENEFITS TO PROTECT WORKERS



Yesterday, the Italian government announced the signing of the bilateral social security agreement between Italy and Albania which will regulate pension benefits, unemployment benefits, sickness and maternity of those who exercise or have exercised a subordinate or self-employed activity in the two States.




Following this, the Ministry of Labor and Social Policies, in collaboration with INPS, will start negotiations for a bilateral administrative agreement with which to make the agreement itself operational, the scope of which does not include healthcare services in nature, family benefits and protection against risks against accidents and occupational diseases, as well as non-contributory benefits.

CHILDREN BORN BY SURROGACY AND ADOPTION IN SPECIAL CASES



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Children born by surrogacy: no indication in the birth certificate of the so-called intended parent. The parent who shares the parental plan may, however, adopt the child.

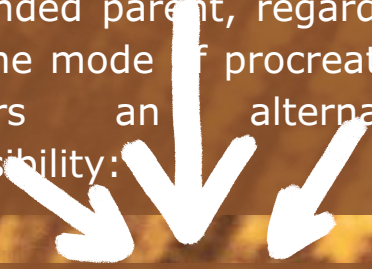


A homosexual couple formed by two Italian citizens, with two children born abroad through surrogacy and with genetic material from one of the men, asked the mayor of a Sicilian municipality to transcribe the birth certificates and to include not only the name of the biological father, but also that of the father who wanted the birth, the so-called intended parent.

“ ———
The recent judgment of the Court of Cassation no. 85 of January 3rd, 2024, confirms the legitimacy of the mayor's refusal, reaffirming that surrogate motherhood – as an unacceptable violation of women's dignity – is prohibited in Italy and that it is therefore not permissible to recognize the parenthood of the intended father who wanted the children by resorting to surrogacy in a foreign country.



However, the Court of Cassation, recognizing the need to protect the affective relationship that binds the child and the intended parent, regardless of the mode of procreation, offers an alternative possibility:

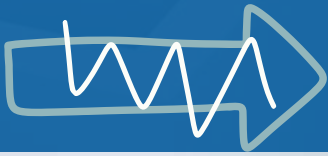


Recourse to adoption in special cases, regulated by article 44 of law 184/83, which provides for cases where the child is placed in a family unit which he or she has previously developed affective ties with.

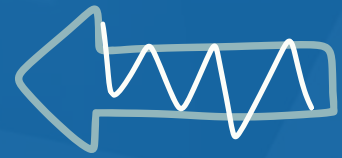


WHICH ONE IS
THE TOUGHEST
ITALIAN VISA
TO OBTAIN?





Some kind of Italian visas are promoted as very easy to obtain, but is it really true?



SELF-EMPLOYMENT VISA (AS A FREELANCE)

In our experience, this is the most difficult visa to obtain because:

- it is subject to the availability of quotas, less than 500 quotas available for 2024 which includes quotas for well-known artists, startup visas and appointed officers of Srl and Spa;
- there is conflicting information regarding which documents must be obtained in Italy to support the visa application and each Consulate may have different requirements;
- it takes months to fix an appointment at the Consulate for filing the visa application and after filing processing time can be up to 90 days;
- its issuance is subject to the Consulate's discretion and in practice, most applicants receive a denial from the Consulate after having obtained the necessary clearances in Italy.



STARTUP VISA

This visa is for those who want to start an “innovative” company in Italy and prove to have at least € 50 K to invest. Innovative is a company whose business model is characterized by a strong technological character and has an exclusive or prevalent corporate purpose the production, development, and marketing of innovative goods or services of high technological value. The startup visa is not easy to obtain because:

- there are only a few hundred quotas available every year
 - many applicants believe that proving the availability of e 50 K should suffice, but in reality the Ministry will focus its attention on the business plan, which must be innovative;
 - another important factor is the applicant’s CV and its IT or technological experience;
-
- the Ministry is also very strict with the bank letter that needs to be submitted to confirm that the applicant has available funds. There is not an official sample letter but the Ministry wants the letter to specifically include a declaration that the Bank has carried out all checks required by the FATF anti-money laundering rules and many applications are denied or delayed because the bank letter does not have the required format.



ELECTIVE RESIDENCE VISA

The law set forth that to obtain this visa the applicant must:

- prove to have a minimum “passive” income (not deriving from work) of € 31 K/year
- have a suitable accommodation in Italy (owned or rented)

WHAT ARE THE MAIN HURDLES TO OBTAINING THIS VISA?

Most consulates require the applicant to prove a passive income 2–3 times the minimum set forth by the law;

Consulates request the applicant to submit the last tax returns, they want the income to be listed in the returns;

if the applicant has also an income deriving from work, Consulates tend to deny the visa because they consider that the applicant will not stop working while in Italy;

If the applicant does not own a property in Italy, it must execute and submit a min. 1-year lease agreement (to be stamped by the tax office) and it is increasingly difficult to find landlords willing to lease a property with such conditions. It is also likely that the applicant will need to pay the rent for several months before being sure to obtain the visa;



In most Consulates it is very difficult to book an appointment for filing the visa application and, when available, appointments can be given after some months;

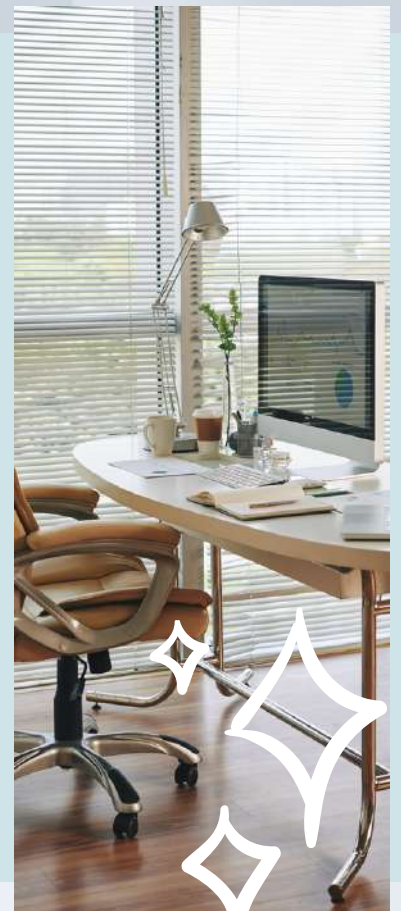
the processing time for the visa is by law up to 90 days (and the Consulate will keep the passport) and if the Consulate requests more documents the time can be extended.

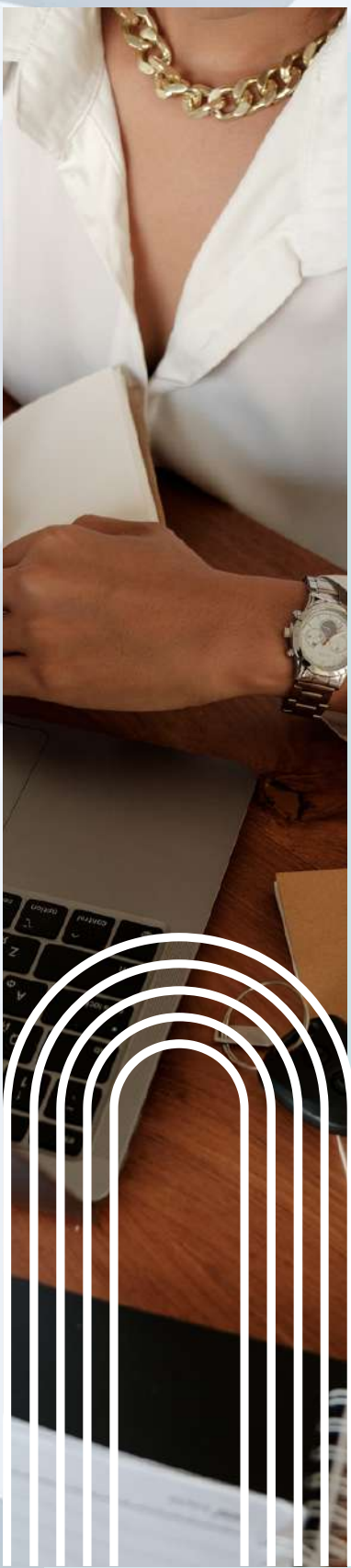
the issuance of the visa is decided by the Consulate which has wide discretion to deny/approve it and each Consulate applies different criteria for the evaluation of the application.

REPRESENTATIVE OFFICE VISA

You probably read in some articles posted on the web that Italy is granting a visa to someone who registers a Rep Office, as an officer representative.

What is not made clear in the articles is that:





- the visa is not granted automatically by being appointed as Rep Office's representative in Italy; and
- self-employment visa commented on in the article is exempted from yearly quotas but subject to some conditions (art. 40/22 Decree 394/1999), namely, it is for employees of a foreign company who are sent to work in Italy to a subsidiary of the Group to work as "self employees".

To obtain this visa is necessary to obtain authorization from the Labor office and to submit, amongst other things:

- (i) evidence that the individual is employed by the sending company;
- (ii) evidence that the company that hires the individual is affiliated with the company that registered the Rep Office;
- (iii) the parent company's yearly financials that show that the company is in good standing and financially strong to support the assignment.

The above requirements are identical to the requirements for obtaining an intra-company visa, eg a visa that is granted after obtaining prior approval by the Immigration Office in Italy (art. 27-a Immigration Law).





VISA AS DIRECTOR OF A NEWLY ESTABLISHED COMPANY

Italy grants this visa only if a company has been in activity for at least 3 years. Accordingly, establishing a branch/subsidiary does not automatically entitle the owner or appointed director to obtain a visa. Even when a company is 3+ years old, the Consulate has the discretion to grant the visa looking at:

- (i) If there are available quotas (a few hundred are allocated to this visa each year)
- (ii) the company's yearly turnover, registered capital, assets, and reserves (which need to be substantial), number of employees

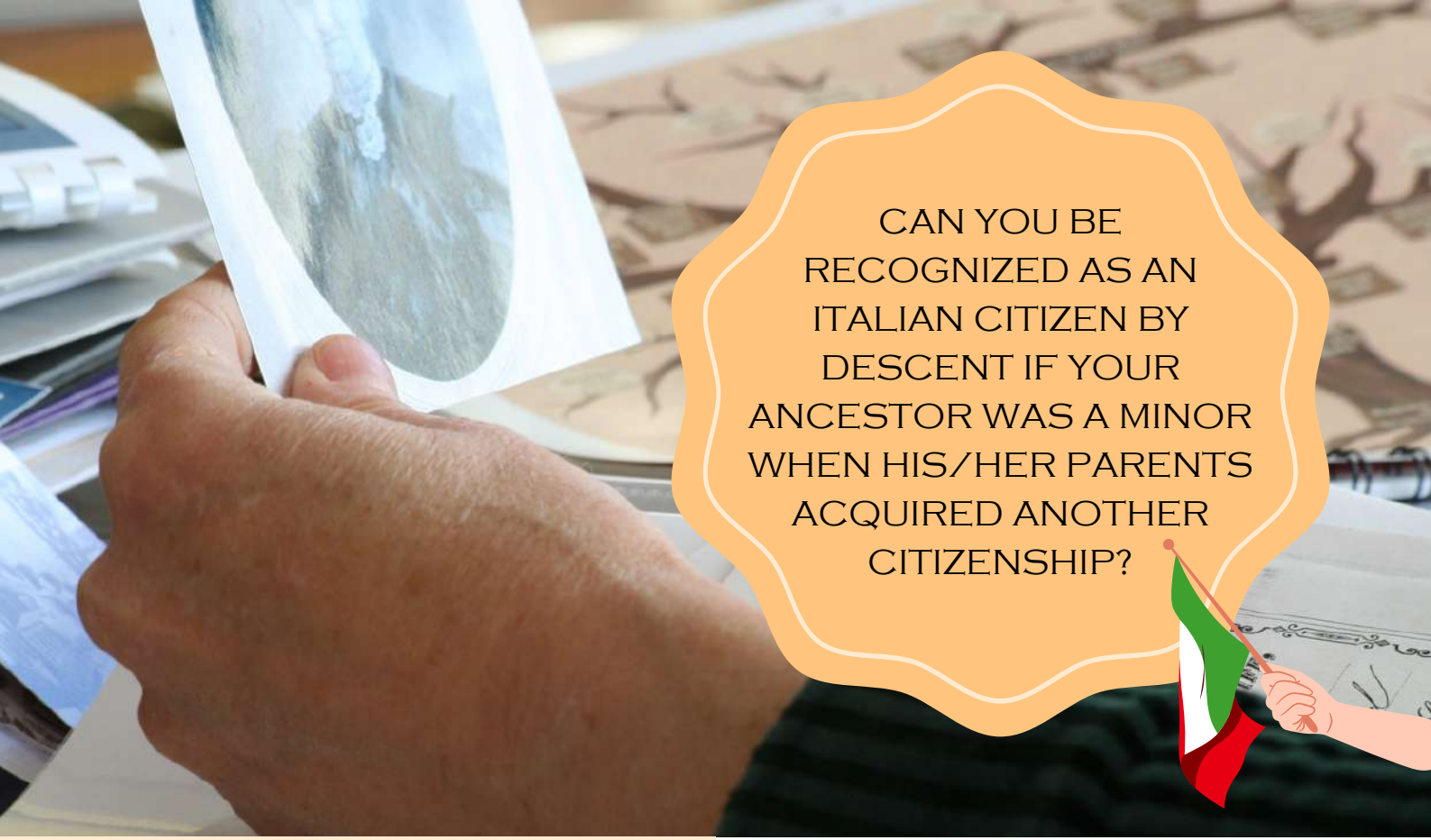


WHAT ABOUT THE ITALIAN DIGITAL NOMAD VISA?

It is not operative yet in Italy. On March 28, 2022, Italy introduced in its law — with great resonance — a specific visa for digital nomads and remote workers. This was announced as revolutionary reform, but there is a caveat because *the devil is in the details!*

The law provides that the requirements and conditions for the issuance of these visas should be established with a further Decree that was to be issued within 30 days, i.e. end of April 2022, but until now no further actions have been taken and the Digital Nomad Visas are still on hold.





CAN YOU BE
RECOGNIZED AS AN
ITALIAN CITIZEN BY
DESCENT IF YOUR
ANCESTOR WAS A MINOR
WHEN HIS/HER PARENTS
ACQUIRED ANOTHER
CITIZENSHIP?

Can you be recognized as an Italian citizen by descent if your ancestor was a minor when his/her parents acquired foreign citizenship?

Two recent decisions by the Court of Cassation are creating turmoil amongst those who could be eligible for Italian citizenship by descent (i.e. they have Italian ancestors). Italy did not allow dual citizenship until 1992. Accordingly, Italian citizens who emigrated and acquired foreign citizenship automatically lost Italian citizenship.

ITALIAN CITIZENSHIP LAW
555/1912 (IN FORCE
BEFORE 1992) HAD TWO
CONFLICTING PROVISIONS:

1

(i) art. 12 sets forth that children automatically followed the parents' citizenship status, consequently losing their Italian citizenship

2

(ii) art. 7 set forth that the Italian citizens born and resident abroad, deemed citizens of that country by right of birth, maintained their Italian citizenship unless they decided to give up citizenship once adult or emancipated.

UNTIL NOW ...

Most judges and Italian Consulates abroad applied the most favorable provision of art. 7, thus granting citizenship also in cases where the applicant's ancestor was a minor when the parents acquired foreign citizenship... BUT

Two recent decisions of the Court of Cassation stated for the application of the less favorable article 12 and denied citizenship in a case where the Italian ancestor naturalized during the child's minor age, regardless place of birth of the minor child.

Despite that, under the Italian legal system Court decisions (also by High Courts) are not binding precedents, we already know that some Italian Judges are now following the same interpretation of the Court of Cassation (applying the more restrictive art. 12, law 555/1912) leading to rejections.

WHAT HAPPENS NOW?

Taking into account these recent developments any future applicant must assess carefully possible options and investigate any alternative route, such as:

(i) searching for any female ancestor in the lineage who does not fall within the "minor issue", therefore getting recognized

Italian citizen by filing a Court motion in Italy

(ii) having another Italian family branch without the "minor case"



ITALIAN CITIZENSHIP IURE SANGUINIS: HOW DOES IT WORK?

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 several factors such as the date and place of birth of their parents, grandparents, and even great-grandparents.



WHAT IS THE FIRST-GENERATION LIMIT TO OBTAIN CITIZENSHIP?

An individual can apply for Italian citizenship with no limit to the number of generations. But, Italy was unified and became the Kingdom of Italy only on March 17, 1861, with the royal family of Piedmont-Sardinia as the new ruling monarchs of Italy. Accordingly:

(i) until 1861 there was no Italian State and it was 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

(ii) 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;

(iii) 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).

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. became a citizen) of another country.



Naturalization in another country can happen voluntarily, i.e. an individual who willingly accepts 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) serving 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 second citizenship (and therefore lost the Italian one) even without his knowledge or his will.

“
UNTIL 1948 WOMEN COULD
NOT PASS ON CITIZENSHIP TO
THEIR CHILDREN
”

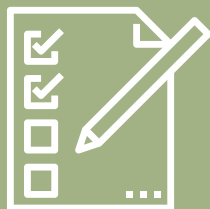
Under the 1912 Citizenship Law, only men were able to transfer their Italian lineage to children, while women could hold but not pass citizenship to their descendants. The principles of gender equality were laid down only on January 1, 1948, when the Italian Constitution entered into force. Unfortunately,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



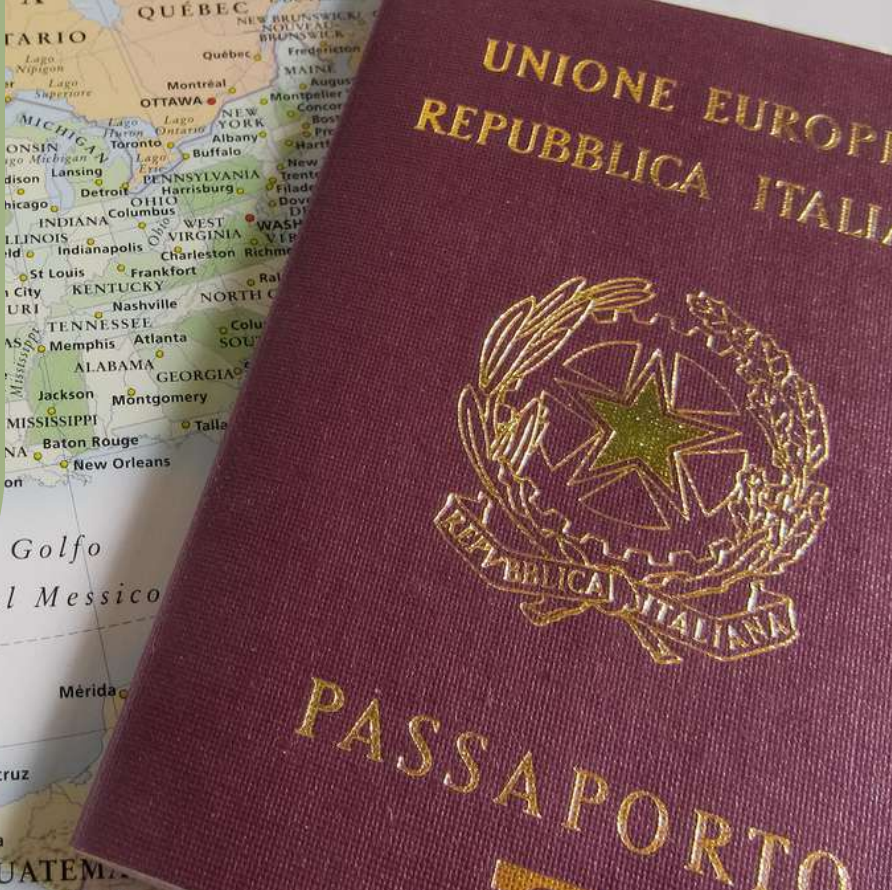
If you think this is discriminating between women and men, don't worry! The Italian Supreme Court agrees with you. In 2009, it established that it is unconstitutional to discriminate between women and men even in citizenship matters. All descendants born anytime from an Italian parent, are Italian citizens by birthright.



Unfortunately, this judgment did not have any consequences on the Consular behavior and if you fall into the "1948 cases" and submit a request for recognition of Italian citizenship Jure Sanguinis, the 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.



WHAT ARE THE REQUIREMENTS TO OBTAIN THE ITALIAN PASSPORT?



A passport is both a travel and an identification document issued:

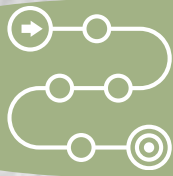


in Italy by the Police Headquarters;
abroad by diplomatic-consular Representations.

The passport is valid for countries recognized by the Italian government, and upon request, it can also be valid for countries not recognized by indicating the places of destination (Law 1185/67, Article 2).

While recalling that having a passport is therefore an essential requirement for entry into most non-European countries, before embarking on a journey, we recommend you to carefully consult the website www.viaggiasesicuri.it, where it will be possible to consult – for each individual State of destination – updated information on the travel document(s) required for entry into the country and on any restrictions and/or specific requirements.





PROCESS TO OBTAIN ITALIAN PASSPORT



Where to apply for an Italian passport? Italian citizens generally need to submit their passport application to the competent office based on their place of residence, either in Italy or abroad. In certain cases, with prior authorization from the respective Questura (local police headquarters) or Consulate, the passport can be issued by an office other than the one in the applicant's place of residence. This authorization must be explicit. It is important to note that if the application is submitted to a consular district where the applicant is not a resident, the processing and issuance time may be longer due to the required authorization from the competent Questura/Consulate.

What is the Italian passport? Ordinary Italian passport is the electronic passport that – as of October 26, 2006 – has replaced previous passport models. It uses modern technologies, such as anti-counterfeiting printing and a microprocessor containing the data of the holder and the issuing authority, which provides high security standards.

The **validity of the passport** varies depending on the holder's age:

- 3 years for minors under 3 years of age;
- 5 years for minors between 3 and 18 years of age
- 10 years for adults.



DOCUMENTS REQUIRED FOR AN ORDINARY PASSPORT APPLICATION



To apply for an ordinary passport, the following documents are needed:

- passport application form, duly completed and signed by the person concerned;
- an identity document in accordance with Presidential Decree 445/2000;
- 2 recent photographs (identical, frontal, in colour, format 35 x 40 mm);
- receipt of payment of the cost of the passport booklet and administrative fee;

- in case the applicant has children under the age of 18, an affidavit of consent to the issuance of the document by the other parent, regardless of the applicant's marital status (single, married, separated or divorced) – atto di assenso;
- if the applicant is a minor under the age of 18, an affidavit from both parents – atto di assenso;
- if the applicant is a child under the age of 18 born abroad, he/she shall submit to the competent Consulate – that, if not already done so, shall transmit it to Italy for subsequent registration – the birth certificate, translated and legalised (or with an apostille) or, where applicable, the certificate on a multilingual standard form.

Individual passport for minors:

Since June 26, 2012, all Italian minors traveling internationally must carry individual travel documents. Minors under different age ranges have varying validity periods for their passports:

- 3 years for minors aged between 0 and 3;
- 5 years for minors aged between 3 and 18.



HOW TO BECOME AN ITALIAN CITIZEN



The most common pathways to obtain Italian Citizenship are by descent, marriage/civil union, and residency/naturalization.



Italian citizenship by descent is based upon the principle of “jure sanguinis” (blood right, according to ancient Latin):

This means that a child born to an Italian mother or father has also the right to claim Italian citizenship, regardless of where the child was born.



Italian citizenship by Marriage/Civil Union with two different scenarios

The spouse or partner in a civil union of an Italian citizen who has registered residency for at least 2 years and holding a valid permit of stay, can apply for Italian citizenship after 2 years from the date of marriage or civil union, which is reduced to 1 year if the couple has children, also adopted, according to Italian law.


The spouse of an Italian citizen who resides abroad can apply for Italian citizenship after 3 years from the date of marriage or civil union, reduced to 18 months if the couple has children according to Italian law.



Italian Citizenship through Naturalization by Residency

If you have been legally resident in Italy, and you are still resident, you may be eligible for citizenship through residency and apply for Italian citizenship through naturalization. Requirements are based on the number of years of residency, absence of criminal records, payment of tax in Italy, and knowledge of the Italian language. Non-EU applicants can apply after 10 years of residency and in the case of EU citizens, they can apply after 4 years of residency. Reduced periods of just 3 years of residency are allowed if the applicant has a parent or grandfather who is born Italian.

Reacquisition of Italian Citizenship



Any person who has been Italian for a certain period of his life can request the reacquisition of Italian citizenship.

ITALIAN CITIZENSHIP: SOME CLARIFICATIONS IN LIGHT OF RECENT RULINGS



The refusal of Italian citizenship for the Lebanese citizen who failed to produce the criminal record certificate related to the period she spent in Russia is legitimate.



TAR Lazio, sez. I ter, July 18, 2023, no. 12132 (n. 437/438)

It is lawful to deny citizenship by naturalization to the Lebanese citizen who did not produce a criminal record certificate for the period spent in Russia.

Specifically, it is not sufficient to have produced a certification issued by the Russian Consulate in Italy attesting to the impossibility of issuing the criminal record certificate as it does not come from a Russian national.

Likewise, no value can be attached to the statement made by the petitioner on the impossibility of traveling to Russia to obtain the criminal certificate for family reasons.



To obtain Italian citizenship by 10-years term residency, it is strictly necessary to demonstrate the fulfillment of the said term through the Italian certificate of residency (i.e., "Certificazione anagrafica").

TAR Lazio, section V bis, Sept. 18th, 2023, order n. 13815

The legal registration of Italian residency is verified through the Italian certificate of residency only, as the legal residence cannot be proven by conjectures nor by other means. Furthermore, the fulfillment of the term must persist in time until the Oath is finalized.



It is unlawful to deny Italian citizenship if the decree does not indicate the periods or years when the declared income of the applicant was insufficient.

TAR Lazio, sez. V bis, July 3, 2023, no. 11128 (n. 436)

It is unlawful to deny citizenship by residence for lack of income parameters without stating which periods or years the income declared by the applicant was insufficient.

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