

N. 3229/2023 R.G.TRIB.



**COURT OF LECCE
SPECIALIZED SECTION FOR IMMIGRATION, INTERNATIONAL
PROTECTION, AND FREE MOVEMENT OF EUROPEAN UNION
CITIZENS**

The Court of Lecce, in a single-judge composition, represented by Dr. Piera Portaluri, having examined the documents regarding the resolution taken during the hearing on 27.04.2023, has issued the following decision:

JUDGMENT

in the case registered under number 3229/2023 R.G. filed

BY

[REDACTED], American citizen, born in [REDACTED] (USA) on [REDACTED], resident at [REDACTED] (USA); [REDACTED], American citizen, born in [REDACTED] (USA) on [REDACTED], resident at [REDACTED] (USA); [REDACTED], C.F. [REDACTED], American citizen, born in [REDACTED] (USA) on [REDACTED], resident at [REDACTED] (USA); [REDACTED], American citizen, born in [REDACTED] (USA), all represented and defended by Attorney Salvatore Aprigliano,

PETITIONERS

against

MINISTRY OF THE INTERIOR represented by the Minister pro tempore, represented and defended as required by law by the State Advocacy Office of Lecce,

RESPONDENT

With the intervention of the PUBLIC PROSECUTOR

Subject matter: appeal under art. 281 decies of the Italian Civil Procedure Code for recognition of Italian citizenship

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PROCEEDINGS OF THE CASE

With a petition filed on 28.04.2023, the petitioners specified that they are direct descendants of [REDACTED] born in [REDACTED] (TA) on [REDACTED] from [REDACTED];

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



- ## REASONS FOR THE DECISION

Courtesy translation, without legal validity. For all legal purposes, only the original Italian version of the judgment is valid.

the Public Administration (Ministry of the Interior Circular No. K28.1/1991), this would normally prevent the transmission of Italian citizenship status to descendants of an Italian woman.

In fact, the effects of Constitutional Court ruling No. 30 of 1983 have influenced cases like the one at hand, declaring the constitutional illegitimacy of Article 1, paragraph 1 of Law No. 555 of 1912, insofar as it did not provide for automatic citizenship by birth for children born to an Italian mother.

Even earlier, with ruling No. 87 of 1975, the Constitutional Court declared unconstitutional Article 10, paragraph 3 of Law No. 555 of 1912 (Provisions on Italian citizenship), which resulted in the loss of Italian citizenship for women marrying foreign citizens regardless of their own will.

Furthermore, with ruling No. 4466/2009, the Supreme Court of Cassation in joint sections consistently ruled that *"Italian citizenship status must be recognized judicially, irrespective of the declaration made by the interested party under Law No. 151 of 1975, Article 219, to a woman who lost it for marrying a foreign citizen before 1 January 1948, as the loss without the holder's consent continues beyond that date due to the unconstitutional provision, which contradicts the principles of gender equality and the legal and moral equality of spouses (Articles 3 and 29 of the Constitution). By the same principle, from 1 January 1948, the child of a woman in this situation, born before that date and during the validity of Law No. 555 of 1912, regains Italian citizenship, establishing the relationship of filiation, after the Constitution came into force, with the automatic transmission to them of the status of citizen, which they would have been entitled to without the discriminatory law."*

In reality, both logically and legally, under Article 136 of the Constitution and Law No. 87 of 11 March 1953, Article 30, the cessation of effects of an illegitimate and discriminatory law immediately and "automatically" affects pending or still justiciable situations, such as the right to citizenship. Consequently, the indisputable right to the non-loss or acquisition of citizen status of the appellants' ancestors can be recognized at any time, and thus their right to declare their own status as descendants of a citizen through descent from a woman who, from 1 January 1948, should have been considered an Italian citizen from birth.

Essentially, laws prior to the Constitution coming into force, deemed illegitimate by judicial rulings, are inapplicable even retroactively, and from 1 January 1948, they no longer affect the relationships they previously influenced, provided there is a person still affected by unjust but justiciable consequences, i.e., protectable in a judicial context.

Based on the civil registration certificates provided, translated, and apostilled, it is evident that [REDACTED] never naturalized as a citizen of the United States, and therefore, she never lost her Italian citizenship.

As a consequence, **the children [REDACTED], born in [REDACTED] (USA) on [REDACTED] and [REDACTED], born in [REDACTED] (USA) on [REDACTED], in addition to the US citizenship acquired by "jus soli" under the laws then in force in the United States of America, also acquired Italian citizenship "jure sanguinis" through the maternal line, as the daughter of an Italian citizen mother.**

[REDACTED] who in turn transmitted citizenship to her son [REDACTED], born in [REDACTED] (USA) [REDACTED]

The petitioners have never naturalized as US citizens nor have they ever made any explicit or implicit renunciation of their Italian citizenship, as provided for by law.

Therefore, the direct descent of the appellants from the Italian citizen Mr. Domenico Maggio has been proven uninterrupted and continuous. As a result, their right to have Italian citizenship recognized is indisputable from birth, as evidenced by the documentation submitted.

The legal costs can be declared non-reimbursable since the decision stems from the application of principles derived from case law.

ON THIS MATTER

The Court, definitely ruling, on the appeal filed by [REDACTED], [REDACTED], born in [REDACTED] (USA) on [REDACTED], [REDACTED], [REDACTED], born in [REDACTED] (USA) on [REDACTED], [REDACTED], [REDACTED], born in [REDACTED] (USA) on [REDACTED], [REDACTED], [REDACTED], born in [REDACTED] (USA) on [REDACTED], thus decides:

1. Accepts the application and, consequently, declares that the petitioners are Italian citizens;
2. Orders the Ministry of the Interior and, through it, the competent civil registry official, to proceed with the registrations, transcriptions, and legal annotations in the civil registry records regarding the citizenship of the individuals mentioned, and to provide any necessary communications to the competent consular authorities;
3. Makes no ruling on costs.

Decided in Lecce, on 9-5-2024

The Judge
dott. Mario Cigna

The present measure was drafted based on the draft prepared by Dr. Marcello Cafueri, GOP appointed pursuant to Legislative Decree No. 116/2017.