

R.G. n. 63/2023



COURT OF L'AQUILA

*Specialized section on immigration law, international protection,
and free movement of EU citizens*

IN MONOCRATIC COMPOSITION

* * * * *

Upon dissolution of the reservation assumed on 12.04.2024, Judge Dr. Giovanni Spagnoli issued the following

ORDER

pursuant to Article 702 bis of the Italian Code of Civil Procedure in civil case number 63 of the general contentious affairs register for the year **2023**

BETWEEN

██████████, born in ██████████ (USA) on ██████████, on his own behalf and in his capacity as a parent exercising parental responsibility (together with Mrs. ██████████) for their minor children ██████████, born in ██████████ (UK) on ██████████ and ██████████, born in ██████████ (USA) on ██████████, all represented and defended, by virtue of power of attorney attached to the petition, by Attorney Salvatore Aprigliano and electively domiciled in Milan at Via Fabio Filzi, No. 41;

Petitioner

AND

MINISTRY OF THE INTERIOR, represented by its legal representative ad interim, domiciled ex lege in L'Aquila, at Via Buccio da Ranallo s.n.c., at the Offices of the State Attorney of L'Aquila District, who represents and defends it ex lege, declared in default at the hearing on April 4, 2024.

Defendant



Appeal communicated pursuant to article 70, paragraph 1, No. 3 and 71 of the Italian Code of Civil Procedure to the Public Prosecutor at the Prosecutor's Office, Headquarters, on March 29, 2023.

SUBJECT: Appeal under Articles 19 bis of Legislative Decree No. 150/2011 and 702 bis of the Italian Code of Civil Procedure for recognition of citizenship status by jus sanguinis.

CONCLUSIONS OF THE PARTIES

The petitioner concluded as per written notes submitted in lieu of the hearing.

REASONS FOR THE DECISION

1. **With the appeal filed on January 13, 2023,** [REDACTED], on his own behalf and in his capacity as a parent exercising parental responsibility (together with Mrs. [REDACTED]) for their minor children [REDACTED], under Articles 19 bis of Legislative Decree 150/2011 e 702 *bis* c.p.c., the Court summons the Ministry of the Interior to ascertain and declare the right of the petitioning parties to the recognition of Italian citizenship status in their favor, with the consequent judicial order for the transcription of this judgment in the civil registry records. [REDACTED]

[illegible]

Having said that, before examining the merits of the dispute at hand, it is useful to reconstruct, also in terms of time, the regulatory and jurisprudential framework of reference.

2. The applicable procedural framework.



Regarding procedural rules, since the appeal was filed before March 1, 2023 (i.e., before the entry into force of the Cartabia Reform), Article 702 bis of the Italian Code of Civil Procedure applies.

3. The admissibility of the judicial claim.

As a preliminary procedural matter, it is necessary to assess the admissibility of the judicial claim filed in this instance.

In this regard, the right to Italian citizenship can only be recognized to individuals by the competent administrative authorities. Therefore, when the benefit of citizenship can and should be obtained through the activities of the public administration, a petition filed directly by the interested party to the administrative court is inadmissible due to lack of standing to sue. At this stage, before the administrative authority exercises its powers, the subjective right to citizenship is neither contested nor denied, and thus there is no evidence of the necessity for judicial intervention.

Notwithstanding the foregoing, it must be noted that if the public administration (P.A.), tasked with conducting mandatory activities affecting subjective rights, remains inactive for an unreasonable period of time, the interested party may challenge the silence of the P.A. before the administrative court. They may complain about the failure to fulfill the obligation to act, which contrasts with the subjective right to recognition of citizenship status. In other words, the passage of a reasonable period without the P.A. taking action on the request submitted by the individual gives rise to the individual's standing to sue for obtaining the benefit.

In this regard, concerning the recognition of citizenship by jus sanguinis, case law has examined cases of long waiting lists at foreign consulates (sometimes up to 10-12 years). In such cases, judicial action has been deemed the only possible means of protecting the applicant's subjective right (Tribunal of Rome, December 19, 2019 and December 5, 2014).

Therefore, if the described scenario arises, the interested party may indeed approach the administrative court directly, even without prior submission of the application to the administrative authorities.

In light of the above, the Court believes that the appeal filed in this instance is admissible, as the petitioners have provided evidence of the aforementioned points (documents numbered 7 to 16 in the index of the petitioner's file).



4. The substantive prerequisites of the applicant's right.

In substantive terms, "*status civitatis*" refers to "*the quality conferred by law that indicates an individual's belonging to a State*" (Supreme Court of Cassation, Joint Sections, No. 25318/2022). Once acquired through descent, birth, or naturalization, this "*status civitatis*" entails permanent effects throughout the individual's lifetime, which can only be voluntarily relinquished through express or implied renunciation (Court of Cassation, No. 22271/2016).

Moreover, concerning Italian citizenship rights, under the framework established by the Civil Code of 1865, subsequent Citizenship Law No. 555 of 1912, and current Law No. 91 of 1992, citizenship by birth is acquired as an original entitlement "*jus sanguinis*". Once acquired, the status of citizenship is permanent, imprescriptible, and subject to legal recourse at any time based on simple proof of the acquisition through birth from an Italian citizen. Therefore, those seeking recognition of citizenship need only prove the acquisition and lineage, while the burden of proof of any interruptive circumstance lies with the opposing party (Supreme Court of Cassation, Joint Sections, No. 25317/2022).

The substantive legal prerequisites defining the *status* under consideration include: a) direct descent of the applicant, regardless of the number of preceding generations, from an ancestor who held Italian citizenship; b) uninterrupted continuity in the transmission of "*status civitatis*" from the Italian ancestor to the applicant's generation.

4.1. The proof of descent according to Law No. 555/1912.

With regard to the requirement mentioned in sub a), the proof of being a descendant, regardless of the number of intervening generations, from an Italian citizen must be provided by submitting civil status documents, birth certificates, and marriage certificates to the court. **In the present case, the documentation submitted by the petitioners** (see documents numbered 1 to 6 in the index of the petitioner's file) **demonstrates the descent of the petitioners from [REDACTED], born in [REDACTED] (USA), whose father was an Italian citizen who emigrated to the United States of America and was already recognized as an Italian citizen by *jus sanguinis*.**

Therefore, it is necessary to consider, in order to identify the applicable substantive law to the specific case (including the Civil Code of 1865, Law No. 555/1912, and Law No. 91/1992), the law in force



at the time when this right was first transferred from the Italian ancestor to the first direct descendant, and subsequently the law in force at the time of the birth of this descendant.

Applying these principles to the specific case, since [REDACTED]

[REDACTED], the provisions of Article 7 of Law No. 555/1912 apply for the purposes of our interest, which reads as follows: "[...] *An Italian citizen born and residing in a foreign state, where they are considered a citizen by birth, retains Italian citizenship. However, upon reaching adulthood or emancipation, they may renounce it.*".

This provision, while stating an exception to the principle of the singular nationality as established by Article 1 of the same law, establishes that the natural child of an Italian citizen residing abroad does not lose Italian citizenship solely because the state in which they were born has attributed its own citizenship (*jus soli*). Consequently, the individual may hold dual citizenship, that of the foreign country where they were born (*jus soli* citizenship) and Italian citizenship (*jus sanguinis* citizenship). Recent jurisprudence has also aligned with this interpretation (Supreme Court of Cassation, Joint Sections, judgments No. 25317/2022 and 12894/2023).

4.2. The continuity in the transmission of *status civitatis*.

The second prerequisite that must exist, according to the combined provisions of Articles 1 and 7 of Law No. 555/1912 and Article 9(1)(a) of Law No. 91/1992, for the recognition of the status in question, is the (negative) requirement of the **absence of interruptive causes in the transmission of *status civitatis*** from the ancestor and their descendants.

In light of the foregoing, it must be considered that the requirement of continuity in the transmission of citizenship status in favor of the petitioners exists.

5. Conclusions.



In light of all the foregoing, the Court, in granting the petition, confirms and declares the right of the petitioning parties to the recognition of Italian citizenship *status* in their favor.

Furthermore, the request of the petitioners - concerning the request for transcription in the civil registry of this decision under Article 24, paragraph 1, letter e) of **Presidential Decree No. 396/2000** - **must also be granted**, pursuant to Article 12, paragraph 11, of the aforementioned article which states: "*transcription may be requested by anyone with an interest therein [...] or by the public authority.*"

Therefore, pursuant to Article 10 of Presidential Decree No. 396/2000, **it is ordered that the Ministry of the Interior, and through it, the competent Civil Registry Officer, proceed with the registrations, transcriptions, and legal annotations in the civil registry regarding the citizenship of the individuals mentioned, and provide any necessary notifications to the relevant consular authorities.**

Accordingly, it must be directed that the court clerk, in accordance with Article 14 of Presidential Decree No. 396/2000, promptly transmit this decision to the competent Civil Registry Officer.

6. Although the failure of the opposing party to appear in court does not exempt them from being ordered to reimburse litigation costs (Supreme Court of Cassation, judgment No. 5842/2015), the Court deems it appropriate in this case to declare such costs non-recoverable. Indeed, the significant number of applications submitted to the administrative authority - a circumstance that underpins the petitioners' standing to sue - effectively prevents timely conclusion of the corresponding administrative procedures.

ON THIS MATTER

The Ordinary Court of L'Aquila, Specialized Section in Immigration Matters, International Protection, and Free Movement of EU Citizens, sitting as a single judge, having finally ruled on civil case no. **63/2023** between the parties named above, hereby decrees:

- 1) In granting the petition, confirms and declares the right to [REDACTED] to the recognition in their favor of Italian citizenship *status*;
- 2) orders, under Article 10 of Presidential Decree No. 396/2000, the Ministry of the Interior and, through it, the competent Civil Registry Officer, to proceed with the registrations, transcriptions, and legal annotations in the civil registry regarding the citizenship of the individuals indicated, and to provide any necessary notifications to the relevant consular authorities;



- 3) dispone che il cancelliere, *ex art.* 14 D.P.R. 396/2000, trasmetta, senza indugio, all'ufficiale dello stato civile competente il presente provvedimento;
- 4) directs the court clerk, under Article 14 of Presidential Decree No. 396/2000, to promptly transmit this decision to the competent Civil Registry Officer.

L'Aquila, April 15 2024

The Judge
dott. Giovanni Spagnoli

