

N. R.G. [REDACTED]



COURT OF NAPLES –
13th CIVIL SECTION

**SPECIALIZED SECTION ON IMMIGRATION, INTERNATIONAL PROTECTION, AND
FREE MOVEMENT OF EU CITIZENS**

in the proceedings registered under no. R.G. [REDACTED] initiated with a petition filed on
21/12/2023 by:

[REDACTED], Tax Code [REDACTED], U.S. citizen, born in [REDACTED]
(USA) on [REDACTED], residing in [REDACTED] (USA); [REDACTED],
Tax Code [REDACTED], U.S. citizen, born in [REDACTED] (USA) on [REDACTED],
residing in [REDACTED] (USA); [REDACTED], Tax Code
[REDACTED], U.S. citizen, born in [REDACTED] (USA) on [REDACTED], residing in
[REDACTED] (USA),

all represented and defended by Attorney Salvatore Aprigliano, Tax Code PRGSVT74R31F205H, of
the Milan Bar, with elected domicile in Milan at Via Fabio Filzi no. 41, pursuant to power of attorney
on record;

against

The Ministry of the Interior, in the person of the Minister pro tempore,
and with

The Public Prosecutor

Intervening by law

The Court, sitting in single-judge composition and presided over by Judge Dott.ssa Ivana Capone, at the
conclusion of the hearing held on 24.6.2025, issues the following

JUDGMENT

By petition pursuant to Article 281-decies of the Italian Code of Civil Procedure, the petitioners requested the recognition of their Italian citizenship *jure sanguinis*, stating that they are direct descendants of [REDACTED], an Italian citizen by birth, born in [REDACTED] ([REDACTED]) on [REDACTED], who emigrated to the U.S.A.

The Ministry of the Interior, despite having been duly served, remained in default. The Public Prosecutor expressed a favorable opinion regarding the acceptance of the petition. Il P.M. ha espresso parere favorevole all'accoglimento del ricorso.

As to the jurisdiction of the Court of Naples, it should be noted that Delegated Law No. 206/2021 provides, under paragraph 36, the following amendment: "*At Article 4, paragraph 5, of Decree-Law No. 13 of 17 February 2017, converted, with amendments, by Law No. 46 of 13 April 2017, the following sentence is added at the end: 'When the plaintiff resides abroad, disputes concerning the determination of Italian citizenship shall be assigned based on the municipality of birth of the father, mother, or ancestor who was an Italian citizen.'*".

Paragraph 37 of the same law provides that: "*The provisions of paragraphs 27 to 36 of this article shall apply to proceedings initiated as of the one hundred eightieth day following the date of entry into force of this law.*".

Therefore, as of 22/06/2022, in cases where petitioners reside abroad, jurisdiction has shifted from the Court of Rome to the court of the place of birth of the Italian ancestor—or more precisely, to the court where the Specialized Sections for Immigration and Citizenship are located.

In the present case, the ancestor was born in [REDACTED] ([REDACTED]), from which the jurisdiction of this Court arises, in the Specialized Section for Immigration

The recognition of Italian citizenship is currently governed by Law No. 91/1992 and its implementing regulations. Article 1 of the aforementioned law establishes that a person is an Italian citizen by birth if born to an Italian father or mother. To be recognized as an Italian citizen by descent, it is necessary to demonstrate, through civil registry certificates, a direct line of descent from the Italian ancestor born in Italy to the applicant. Article 4 of the 1865 Civil Code did not recognize the child of an Italian mother as an Italian citizen by birth, providing instead that *jure sanguinis* citizenship could only be transmitted through the paternal line. The contents of this provision were incorporated and reproduced by Article 1, paragraph 1, no. 1, of Law No. 555/1912. Article 14 of the 1865 Civil Code stated that "*An Italian woman who marries a foreigner becomes a foreigner, provided that by virtue of the marriage she acquires her husband's citizenship. If she becomes a widow, she regains Italian citizenship if she resides or returns to reside in the Kingdom and declares, in both cases before the civil registrar, her intention to establish her domicile there.*"; The contents of this provision were incorporated and reproduced by Article 10, paragraph 3, of Law No. 555/1912.

Article 17 of Law No. 555/1912 repealed Articles 4 to 15 of the 1865 Civil Code. The same principles addressed in the repealed provisions were codified in Law No. 555/1912 and were later annulled by the Constitutional Court in 1975 and 1983. The governing principle of the *iure sanguinis* transmission of citizenship exclusively through the paternal line, established by Article 4 of the 1865 Civil Code and carried over into Article 1, paragraph 1, no. 1, of Law No. 555/1912—subsequently declared unconstitutional by judgment No. 30 of 1983—must be considered, as the Constitutional Court has repeatedly affirmed, to be invalid and no longer applicable (see Civil Court of Rome, First Division, Judgment No. 8603/2012) .

Similarly, Article 14 of the 1865 Civil Code, which provided for the loss—regardless of her will—of Italian citizenship by a woman who married a foreign citizen, was transposed into Article 10, paragraph 3, of Law No. 555/1912, which was in turn declared unconstitutional by judgment No. 87 of 1975.

The Constitutional Court held that the cited provisions violated the principles set forth in Articles 3 and 29 of the Constitution, creating a serious moral, legal, and political inequality between spouses, placing the woman in a clear position of inferiority. In line with the arguments offered by the Court—regarding the challenge to Article 1, paragraph 1, no. 1, of Law No. 555/1912 (whose contents had been transposed from Article 4 of the 1865 Civil Code)—the exclusive acquisition of citizenship from the father undermined, in several respects, the legal position of the mother in her relationship with both the State and the family. In particular, "it cannot be denied that both parents have a legally relevant interest in their children being citizens and thus members of the same state community to which they belong, enjoying the protections tied to such membership" (Constitutional Court, Judgment No. 30 of 1983).

The fact that the criticisms made by the Constitutional Court with respect to Articles 1, paragraph 1, no. 1, and 10, paragraph 3, of Law No. 555/1912 also extend to Articles 4 and 14 of the 1865 Civil Code is confirmed by the Court itself, which has stated that its "judicial review [...] may and must be exercised whenever one can speak of the 'effectiveness' (see Article 136 of Law No. 87 of 11 March 1953) and 'application' (Article 30 of Law No. 87 of 11 March 1953) of the law, regardless of whether the law in question has been repealed, as it remains 'effective' and 'applicable' within the boundaries established by the principles governing the succession of laws over time" (Constitutional Court Judgments Nos. 4/1959, 49/1970, 24/1975, 255/1982).

The Italian Supreme Court of Cassation, Civil Division, sitting in Joint Chambers, ruled in Judgment No. 4466/2009 that Italian citizenship must be judicially recognized for women who lost it by marrying a foreign national prior to 1 January 1948, "since the illegitimate deprivation arising from the unconstitutional provision does not cease with the involuntary loss resulting from the establishment of the marital bond but continues to have effects even after the Constitution came into force, in violation of the fundamental principles of gender equality and legal and moral equality between spouses, as set out in Articles 3 and 29 of the Constitution. As a result, the temporal limitation of the effects of the declaration of unconstitutionality to 1 January 1948 does not prevent the recognition of the status of citizen, which is permanent and imprescriptible and can be asserted at any time, except in the case of a waiver by the applicant."

The same Court, in Joint Chambers Judgment No. 4467/2009, further held that "as a result of this principle, Italian citizenship is also reacquired as of 1 January 1948 by the child of a woman in the situation described, born before that date and while Law No. 555/1912 was in force. This right is transmitted to the child's own descendants, with the establishment of the parent-child relationship after the Constitution's entry into force determining the transmission of the 'status' of citizen, which would have rightfully belonged to them in the absence of the discriminatory law."

Under the current legal framework, Article 1, paragraph 1, letter a), of Law No. 91/1992 expressly provides that "a person is an Italian citizen by birth if the father or mother are Italian citizens"; Italian women no longer lose their citizenship upon marrying a foreign national, and the simultaneous possession of multiple citizenships is now recognized. These considerations undoubtedly lead to the recognition of the right of the present petitioners to obtain the status of Italian citizens. In this case, the petitioners are direct descendants [REDACTED], an Italian citizen by birth, born in [REDACTED] ([REDACTED]) on [REDACTED], [REDACTED] who later emigrated to the United States where on [REDACTED] she married. [REDACTED]. From their union [REDACTED], was born on [REDACTED], [REDACTED], acquiring U.S. citizenship at birth by virtue of the *jus soli* principle in force there, [REDACTED], after marrying [REDACTED], took on her husband's surname. From their union, was born on [REDACTED] in [REDACTED], [REDACTED], acquiring U.S. citizenship at birth by virtue of the *jus soli* principle in force there, and is one of the present petitioners. [REDACTED] in turn had two children: [REDACTED] and [REDACTED], who are also petitioners in the present case.: [REDACTED] was born on [REDACTED], in [REDACTED] (USA) and acquired U.S. citizenship at birth by virtue of the *jus soli* principle in force there. [REDACTED] was born on [REDACTED], in [REDACTED] (USA) and also acquired U.S. citizenship at birth by virtue of the *jus soli* principle in force there. Therefore, accepting the petitioners' request, it must be declared that they are Italian citizens, and the Ministry of the Interior shall be ordered to adopt the necessary consequential measures. There are valid reasons, considering that the decision arises from the application of jurisprudential principles, to declare that litigation costs shall be fully compensated between the parties.

FOR THESE REASONS

The Court, having definitively ruled, decides as follows:

- It upholds the petition and, as a result, declares that the petitioners are Italian citizens;
- It orders the Ministry of the Interior and, on its behalf, the competent civil registrar, to proceed with the registrations, transcriptions, and legal annotations in the civil status registers regarding the citizenship of the individuals indicated, and to make any necessary communications to the competent consular authorities;
- It declares that legal costs shall be fully compensated between the parties.

So decided in Naples, on July 1, 2025

GOP

Dott.ssa Ivana Capone

Judgement n. [REDACTED] published on 07/03/2025

RG n. [REDACTED]

Repert. n. [REDACTED] of 07/03/2025