

N. [REDACTED] R.G.

**ITALIAN REPUBLIC****IN THE NAME OF THE ITALIAN PEOPLE**

The Court of Bari, Specialized Section for Immigration, International Protection and Free Movement of European Union Citizens, presided over by Judge Dr. Enzo Davide Ruffo;
having acknowledged that this decision is issued following the hearing held on *February 14, 2025*, scheduled for oral discussion and ruling pursuant to *Article 281-sexies of the Italian Code of Civil Procedure*, which was replaced pursuant to *Articles 127, last paragraph, and 127-ter of the Code of Civil Procedure* by the electronic filing of written pleadings, as previously ordered by decree duly communicated to the attorneys of record;
having read the written pleadings and carried out the preliminary procedural verifications;
having verified the proper establishment of the adversarial process;
having examined the results of the evidentiary phase delegated to the Honorary Judge, Attorney Tiberio Rucci;
has delivered the following

JUDGMENT

in the proceeding registered under no. [REDACTED] R.G., concerning the recognition of Italian citizenship, brought by:

[REDACTED], (Tax Code [REDACTED]), born in [REDACTED] (USA) on [REDACTED], represented and defended by Attorney Salvatore Aprigliano, pursuant to power of attorney filed in the records;

-claimant-

against

THE MINISTRY OF THE INTERIOR, in the person of the Minister pro tempore, represented and defended by law by the State Attorney's Office of Bari;

-respondent -

and with the intervention of the
PUBLIC PROSECUTOR AT THE COURT OF BARI

PROCEEDINGS AND REASONS FOR THE DECISION



I.1-By petition filed on December 22, 2023, pursuant to Article 281-*undecies* of the Italian Code of Civil Procedure, [REDACTED], after claiming to be a direct descendant of [REDACTED], born in [REDACTED] (Italy) on [REDACTED], an Italian citizen by birth who emigrated to the United States without ever renouncing Italian citizenship and without ever acquiring U.S. citizenship, as evidenced by the certificate of non-naturalization issued by the authorities of the aforementioned State and filed in the records, requested the recognition of Italian citizenship *jure sanguinis*.

I.2-By decree issued on January 11, 2024, the hearing for the appearance of the parties was scheduled for June 5, 2024, and subsequently postponed ex officio to September 20, 2024. The hearing was held via videoconference, as previously ordered by decree issued pursuant to Article 127-bis of the Italian Code of Civil Procedure, duly communicated to the attorneys of record. Only the petitioners' counsel participated, joining remotely and, as recorded in the hearing minutes on file, reiterated the request for the petition to be upheld.

The Ministry of the Interior appeared through the State Attorney's Office of Bari, by means of a defensive brief electronically filed on May 9, 2024, in which—without contesting the existence of the factual and legal grounds for the recognition of Italian citizenship in favor of the petitioners—it merely requested, in the event of acceptance of the petition, that the legal costs be offset between the parties.

I.4- The Public Prosecutor did not appear and did not submit any objections to the acceptance of the petition.

1- On the merits, the petition, being well-founded, must be upheld for the following reasons.

II.2- Now, pursuant to Article 4 of the former Civil Code of 1865, which was in force at the time the petitioners' ancestor gave birth to the first descendant, "*A citizen is the child of a citizen father.*".

II.3- This provision must be read and interpreted in light of Judgment No. 30 of February 9, 1983, in which the Constitutional Court declared the constitutional illegitimacy of Article 1, No. 1, of Law No. 555 of June 13, 1912, insofar as it did not provide that a child born to an Italian mother is also an Italian citizen by birth. In support of this decision, the Court specifically noted that the provision "*is in clear conflict with Article 3, paragraph 1 (equality before the law without distinction of sex), and with Article 29, paragraph 2 (moral and legal equality of spouses). Nor can the differentiated rules on the acquisition of citizenship by birth be justified by reference to a legal limit to the equality between spouses, allegedly set in place to safeguard family unity. Among other things, it is unclear how the diversity of citizenship between spouses—as admitted by Judgment No. 87/1975*



and by Article 143-ter of the Civil Code (introduced by Law No. 151 of May 19, 1975, on the reform of family law)—has been deemed compatible with family unity, whereas the joint attribution to a minor child of both paternal and maternal citizenship would not be”.

II.4-Nor can the failure to comply with the principles enshrined in Article 3, paragraph one, and Article 29, paragraph two, be justified by the need to avoid cases of dual citizenship, even in light of international commitments (see the 1963 Strasbourg Convention, whose ratification was authorized by Law No. 876 of October 4, 1966, and deposited by Italy with certain reservations). Indeed, the need to uphold the constitutional principle of equality, also in the matter of acquiring *status civitatis* by birth, must be recognized as prevailing over even serious inconveniences. Moreover, the legislator is not without means to contain within tolerable limits the difficulties arising from the plurality of citizenships held by the child.

II.5- On the scope of application of the aforementioned ruling, the Joint Sections of the Court of Cassation also intervened with Judgment No. 4466/2009, clarifying that “*As a result of Constitutional Court Judgments No. 87 of 1975 and No. 30 of 1983, Italian citizenship must be recognized in judicial proceedings to a woman who lost it pursuant to Article 10 of Law No. 555 of 1912, for having married a foreign citizen before January 1, 1948, regardless of any declaration made under Article 219 of Law No. 151 of 1975, since the unlawful deprivation caused by the provision declared unconstitutional does not end with the involuntary loss of citizenship resulting from the establishment of the marital bond, but continues to produce effects even after the Constitution entered into force—thus violating the fundamental principles of gender equality and the legal and moral equality of spouses, enshrined in Articles 3 and 29 of the Constitution. Consequently, the temporal limitation of the effects of the declaration of unconstitutionality to January 1, 1948 does not prevent the recognition of citizenship status, which is permanent, imprescriptible, and can be asserted at any time, unless it is extinguished by a formal renunciation by the applicant. In application of this principle, Italian citizenship is reacquired as of January 1, 1948 also by the child of a woman in the described situation, if born before that date and under the validity of Law No. 555 of 1912, and such right is transmitted to his or her descendants. If the child–parent relationship was established after the Constitution entered into force, this gives rise to the transmission of citizenship status, which the person would have been entitled to by right in the absence of the discriminatory law*”.

II.6- Having established the possibility of recognizing Italian citizenship by direct descent, including through the maternal line, it must first be noted that, for the recognition of citizenship *jure sanguinis*, it is sufficient to demonstrate direct lineage from the Italian ancestor. It is, instead, the burden of the Administration to prove the existence of any interrupting circumstances, such as the loss of citizenship or the naturalization of the ancestor or of any ascendant.



II.7- See, most recently, Cass. Joint Sections No. 25317/2022: “Since Italian citizenship acquired by birth is obtained originally *jure sanguinis*, and citizenship status, once acquired, is permanent, imprescriptible, and can be asserted at any time, anyone seeking to obtain citizenship is only required to prove the original act of acquisition and the line of transmission. On the contrary, it is the burden of the opposing party—should it raise an objection—to demonstrate the possible existence of a legal circumstance interrupting the *jure sanguinis* line of transmission from the ancestor.”

II.8-In the present case, it must be noted that from the documentation submitted by the petitioner—documentation that has not been specifically contested by the Administration—it appears that the petitioner is a direct descendant of [REDACTED], born on [REDACTED], from the union between [REDACTED] and [REDACTED], who emigrated to the United States of America without ever naturalizing as a U.S. citizen, as evidenced by the certificate of non-naturalization issued by the Peruvian authorities.

II.9-It must be specifically noted that the documents submitted by the petitioner show that:

1. [REDACTED], during the relationship with [REDACTED], gave birth on [REDACTED];
2. [REDACTED], in turn, during a de facto union with [REDACTED], gave birth on [REDACTED] to the present petitioner, [REDACTED].

II.10- It must finally be noted that the fact that the descendants of Ms. [REDACTED] settled in the United States and acquired U.S. citizenship does not preclude the recognition of Italian citizenship. In order to establish a loss of Italian citizenship that would interrupt its transmission *jure sanguinis* to the descendant, it is necessary that the individual concerned has expressly renounced Italian citizenship through a conscious and voluntary act—a circumstance which, in the present case, it was the burden of the Administration to allege and prove.

II.11- See, on this point, Cass. No. 22271/2016: “Pursuant to Article 11 of Law No. 91 of 1992, the acquisition of foreign citizenship, even if accompanied by the transfer of residence abroad, does not necessarily entail the loss of Italian citizenship, unless the individual expressly renounces it through a conscious and voluntary act. In fact, as can be inferred from Article 4 of the Constitution, Article 15 of the Universal Declaration of Human Rights of December 10, 1948, and the Treaty of Lisbon of December 13, 2007, every person has a permanent and imprescriptible subjective right to citizenship status, which can be asserted judicially at any time and may only be lost through renunciation.”.



II.12-See also Cass. No. 6220/1981: “THE ACQUISITION OF FOREIGN CITIZENSHIP, EVEN IF ACCOMPANIED BY THE TRANSFER OF RESIDENCE ABROAD, DOES NOT NECESSARILY IMPLY THE LOSS OF ITALIAN CITIZENSHIP, WHICH—PURSUANT TO ARTICLE 8 OF LAW NO. 555 OF JUNE 13, 1912—REQUIRES THAT SUCH ACQUISITION OCCUR ‘SPONTANEOUSLY’, OR, IF IT OCCURS ‘WITHOUT THE INDIVIDUAL’S VOLUNTARY PARTICIPATION’, THAT IT BE FOLLOWED BY A DECLARATION OF RENUNCIATION OF ITALIAN CITIZENSHIP. THEREFORE, THE SUBSEQUENT ACQUISITION OF FOREIGN CITIZENSHIP CANNOT, IN ITSELF, BE INVOKED AS A CAUSE FOR THE LOSS OF ITALIAN CITIZENSHIP; THE ABOVE-MENTIONED CIRCUMSTANCES MUST BE ALLEGED AND PROVEN.”

II.13-In conclusion, since, on the one hand, the petitioner has proven direct descent from the ancestor, an Italian citizen, and, on the other hand, the Administration—which did not even contest the grounds for granting the petition—has neither alleged nor proven the existence of any circumstances interrupting or preventing the acquisition of citizenship *jure sanguinis* by the petitioner, he must be declared an Italian citizen.

II. 1-As for the regulation of legal costs, in light, on the one hand, of the particular nature of the legal issues addressed, and, on the other hand, of the procedural conduct of the Administration—which, although having appeared in the proceedings, did not oppose the petition—and also taking into account, as noted by the Ministry, the high number of applications submitted in the administrative phase (a well-known fact), which makes it practically impossible for the Administration to process all cases within the time limits set by law, there exist other serious and exceptional reasons, pursuant to Article 92, paragraph 2, of the Italian Code of Civil Procedure, as reworded by Constitutional Court Judgment No. 77/2018, to order full cost compensation between the parties.

FOR THIS REASON

The Court, Specialized Section for Immigration, International Protection and Free Movement of European Union Citizens, definitively ruling on the petition filed by the petitioner on December 22, 2023, hereby orders as follows:

- A. UPHOLDS the petition and, as a consequence, DECLARES that [REDACTED], (Tax Code [REDACTED]), born in [REDACTED] (USA) on [REDACTED] is an Italian citizen;
- B. ORDERS, accordingly, the Ministry of the Interior and, on its behalf, the territorially competent Civil Registrar to proceed with the registrations, transcriptions, and annotations required by



law in the civil status registers concerning the citizenship of the person indicated under point A), and to carry out any necessary communications to the competent consular authorities;

C. FULLY COMPENSATES the legal costs between the parties.

Thus decided in Bari, on February 28, 2025.

The Judge

Enzo Davide Ruffo

