



Court of Naples

13th CIVIL SECTION

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

The Court of Naples, sitting as a single judge with Judge Antonietta De Simone, having rendered a
decision on January 8, 2024, issues the following

ORDER

in the civil case handled with summary proceedings pursuant to Articles 702 bis and following of the
Civil Procedure Code, registered under no. 27243-2022 R.G., concerning: Italian citizenship status

BETWEEN

[REDACTED], American citizen, born in [REDACTED] (USA) on
[REDACTED], and [REDACTED],
[REDACTED], American citizen, born in [REDACTED] (USA) on [REDACTED], represented and
defended by Attorney Salvatore Aprigliano, Tax Code PRGSVT74R31F205H, of the Milan Bar as
per the power of attorney attached to the file

APPLICANTS

AND

The **MINISTRY OF THE INTERIOR**, represented by the current Minister residing ex lege at the
State Attorney's Office

Respondent in default

Also

The **Prosecutor of the Republic** at the Court of Naples

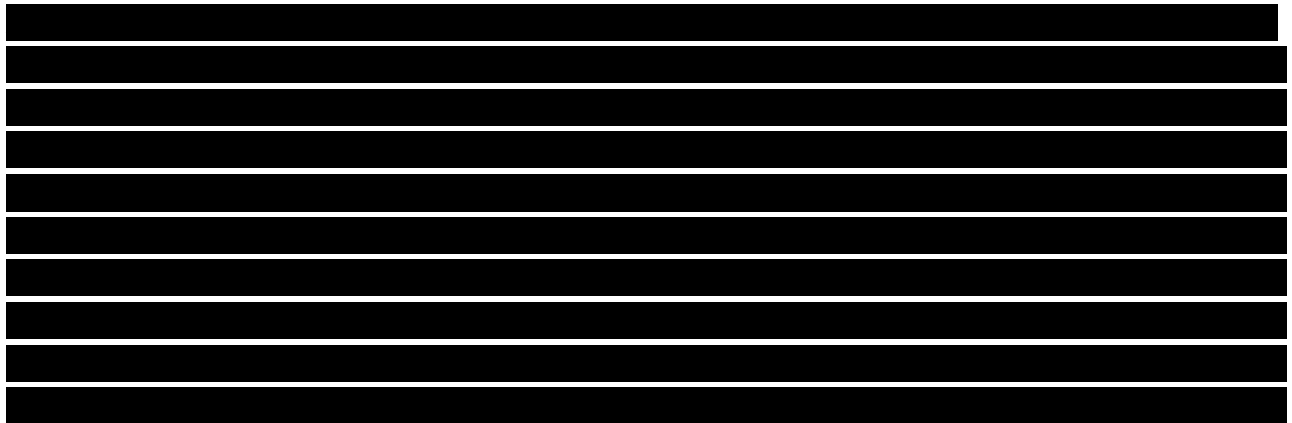
Intervenor ex lege



Reasons for the decision

With an application filed on November 23, 2022, the applicants have brought an action against the Ministry of the Interior to obtain an appropriate measure for Italian citizenship, and thus to order the Civil Status Officer of their municipality of residence to record and transcribe in the Civil Status Registers of the ancestor; to have it confirmed that they are Italian citizens iure sanguinis from birth.

The genealogical history of the family is confirmed by the documents attached to the case file and the Civil Status certificates with the necessary apostilles.



From the documentation submitted, it is evident that the ancestry of the current applicants is characterized by an involuntary interruption of Italian citizenship. This Italian citizenship is currently governed by Law No. 91 of February 5, 1992 (and the regulation for its implementation: in particular, by DPR No. 572 of October 12, 1993, and DPR No. 362 of April 18, 1994), and subsequent amendments. The aforementioned law specifically governed in Article 1 the cases in which Italian citizenship was passed down iure sanguinis, effectively leaving the female citizen only residual possibilities compared to the male citizen in terms of passing down Italian citizenship to offspring. In fact, the law stated: “A citizen by birth is: **an Italian citizen by birth is the child of a father or mother who are citizens.**”

The applicant argues that based on the described family situation, they wish to establish Italian citizenship iure sanguinis from birth and without interruption; for this purpose, they attach to the application all the certificates required by Italian law.

The resisting parties did not appear in court and the proceedings continued in default. The Public Prosecutor has filed a favorable opinion.



[REDACTED]

[REDACTED]

[REDACTED]

The application is well-founded. According to Article 4 of the 1865 Civil Code: “A citizen is the child of an Italian father.” Similarly, under Article 1 of Law 555/1912: “A citizen by birth is the child of a citizen father.” Law No. 555/1912, therefore, while confirming the principle of recognition of Italian citizenship through paternal descent regardless of the place of birth, intended to guarantee children of Italian citizens who emigrated abroad the maintenance of the link with the country of origin of their ancestors, introducing an important exception to the principle of singular citizenship. Article 7 of Law 555/1912 allowed the child of an Italian citizen - born in a foreign state that granted its own citizenship according to the principle of ius soli (as in the present case) - to retain Italian citizenship acquired at birth, recognizing, therefore, to the individual, the significant right to renounce it upon reaching adulthood, if residing abroad. According to Italian law, citizenship is transmitted by descent (“iure sanguinis”), so at birth, one acquires the citizenship of their parent (Article 1 of Law No. 91/92: “a citizen is the child of a father or mother who are citizens”), confirming the principle of recognition of Italian citizenship through paternal and maternal descent regardless of the place of birth. Therefore, in the case of paternal descent, anyone born in a foreign state is entitled to be recognized as an “Italian citizen” if they prove to have an Italian ancestor (male), with no generational limits (with the sole limit that the Italian ancestor must have died after March 17, 1861, the date of the proclamation of the Kingdom of Italy). The only condition required is that the chain of citizenship transmission has not been interrupted by naturalization or renunciation by one of the ancestors before the birth of the child to whom citizenship is to be transmitted. From the documents produced, it appears that the Italian ancestor had never been naturalized as an American citizen and thus had not lost Italian citizenship, transmitting it “iure sanguinis” to their descendants.

The line of descent reported by the applicants is accurately matched by the documentation provided, in particular, neither the applicants nor the ancestors have ever renounced Italian citizenship, interrupting the chain of citizenship transmission, as proven by appropriate certificates issued by the competent Italian diplomatic and consular authorities and apostilled.

Consequently, the descendants also acquired Italian citizenship from birth, as descendants of Italian citizens.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



It is therefore proven that direct paternal descent from an Italian citizen exists. In principle, there should be a lack of interest in judicially pursuing the verification of Italian citizenship, as there are no generational passages through the female line in the pre-constitutional period, and therefore no doubt arises regarding the applicability of constitutional jurisprudence (Judgment No. 87 of 1975, Judgment No. 30 of 1983) which determined the elimination of the solely male transmission criterion and the provision that the woman who married a foreign citizen lost citizenship.

Therefore, since the recognition of the status of *civitatis* rests with the Ministry of the Interior, the applicants should have limited their request to obtaining the relevant certificate or at least requesting recognition of the status from the consular authority in the country of residence based on the documentation proving their descent from an Italian citizen, without the need to initiate a lawsuit before the ordinary judge. The applicants could have **submitted their request** to the Italian Consulate in San Francisco (USA), which is competent for their place of residence for the recognition of their Italian *civitatis status iure sanguinis*, as descendants - in direct line - of an Italian citizen, given the long waiting times, but chose to approach the ordinary judicial authority due to the impossibility of obtaining such recognition within the legal timeframes.

In any case, due to the Madia Law (Legislative Decree 33 of 2013), it was explicitly requested from the San Francisco Consulate to know the current timelines for citizenship applications and, in particular: 1) from which date new appointments are assigned; 2) the year in which the applications under review were submitted as of today. On this point, the Consulate, on December 14, 2022, provided a response confirming the extreme delay in processing citizenship applications *iure sanguinis*.

According to Article 2 of Law No. 241 of August 7, 1990, proceedings of competence of state administrations must be concluded within determined and certain terms, also in accordance with the principle of reasonable duration of the process. Uncertainty regarding the resolution of the request for recognition of Italian *civitatis status iure sanguinis* and the passage of an unreasonable amount of time in relation to the claimed interest, resulting in a violation of the interest itself, equates to a denial of the right, justifying the interest in seeking judicial protection. Therefore, the request must be accepted, declaring the applicants as Italian citizens, and ordering the Ministry of the Interior to take the consequent measures. There are valid reasons to compensate the litigation costs, given that the high number of administrative requests does not allow for their timely processing. **Therefore, it is considered by the undersigned that the applicants in this case are Italian citizens *iure sanguinis* from birth.**

For the reasons stated in fact and law, it is ordered that the Civil Status Officer take the necessary actions to grant this status.

Full compensation of costs can be ordered, considering the existence of non-univocal interpretations on the issues, including regarding the judgment of lack of passive legitimacy of the municipality.

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



Ruling

The court, through the single judge, accepts the request and, as a result, declares that:

- [REDACTED], born in [REDACTED] (USA) on [REDACTED], and [REDACTED], born in [REDACTED] (USA) on [REDACTED], are Italian citizens;
- orders the Civil Status Officer of the ancestor [REDACTED], Italian by birth, born in [REDACTED] (Italy) [REDACTED], to proceed with the necessary annotations and transcriptions in the Civil Status Registers of the population;
- orders the Ministry of the Interior, or its representative, to proceed with the legal registrations, transcriptions, and annotations of the applicants' Italian civitatis status in the civil status registers, and to communicate with the competent Consular Authorities;
- Costs are to be compensated.

So decided in **Naples on March 7, 2024**

The Judge

A. De Simone

