Judgment n. 4038/2026 published on 05/13/2026
RG n.
Register no. 05/13/2026

ORDINARY COURT OF BOLOGNA

Specialized Section on Immigration, International Protection and Free Movement of European Union Citizens

In the civil proceedings registered under No. brought by:

(Italian Tax Code No. born on in (USA), residing at (USA), acting both in his own name and in his capacity as parent of (Italian Tax Code No. born on in (USA), residing at (USA), represented and defended by Attorney Salvatore Aprigliano, Italian Tax Code No. PRGSVT74R31F205H, member of the Milan Bar Association, pursuant to the special powers of attorney filed in the proceedings,

APPLICANTS

against

**MINISTRY OF THE INTERIOR**

RESPONDENT

**Public Prosecutor's Office**

MANDATORY INTERVENING PARTY

The Court, sitting as a single judge in the person of the Honorary Judge (GOP) Dr. Natascia Gardini, having lifted the reservation taken on 12 May 2026, hereby issues the following

**JUDGMENT pursuant to Article 281-terdecies of the Italian Code of Civil Procedure**

**Facts and Law**

1.

The applicants, as identified above, alleged that they are direct descendants of: an Italian citizen by birth, born on in (Modena). Mr. subsequently emigrated to the United States where, through his union with he fathered (USA), who acquired United States citizenship by virtue of the principle of jus soli in force therein (**doc. 004)**.

Subsequently, from the union between was born on (USA) (**doc. 005**).

Thereafter, through his union with , fathered , the present applicant, on (USA), who is a United States citizen by virtue of the principle of jus soli in force therein (doc. 006).

Finally, the union between gave rise to the birth of the present applicant, on in (USA), who is a United States citizen by virtue of the principle of jus soli in force therein (doc. **007)**.

(Attached: translated and apostilled birth and marriage certificates, together with the genealogical chart.)

2.

The same applicants sought recognition of Italian citizenship, claiming that such citizenship had been transmitted jure sanguinis. They stated that they had first applied to the respondent Administration, repeatedly and unsuccessfully attempting to submit a formal application for recognition of Italian citizenship before the Consulate General of Italy in Philadelphia since 2024, including through the "Prenotami" online platform (doc. 10), as well as on 22/01/2025, 23/01/2025, 28/01/2025 and 27/02/2024 by means of formal requests for general civic access pursuant to the "Madia Law" (Legislative Decree No. 33 of 2013) addressed to the Consulates in New York, Boston, Philadelphia and Chicago (see counsel's certified email communications, doc. 009), without, however, any concrete possibility of obtaining an adequate and timely response, resulting in the paralysis of the system.

By order issued out of hearing on 24/02/2026, a term was granted for service of the application upon the respondent party, and a brief adjournment pursuant to Article 127-ter of the Italian Code of Civil Procedure was ordered. The case was then reserved for decision, being entirely documentary in nature.

The documents were transmitted to the Public Prosecutor, in the person of the Public Prosecutor at the Court of Bologna, who did not submit any conclusions.

It should be noted that the Ministry entered an appearance late in the proceedings, requesting dismissal of the application for the reasons stated therein (statement of appearance filed on 09/05/2026, deadline

for written notes in lieu of hearing set for 12/05/2026). Nevertheless, such delay does not affect the admissibility of the defenses raised, since they concern neither counterclaims nor procedural or substantive objections that may not be raised ex officio.

The applicants filed written submissions within the prescribed deadline of 12/05/2026.

3.

The territorial jurisdiction of the Court seised of the matter is undisputed (see Article 4, paragraph 5, of Decree-Law No. 13 of 17 February 2017, converted, with amendments, by Law No. 46 of 13 April 2017, as amended by Article 1, paragraph 36, of Delegating Law No. 206/2021, according to which: "Where the claimant resides abroad, disputes concerning the determination of Italian citizenship status shall be assigned with reference to the municipality of birth of the father, mother, or ancestor who is an Italian citizen"), as is the fact that the dispute falls within the jurisdiction of a single judge (see Article 3, paragraph 4, of the aforementioned Decree-Law No. 13 of 17 February 2017, according to which: "Except as provided by paragraph 4-bis, notwithstanding Article 50-bis, first paragraph, no. 3, of the Italian Code of Civil Procedure, disputes referred to in this Article shall be adjudicated by the Court sitting as a single judge.")

4.

It must be observed that the present judicial application was filed on 16/09/2025, namely after 27 March 2025, and therefore falls within the scope of application of Decree-Law No. 36/2025, converted with amendments into Law No. 74 of 23 May 2025, which profoundly reformed, in a restrictive sense, the institution of citizenship as governed by Law No. 91/1992.

Article 1 of Decree-Law No. 36/2025, converted with amendments into Law No. 74 of 23 May 2025, provides as follows:

"1. The following Article is inserted after Article 3 of Law No. 91 of 5 February 1992:

'Art. 3-bis – 1. By way of derogation from Articles 1, 2, 3, 14 and 20 of this Law, Article 5 of Law No. 123 of 21 April 1983, Articles 1, 2, 7, 10, 12 and 19 of Law No. 555 of 13 June 1912, as well as Articles 4, 5, 7, 8 and 9 of the Civil Code approved by Royal Decree No. 2358 of 25 June 1865, any person born abroad, including before the entry into force of this Article, and in possession of another citizenship, shall be deemed never to have acquired Italian citizenship, unless one of the following conditions applies:

a) the citizenship status of the interested party is recognized, in accordance with the legislation applicable as of 27 March 2025, following an application, accompanied by the required documentation, submitted to the competent consular office or mayor no later than 11:59 p.m., Rome time, on the same date;

a-bis) the citizenship status of the interested party is recognized, in accordance with the legislation applicable as of 27 March 2025, following an application, accompanied by the required documentation, submitted to the competent consular office or mayor on the date indicated in an appointment communicated to the interested party by the competent office no later than 11:59 p.m., Rome time, on the same date of 27 March 2025;

b) the citizenship status of the interested party is judicially ascertained, in accordance with the legislation applicable as of 27 March 2025, following a judicial application filed no later than 11:59 p.m., Rome time, on the same date;

c) a first- or second-degree ascendant possesses, or possessed at the time of death, exclusively Italian citizenship;

d) a parent or adoptive parent resided in Italy for at least two continuous years after acquiring Italian citizenship and prior to the birth or adoption of the child;

[e) a first-degree ascendant of the parents or adoptive parents who are citizens was born in Italy.]'"

With regard to proof of the above conditions, Article 19-bis, paragraph 2-ter, of Legislative Decree No. 150 of 1 September 2011, as introduced by Article 1, paragraph 2, of the aforementioned Decree-Law No. 36/2025, provides that:

"In disputes concerning the determination of Italian citizenship, the person seeking recognition of citizenship shall bear the burden of alleging and proving the absence of grounds for non-acquisition or loss of citizenship as provided by law."

It must therefore be noted that Article 3-bis of Law No. 91/1992, introduced by Decree-Law No. 36/2025, established a derogation from the principle of transmission of citizenship iure sanguinis set forth in Article 1 et seq. of Law No. 91/1992, by providing that a person born abroad and holding another citizenship does not acquire Italian citizenship. In such cases, Italian citizenship may nonetheless be transmitted iure sanguinis either where a judicial or administrative application had been filed prior to the above-mentioned date (Article 3-bis, letters a), a-bis) and b)), or where the applicant can claim a first-degree ascendant (parent) or second-degree ascendant (grandparent) who possesses, or

possessed at the time of death, exclusively Italian citizenship (Article 3-bis, letter c)), or, finally, where the parent or adoptive parent resided in Italy for at least two consecutive years after acquiring Italian citizenship and prior to the birth or adoption of the child (Article 3-bis, letter d)), a circumstance not even alleged in the present case.

By Judgment No. 63/2026, filed on 30 April 2026, following the hearing during which the constitutional challenge raised by the Court of Turin was argued, the Constitutional Court rejected the questions of constitutional legitimacy concerning Decree-Law No. 36/2025, holding them, for the reasons stated therein, partly unfounded and partly inadmissible.

In particular, the judgment states that:

“the Court declared unfounded the objections by which the Court of Turin, invoking Article 3 of the Constitution, challenged, on the one hand, the arbitrariness of the distinction between those who applied for recognition of citizenship before 28 March 2025 and those who applied thereafter, and, on the other hand, the alleged infringement of vested rights, arguing that the provision at issue amounted to an ‘implicit revocation of citizenship with retroactive effect and without any transitional legal provisions.’ The Court also declared unfounded the question raised for alleged violation of Article 9 of the Treaty on European Union (TEU) and Article 20 of the Treaty on the Functioning of the European Union (TFEU), which confer Union citizenship upon every person holding the nationality of a Member State. The Court further declared inadmissible the question raised for alleged violation of Article 15, paragraph 2, of the 1948 Universal Declaration of Human Rights, according to which ‘[n]o one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.’ Finally, the Court declared inadmissible the question raised for alleged violation of Article 3, paragraph 2, of the Fourth Additional Protocol to the European Convention on Human Rights (ECHR), according to which ‘[n]o one shall be deprived of the right to enter the territory of the State of which he is a national.’”

In essence, through a historical overview of the institution, the Court rejects the notion that the new regime entails a loss of citizenship. On the contrary, it maintains that the reform concerns the criteria governing the transmission of status civitatis, insofar as citizenship cannot and must not be reduced to a merely formal bond of origin, but rather extends to participation in the political life of the Republic. The people vested with sovereignty cannot be conceived as an indefinite and global identity, detached from the territorial and institutional reality of the State; within this context, the concept of an “effective link” emerges as a structuring element of contemporary citizenship.

However, this does not amount to an unconditional validation of the new regime. The decision acknowledges the tensions generated by the retroactive application of the provision and does not disregard the arguments concerning legal certainty and the protection of legitimate expectations. Indeed, throughout its reasoning, the Court reiterates the requirements of reasonableness and proportionality, as well as the need to avoid arbitrary effects on consolidated legal situations.

The decision anticipated above is sufficient to consider the legislation applicable ratione temporis to the present case lawful, since the other grounds of constitutional challenge set out in the originating application and not submitted to the Constitutional Court are likewise unfounded.

In particular, in light of the ruling of the Constitutional Court, the objections concerning the alleged unconstitutionality of applying the provision also to persons already born on the date the amendment entered into force, as well as the objections relating to alleged violations of European Union law, must be regarded as overcome.

Furthermore, this Court considers that the clear wording of the statutory provision—which refers to a judicial application (Article 3-bis, letter b)), to an application accompanied by the required documentation submitted to the competent consular office or mayor (Article 3-bis, letter a)), or to an application accompanied by the required documentation submitted to the competent consular office or mayor on the date indicated in an appointment communicated to the interested party by the competent office (Article 3-bis, letter a-bis))—precludes any constitutionally oriented expansive interpretation.

Nor can it be maintained that the legislature's decision to make the applicability of the previous legal framework contingent upon the formal submission of an application accompanied by documentation is unreasonable or gives rise to unjustified disparities of treatment. In this regard, it must be emphasized that only the formalization of an application (to which the situation of an appointment already scheduled for that purpose has been equated) makes it possible to identify a clear and unequivocal intention to seek Italian citizenship. Consequently, attempts to access the "Prenot@mi" website or requests for information concerning the procedures for filing the application addressed to the competent administrative authorities cannot be treated as equivalent thereto.

4.1

Having stated the foregoing, examination of the documents filed in the proceedings establishes the uninterrupted line of descent of the applicants from the above-mentioned Italian citizen, such that there can be no doubt as to the theoretical transmission to them of Italian citizenship iure sanguinis.

Furthermore, the documentary evidence does not show that any of the various ascendants ever renounced Italian citizenship.

This Court nevertheless considers that the clear wording of the statutory provision—which refers to a judicial application (Article *3-bis*, letter b), to an application accompanied by the required documentation submitted to the competent consular office or mayor (Article *3-bis*, letter a), or to an application accompanied by the required documentation submitted to the competent consular office or mayor on the date indicated in an appointment communicated to the interested party by the competent office (Article 3-bis, letter a-bis))—falls, in the present case, within the conditions legitimizing the recognition of Italian citizenship iure sanguinis, since the applicants have demonstrated and produced *per tabulas* the submission of an adequate application for recognition of citizenship by certified electronic mail (PEC) to the competent Consular Office on the above-mentioned dates, in any event prior to 27 March 2025; further support in this regard is provided by the mandate and legal representation agreement executed between the parties on 16–22 April 2024.

Accordingly, this Court finds that such application, formalized and substantiated in the manner described above, clearly and unequivocally demonstrates the intention to seek Italian citizenship prior to 27 March 2025 and therefore satisfies the requirements set forth in the applicable legislation, particularly in light of the principle of protection of legitimate expectations.

5.

Finally, the action appears to have been properly brought also with respect to the minor child, notwithstanding the absence of authorization from the guardianship judge pursuant to Article 320 of the Italian Civil Code, since the act carried out in the name and on behalf of the child must be regarded as an act of ordinary administration, insofar as it is aimed at preserving and/or securing an advantage or preventing a loss to the minor's assets and does not appear capable of causing prejudice to or diminution of such assets (see Court of Cassation, Section II, Judgment No. 743 of 19 January 2012, according to which: "with regard to the procedural representation of a minor, authorization by the guardianship judge pursuant to Article 320 of the Civil Code is necessary in order to commence proceedings relating to acts of extraordinary administration, namely acts capable of causing prejudice to or diminution of the assets, but not for acts directed toward the improvement and preservation of assets already forming part of the incapable person's estate"). Nor can it be doubted that an application for recognition of citizenship (which, moreover, constitutes a declaratory action) falls among acts beneficial to the minor.

It must further be noted that the procedural representation of a minor does not automatically cease when the latter attains the age of majority and thereby acquires procedural capacity in his or her own right. Rather, the attainment of majority must be brought to the attention of the other parties by means of a declaration, service, or communication through a procedural act. This principle of the continuing effect (ultrattività) of representation operates, however, only within the same procedural stage, in view of the autonomy of the individual levels of proceedings (Court of Cassation, Section II, Judgment No. 19015 of 2 September 2010, Rv. 615208-01).

6.

With regard to costs, it is observed that the unfounded nature of the objections raised by the respondent Ministry, together with the impact on the present litigation of the very recent ruling of the Constitutional Court in a complex matter not susceptible of straightforward interpretation, justify the existence of grounds for the full offsetting of litigation costs between the parties.

**P.Q.M.**

The Court, having rejected all opposing requests and objections, hereby definitively rules as follows:

DECLARES the Italian citizenship of:

- (Tax Code ), born on in (USA) and residing in (USA);
- (Tax Code ), born on in (USA) and residing in (USA);

ORDERS the competent Civil Status Registrar to carry out the necessary consequential formalities;

DECLARES that litigation costs are fully compensated.

Let notice be given.

Bologna, May 12, 2026

The Honorary Judge (GOP)

Natascia Gardini