NEW MINISTERIAL GUIDELINE ON THE "MINOR ISSUE" IN ITALIAN CITIZENSHIP BY ANCESTRY APPLICATIONS

18 October 2024

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Clarifications and new opportunities stemming from this guideline

On the 3rd of October, 2024, the Italian Ministry of Interior, after a long-awaited silence, finally issued new guidelines for the Public Authorities that are competent to decide on Italian citizenship applications Iure Sanguinis (by ancestry). These new guidelines were particularly needed after a ruling of the Court of Cassation of January 2024 changed the long-standing case law according to which one could reclaim Italian citizenship as long as the Italian ancestor was not naturalized (spontaneously acquired a foreign citizenship) *before the birth of their descendant*.

Indeed, according to the new interpretation of the highest court in Italy, the rule has become stricter: the applicant should demonstrate that the Italian ancestor, if ever naturalized, was not naturalized *before the adult age of the descendant*.

Following this new harsher interpretation, Municipalities and Consulates have started to handle the same scenario differently, with some offices implementing the new ruling and others implementing the old ministry guidelines incorporating the more favourable long-standing case law.

The Ministerial guideline aims to incorporate the ruling of the Court of Cassation and to ensure its uniform application by all consular and municipal offices that decide on citizenship applications.

What is the core of the Ministry's new guideline?

The new ministerial guideline incorporates the most recent legal interpretation of the Court of Cassation by requesting all Public Administrations to reject requests of recognition of Italian citizenship *Iure Sanguinis* when the Italian ancestor has obtained foreign citizenship spontaneously and during the minor age of the child.

More specifically, the new interpretation requires a strict application of Art. 12 of said law n. 555/1912, which provided that not only the Italian ancestor who applied for foreign citizenship would lose Italian nationality, but also his minor children who were living with him at the time, and therefore the whole subsequent direct lineage.

According to the new Ministry guideline, in order to achieve a positive outcome of the application for recognition of Italian citizenship applicants should prove that the minor child who had lost Italian citizenship due to the decision of the father did re-acquire citizenship upon becoming an adult, as per Articles 3 and 9 of Law n. 555/1912. However, the re-acquisition of citizenship was a rare event back at the time, mainly because of lack of awareness of this possibility and of the rules regulating Italian citizenship.

After all, if the highest Italian civil Court in Italy "realized" only in January 2024 that minors lost Italian citizenship because of the naturalization of the cohabitant father, one can imagine what a common American/Italian could know back in the first half of the 20th century.

Why is the cohabitation of the minor child with the father at the time of the latter's naturalization relevant?

The new guidelines and applicable norms provide for the loss of Italian citizenship by minor children (whose father was naturalized in a foreign country) under the condition that the minor was cohabiting with the father at the time of the naturalization.

This implies that, if proven that the child was not living together with the father, the minor did not lose Italian citizenship, the whole direct Italian lineage was not interrupted and the applicant can still be recognized as Italian.

Useful documents to prove the lack of cohabitation may be the marriage certificate of the descendant or documents pertaining to their university or job in a region or State different from the one of the fathers.

When can the descendant be considered an adult?

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Since according to the new ruling, the descendant lost Italian citizenship due to the naturalization of the father only if still a minor at that time, it becomes paramount to establish when a person could be considered an adult.

According the Italian applicable legislation up until 1975, a person would become an adult only from the age of 21. From 1976, instead, a person is considered an adult from the age of 18.

The Ministry Guideline unfortunately, does *not* specify what age should mark adulthood for those people whose father was naturalized *before* 1976. Were they adult at 18 years old, as per the currently applicable law, or at the age of 21 as per the law applicable before 1976?

What happens if I was already recognized and my lineage has the 'Minor issue'?

The Ministry has clarified this point by stating that, once recognized, the citizenship cannot be revoked.

What if I submitted my application for the recognition of Italian Citizenship months ago and I have not obtained a result yet?

Unfortunately, the applications that are still being evaluated should be decided based on the new Ministry guideline.

What if my father obtained foreign citizenship when I was a minor?

If the applicant for recognition of Italian citizenship is the son/daughter of the Italian ancestor who first moved away from Italy, the new legal path to follow is not to apply for the recognition of Italian citizenship Iure Sanguinis, but for the *re-acquisition* of Italian citizenship, as per Art. 13 of the current applicable Law n. 91/1992.

This is confirmed by the Ministry Guideline n. K73 of 30/05/2002, which specifically confirms that that those who have lost Italian citizenship based on art. 12 of the Law 555/1912 (minors whose father would get naturalized) can apply for the re-acquisition.

What if my female Italian ancestor was not naturalized or was naturalized after the descendant became an adult?

The Ministry guideline makes no mention of how the mother's naturalization or non-naturalization would impact the loss of Citizenship of the minor child.

However, according to the interpretation so far promoted by some Italian Courts, including the Rome Tribunal, if the mother was not naturalized or was naturalized only after the adult age of the child, the Italian lineage would continue through her.

In this regard, it is noteworthy that, before 1975, the mother did not have parental power over the child and therefore her choices could not affect (negatively or positively) the citizenship status of the child. However, the sole parental power of the father was a violation of the Constitution principle of Equality between men and women (Art. 3 of the Italian Constitution). Based on this reasoning, some Italian Courts rightly give relevance to the mother's choice of not getting naturalized to rule in favour of the continuation of the Italian lineage.

Still, the relevance given to the female ancestor's choices may vary according to the different legal views adopted by each single Court. And the ruling of January 2024 may affect future case law on this point.

If you wish to further understand whether you are eligible to claim recognition or re-acquisition of **Italian Citizenship by descent**, fill out our eligibility questionnaire and we will reply with a preliminary assessment and possible next steps considering the applicable procedures.

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