



1. Please advise whether an individual would be eligible for Italian citizenship on the basis of their marriage to an Italian citizen in 2000?

Italian citizenship law is based upon the Italian Law on Nationality amended on 5th February 1992.¹ Law No. 91 of February 5, 1992 provides for Italian citizenship to be obtained on application by a foreign national who marries an Italian citizen. Article 5 states as follows:

1. The foreign or stateless spouse of an Italian citizen shall acquire Italian citizenship after legally residing for at least six months in the territory of the State, or after three years from the date of marriage, if it has not been dissolved, annulled, or its civil effects declared to have ceased and provided there has not been a legal separation.²

Article 6 sets out conditions relating to the exclusion of applicants who have committed certain categories of crime. A summary of the process of acquiring citizenship through marriage published on the Expatriates in Italy website states that these are as follows:

- you have been found guilty of committing a crime against the Italian State – either abroad or in Italy
- you have been found guilty of committing a crime against the political rights of an Italian citizen
- you have been found guilty of a premeditated crime for which the law foresees a prison sentence of minimum three years
- you have been found guilty of a non-political crime for which you have been sentenced to more than one year of imprisonment by a foreign government
- If there exists concrete evidence that you pose a threat to national security.³

According to information provided on the website of the Consulate General of Italy in Melbourne, an applicant who wishes to acquire citizenship by marriage must produce evidence of ‘the registration in Italy of the foreign marriage certificate’, and having made an appointment with the office of the Consulate General, also provide

- 1) Application form duly filled up;
- 2) Marriage Certificate (“Estratto per Riassunto dell’atto di matrimonio”) issued by the Municipality (Comune) in Italy where the marriage has been recorded. This certificate must not be older than 6 months;
- 3) A certified true copy of your valid passport;

¹ US Office of Personnel Management Investigations Service 2001, *Citizenship Laws of the World*, March, <http://www.multiplecitizenship.com/worldsummary.html> - Accessed 8 July 2010, p. 101 - Attachment 1

² Alegi, Peter C. 1992, ‘Italy’s New Citizenship Law’, USMRA-SI website, <http://www.expatsinitaly.com/node/140> - Accessed 9 July 2010 - Attachment 2

³ ‘Citizenship through Marriage’ 2009, Expats in Italy website, 10 April, <http://www.expatsinitaly.com/node/140> - Accessed 9 July 2010 - Attachment 3

- 4) A birth certificate with all information concerning the parents issued by the relevant authorities of the Country of birth, translated and legalized according to the rules established by the Italian Consular authority (individuals born in Australia shall bring the full birth certificate issued by the Registrar General's Office and legalized by the Department of Foreign Affairs and Trade); citizens of other Countries must have all their original documents legalized by the Italian Consular Office in the Country which issued the documents;
- 5) A National Police Clearance (name check only) issued by an authorised Police Department, declaring the existence or lack of any outstanding criminal proceedings. This clearance is required from all the countries in which the person applying for citizenship has lived since the age of 14 - (the certificate must cover the entire period of residency in each country). Such certificate must be translated into Italian and both certificate and translation must be legalized by means of an Apostille by DFAT. Please note that police certificates have a maximum validity of 6 months. Certificates of women must also indicate their maiden name;
- 6) A Receipt for the payment of Euro 200.00 (two hundred euros) made by International Bank Transfer

Applicants must also produce a full birth certificate and a criminal record certificate (copy to be provided in Italian by an approved translator) and bear an apostille from the Department of Foreign Affairs and Trade.⁴

In 2009, the Italian Government introduced a number of new social emergency measures which were widely debated before being passed by the Italian Parliament in Law no. 94/2009 ('Regulations about Public Security') and published in the Official Journal (*Gazzetta Ufficiale*) no. 170 on 24th July 2009. A bulletin published by scholars in the comparative public law program at the University of Siena provides a useful summary of the principal measures;

In particular, the provisions of Law no. 94 affect several laws already in effect, amending – among others– the Criminal Code, the Code of Criminal Procedure, the Highway Code, the Immigration Law. Adoption of Law no. 94/2009 represents a comprehensive legal action based on the necessity to deal with relevant –and quite heterogeneous– social issues, furthering protection for the weakest members of society –women and children,– the fight against illegal immigration, prevention of road accidents caused by alcohol or drug abuse. The Law was supported by 157 votes in favour and 124 against it. The Law was particularly opposed by left-wing parties within the Parliament, but it was also heavily criticized by the legal doctrine and the public opinion, due to its alleged discriminatory and racial contents.

Among the most important rules introduced by Law no. 94/2009, are worth noting, at the outset, some legal measures against illegal immigrants in the Italian territory whose rationale would lie in the enhancement of the fight against illegal immigration. The most relevant measure has been the introduction in the Italian Criminal Code of a provision making illegal immigration a crime. Indeed, Art. 1, s.16, lett. a) of Law no. 94/2009 amended Art. 10 *bis* of Legislative Decree 286/1998 (Immigration Law), qualifying as a penal offence –punished with a fine from 5.000 to 10.000 Euros– the entrance and stay in the State territory of a foreign national, performed in violation of the Italian Immigration Law's provisions on lawful entry

⁴ Consulate General of Italy in Melbourne (undated), 'Citizenship' http://www.consmelbourne.esteri.it/Consolato_Melbourne/Templates/Pagina_Interna.aspx?NRMODE=Published&NRNODEGUID=%7b9c2705ad-146c-4f1c-aa12-1dc6d4b68f1c%7d&NRORIGINALURL=%2fConsolato_Melbourne%2fMenu%2fI_Servizi%2fPer_i_cittadini%2fCittadinanza%2f&NRCACHEHINT=NoModifyGuest – Accessed 9 July 2010 - Attachment 4

and stay requirements. This provision is the most criticized of the whole Law and the Italian Constitutional Court has been already called upon to judge on its constitutionality.⁵

The new law increases the waiting period before someone may apply for citizenship through marriage, in circumstances except where children are involved, from six months to two years. The marriage itself must be continuing, and the application will be rejected if the couple is separated or divorced. As the article in *Palomar Italy* describes, whereas a foreign citizen who wished to marry in Italy was formerly required to show that there were no legal impediments to the marriage, the new Civil Code which has been modified as a result of Law No. 94/2009 requires the foreign citizen to demonstrate their lawful presence on Italian territory as well;

The new text of Art. 116 of the Civil Code, as modified by Art. 1 s.15 of Law no. 94/2009, obliges a foreigner who wants to get married in Italy to both show that no legal obstacles are present, and to provide for a certification demonstrating the legitimacy of his/her presence in the national territory. Moreover, foreign and stateless spouses, applying for Italian citizenship, must show presence on the Italian territory for a period of at least 2 years (by way of difference with the six months' residence period formerly required) after the marriage. Citizenship will be granted only if the marriage is still valid and the couple is not separated.⁶

A copy of Italian Law No. 94/2009 in English translation was not found.

Attachments

1. US Office of Personnel Management Investigations Service 2001, *Citizenship Laws of the World*, March, <http://www.multiplecitizenship.com/worldsummary.html> - Accessed 8 July 2010.
2. Alegi, Peter C. 1992, 'Italy's New Citizenship Law', USMRA-SI website, <http://www.expatsinitaly.com/node/140> - Accessed 9 July 2010.
3. 'Citizenship through Marriage' 2009, Expats in Italy website, 10 April, <http://www.expatsinitaly.com/node/140> - Accessed 9 July 2010.
4. Consulate General of Italy in Melbourne (undated), 'Citizenship' http://www.consmelbourne.esteri.it/Consolato_Melbourne/Templates/Pagina_Interna.aspx?NRMODE=Published&NRNODEGUID=%7b9c2705ad-146c-4f1c-aa12-1dc6d4b68f1c%7d&NRORIGINALURL=%2fConsolato_Melbourne%2fMenu%2fI_Servizi%2fPer_i_cittadini%2fCittadinanza%2f&NRCACHEHINT=NoModifyGuest - Accessed 9 July 2010.
5. 'Italian Law. No. 94/2009 adopts several different legal remedies to deal with social emergency issues, among which a modification to the Criminal code making illegal immigration a crime' 2009, *Palomar Italy*, No. 8, October, http://www.unisi.it/dipec/palomar/italy008_2009.html#3 - Accessed 9 July 2010.

⁵ 'Italian Law. No. 94/2009 adopts several different legal remedies to deal with social emergency issues, among which a modification to the Criminal code making illegal immigration a crime' 2009, *Palomar Italy*, No. 8, October, http://www.unisi.it/dipec/palomar/italy008_2009.html#3 - Accessed 9 July 2010 - Attachment 5

⁶ 'Italian Law. No. 94/2009 adopts several different legal remedies to deal with social emergency issues, among which a modification to the Criminal code making illegal immigration a crime' 2009, *Palomar Italy*, No. 8, October, http://www.unisi.it/dipec/palomar/italy008_2009.html#3 - Accessed 9 July 2010 - Attachment 5