



## PRIVATE CLIENTS

# CHANGES TO THE PORTUGUESE NATIONALITY REGULATIONS

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Organic Law no. 9/2015 of 29 July made the Seventh Amendment to the Law of Nationality by extending Portuguese nationality by birth to the grandchildren of Portuguese citizens when those grandchildren are born abroad. However, this possibility could not come into force until amendments were made to the Portuguese Nationality Regulations, approved by Decree-Law no. 237-A/2006 of 14 December.

After a long period of waiting, the changes to the Portuguese Nationality Regulations were finally introduced through Decree-Law no. 71/2017 of 21 June, which came into force on 3 July 2017. This legislation provides the regulations for the process of granting Portuguese nationality by birth to the grandchildren of Portuguese citizens born abroad, and it introduces improvements to the Portuguese Nationality Regulations.

### **1. GRANTING PORTUGUESE NATIONALITY BY BIRTH TO THE GRANDCHILDREN OF PORTUGUESE CITIZENS BORN ABROAD**

As mentioned, Decree-Law no. 71/2017 of 21 June introduces the regulations on the procedure for granting Portuguese nationality by birth to the grandchildren of Portuguese citizens born abroad, when the parents have not requested this nationality. Up to now, these descendants of Portuguese citizens could only acquire Portuguese nationality by naturalisation, which prevented them from passing on their nationality to children above the age of majority. With the change that has been made, this possibility now exists.

Applicants must provide the following documents with their nationality application:

- Birth certificate
- Birth certificates of the grandmother/grandfather with Portuguese nationality, and of the parent who is their descendant
- Criminal registration certificates from Portugal, from the country of birth and country of nationality, and from the countries where the applicant has been or is resident
- Document proving sufficient knowledge of the Portuguese language
- Documents that can contribute to proving effective ties with the Portuguese community.

The requirement relating to effective ties with the Portuguese community will undoubtedly be the most difficult to prove. In light of this, the legislation introduces some provisions that may make it easier to address this issue and speed up processes. First, the legislation provides for two situations in which the Central Registry must conclude that the applicant has effective ties with the Portuguese community, and is not then required to send the application to the Ministry of Justice. This happens when the applicant:

- Has resided legally in Portugal in the three years immediately preceding the application, is registered with the Portuguese tax authorities and National Health Service, and attends an educational establishment in Portugal or demonstrates knowledge of the Portuguese language;

- Has resided legally in Portugal in the five years immediately preceding the application and is registered with the Portuguese tax authorities and National Health Service.

Except in the two cases described above, the Central Registry must send the application to the Ministry of Justice, for this ministry to recognise the effective ties with the Portuguese community. However, the legislation contains a non-exhaustive list of the documents that may be relevant for these purposes and which, when possible, must be submitted by the applicant. These documents are those that demonstrate (i) legal residence in Portugal; (ii) regular travel to Portugal; (iii) ownership in the name of the applicant, for more than three years, or tenancy agreements made more than three years ago, in respect of property located in Portugal; (iv) residence or ties with a historic Portuguese community abroad; (v) regular participation over the five years leading up to the date of the application in the cultural life of the Portuguese community in the country where the applicant lives, including the activities of the Portuguese cultural and recreational associations of these communities.

## 2. OTHER CHANGES TO THE PORTUGUESE NATIONALITY REGULATIONS

Other very helpful changes have been made to the Portuguese Nationality Regulations, to make processes fairer and faster for applicants.

First, in respect of the requirement of knowledge of the Portuguese language – a condition that is necessary in various procedures for granting and acquisition of Portuguese nationality – the new legislation provides that this knowledge must be presumed when the applicant has been born in or is a national of the country where Portuguese is the official language, for more than 10 years, and has resided in Portugal on whatever basis for at least 5 years.

### *Processes to apply for Portuguese nationality by marriage, for example, may benefit immediately from the new provisions on effective ties with the Portuguese community, with the consequent removal of the risk of the application being opposed by the Public Prosecutor.*

The second important change is the provision that it is not necessary to present a criminal record certificate from the country of birth or from the country of nationality when the applicant has not resided in those countries after the age of 16.

Finally, some changes have been made in relation to the requirement for effective ties to the Portuguese community, the absence of which is one of the possible grounds for the Public Prosecutor to oppose the acquisition of nationality by will (in other words, by individuals married to Portuguese citizens or minor children of citizens who have acquired Portuguese) or by adoption.

In the case of applicants who are minors – in other words, minor children of naturalised Portuguese citizens or minor children adopted by Portuguese citizens – effective ties to the Portuguese community must be presumed if the applicant has, on the date of the application, resided legally in Portugal for the five years immediately preceding the application, is registered with the tax authorities and the National Health Service and, in the case of a minor, attends an educational establishment in Portugal.

In the case of applicants over the age of majority – principally foreign citizens married to Portuguese citizens – effective ties with the Portuguese community must be presumed when the applicant is, on the date of the application, in one of the following situations:

- Born in and a national of a country where Portuguese is the official language, married or living in a de facto union for at least five years with a Portuguese citizen by birth;
- Born in and a national of a country where Portuguese is the official language, when there are children, who are Portuguese citizens by birth, of the marriage or de facto union that grounds the declaration;
- Has sufficient knowledge of the Portuguese language, as long as he or she is married or has been living a de facto union with a Portuguese citizen by birth at least five years;
- Has legally resided in Portuguese territory for the three years immediately preceding the application, is registered with the tax authorities and the National Health Service, and is attending an educational establishment in Portugal or demonstrates knowledge of the Portuguese language;
- Has legally resided in Portuguese territory for the five years immediately preceding the application, and is registered with the tax authorities and the National Health Service.

The transitional rule in Decree-Law no. 71/2017 of 21 June provides that the changes to the Portuguese Nationality Regulations described above apply to processes pending at the date of entry into force of the legislation. As a consequence, pending processes to apply for Portuguese nationality by marriage, for example, may benefit immediately from the new provisions on effective ties with the Portuguese community, with the consequent removal of the risk of the application being opposed by the Public Prosecutor.

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