



Chapter 3

Family and minors





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FAMILY AND MINORS

What is family reunification?

Family reunification is the right to family unity, understood as the right to maintain, create or reconstruct a family unit. It is a person's fundamental right provided for and protected by our Constitution and by other international and European conventional texts.

Family reunification is the legal institution that allows foreign citizens regularly residing on the national territory to obtain the entry and the consequent authorisation to reside for one or more family members that are in the Country of origin.

Who can apply for family reunification?

Non-European citizens legally resident in Italy and in possession of an EU long term residence permit or residence permit for a period of not less than one year.

It is not possible for the following to apply for family reunification:

- asylum / international protection seekers
- those in temporary protection status.

Which family members can benefit from family reunification?

The family members for whom it is possible to apply for family reunification are as follows:

- **spouse**, not legally separated and not under 18 years old, also of the same gender, or the partner under a registered cohabitation;
- **under-age children not married**, be they natural or legitimate children, born from relationships prior to the current one, biological or adopted. If the other parent has not lost parenthood rights and is still living, it is necessary to obtain relevant consent for expatriation. The age established as "under-age" is the one provided for by the Italian law, that is under 18 years old. When submitting application for an entry clearance, the child must be under-age; whereas, it is not relevant if the child turns of age when applying for the entry visa or when entering Italy. It is also possible to reunify minors under the foster care or guardianship of a foreign citizen regularly residing in Italy as long as the document certifying the



foster care or guardianship was issued by a public authority and is not the result of a mere agreement between private subjects;

- **children of age** only if dependent due to their impossibility to take care of themselves because of serious health conditions entailing total invalidity;
- **parents under 65 years old** only if dependent and if they have no other children residing in the Country of origin or provenance;
- **parents over 65 years old** only if dependent and if no other children residing in the Country of origin or of provenance can take care of them due to serious proven health conditions.

Which requirements must be met in order to apply for family reunification?

For the purpose of obtaining family reunification, the foreign citizen in possession of legal residence must prove the availability of the following:

- an accommodation that complies with the health and hygiene requirements and housing suitability issued by the municipality of residence;
- a minimum annual income;
- a health insurance in the event of reunification with a parent over 65 years of age.

Regarding the availability of income, the minimum threshold required is parametrized to the amount of the annual social allowance increased by half of each family to be reunited (updated to 2021).

Social allowance-amount for 1 person	€ 5.983,64
n. 1 family member to be reunited	€ 8.975,46
n. 2 family member to be reunited	€ 11.967,28
n. 3 family member to be reunited	€ 14.959,10
n. 4 family member to be reunited	€ 17.950,92
n. 5 family member to be reunited	€ 20.942,74
n. 6 family member to be reunited	€ 23.934,56

If two or more children under the age of 14 are reunited, the minimum income required for 2021 is equal to 11,967,28 euros.

It should be noted that there will be changes to the amount of the annual social allowance for year 2022.

For each update visit the INPS website <https://www.inps.it/presentazioni-servizi/assegno-sociale>

The family members to be reunited must on the other hand, present to the diplomatic representations of the country of origin or residence, their valid passport and documentation certifying family relationships.



Which requirements must be met by international protection holders in order to apply for family reunification?

Foreign citizens holding the status of refugee or under subsidiary protection are not required to prove neither the fitness of their accommodation nor the minimum income threshold required.

How to apply for family reunification?

In order to start the family reunification procedure, foreign citizens regularly residing in Italy must submit application for the issue of a family reunification clearance document to the Single Desk at the Immigration Office of the Prefettura territorially competent on the basis of the applicant's residence. The application must be submitted via computer. Subsequently, the applicant will have to set an appointment with the Single Desk in order to submit the required documentation and a valid residence permit.

Following its issue, the clearance document is sent via computer to the Italian Embassy or Consulate of competence with regard to the Country of origin or of residence of the family member to be reunified for the issue of an entry visa.

Once arrived in Italy, the reunified family member must go to the Single Desk at the Immigration Office of the Prefettura UTG within 8 days from arrival in order to prepare the application for a residence permit for family reasons to be submitted to the Questura territorially competent.

How long does the reunification procedure last?

The clearance document for family reunification is issued within 90 days and is valid for 6 months. The entry visa is issued within 30 days, while the residence permit is issued within 60 days.

It is important to specify that said terms are absolutely regulative and not peremptory. Therefore, their non-compliance does not entail neither a sanction for the acting Administration nor the automatic acceptance of the application. As a matter of fact, the general rule has proven that the procedure lasts much longer than what indicated by regulations.

What to do if a family reunification application is rejected?

If the clearance document for family reunification, the relevant residence permit or the entry visa for family reasons is rejected, foreign citizens can lodge and appeal with the Section specialised in immigration, international



protection and freedom of movement of EU citizens present in every Ordinary Court where the Court of Appeal has its seat, with reference to the place where the acting Administration has its seat.

Therefore, in the first two cases, the territorial competence is identified on the basis of where the Prefettura UTG or the Questura that issued the rejection is found. Whereas, appeals against the rejection of the entry visa must be lodged with the Ordinary Court of Rome, since the acting Administration is the Ministry of Foreign Affairs. There is no term for lodging the appeal. The judge has the power to annul the rejection and order the acting Administration to accept the application and therefore to issue the visa, the clearance document for family reunification or the residence permit initially rejected.

What is family cohesion?

The concept of **family cohesion** includes all those cases in which the issue of a residence permit for family reasons in favour of a foreign citizen already present on the national territory is necessary to protect the right to family unity.

This procedure can be considered like a reunification *sur place*, in view of the fact that in almost all cases foreign citizens are required to meet the same requirements laid down for entries, but the whole procedure is carried out in Italy.

When is a foreign citizen granted cohesion with a Non-EU family member already present in Italy?

Residence permits for family reasons are issued to Non-EU family members regularly residing on the national territory if:

- they already hold a valid residence permit or expired from less than one year
- they meet the requirements laid down for family reunification – income, fit accommodation and, where required, health insurance.

Therefore, by meeting income and accommodation requirements, it is possible to apply for the conversion of the residence permit already held and possibly even expired, also in cases in which the residence permit cannot be renewed (e.g. medical treatments, tourism, assistance to minors). This procedure is implemented, for instance, when a permit is issued for medical treatments to be provided to women through the whole duration of a pregnancy and for the first six months after the child's birth: upon expiry, said residence permit can no longer be renewed, but the foreign citizen may apply for its conversion into a residence permit for family reasons if the



husband is regularly resident in Italy and has a sufficient income and a fit accommodation.

With regard to family members of refugees, the regulations provide for an extremely favourable treatment since it is not necessary to have a previous residence permit to be converted, nor to prove the availability of means of support and a fit accommodation.

When is a foreign citizen granted cohesion with a EU family member?

Family members of EU citizens have the right to accompany them or reach them in the EU Member Country to which they have moved. Said right is based on a provision aimed at safeguarding the right to freedom of movement and the fundamental right to family unity. The applicable law is provided for by Legislative Decree No. 30 of 6th February 2007.

The family members to whom this right is extended are:

- **children under 21 years old**, both natural and legitimate, also adopted, or of the EU citizen or of the spouse or partner
- **dependent ascendants**, direct, or of the spouse or of the partner
- **spouse**, as long as not legally separated and not under 18 years old, also of the same gender, or a partner under a registered cohabitation.

In order to enter the territory, it is sufficient for the Non-EU family member of a EU citizen to submit application for an entry visa to the Italian Embassy or Consulate in the Country of origin or of residence proving the family relationship, the residence of the family member in Italy (residence certificate issued by the Registry Office) and, where required, the fact of being dependant. On the basis of the same documents, the No-EU citizen is granted a five-year residence card. Said card can be issued also if the family relationship began in Italy and, anyway, after the foreign citizen's entry on the national territory for any other reason.

When is a foreign citizen granted cohesion with an Italian spouse or family member?

Non-EU family members of Italian citizens are governed by the regulations laid down for family members of EU citizens, since they are more favourable compared to the provisions mentioned in the Consolidated Act on Immigration. However, in such cases there are **some further favourable provisions completing the regulatory framework**.

In particular, foreign citizens living with a family member within the second degree (son, brother, parent, the parent's ascendant) or with the spouse or with the partner in a registered cohabitation with Italian citizenship cannot



be deported. Besides, they have the right to be granted a two-year residence permit for family reasons, that can be renewed.

The condition of non-deportability – and consequently also the granting of a residence permit – is implemented against the ascertainment of the actual cohabitation, regardless of any further evaluation concerning the existence of a sufficient income, the availability of a fit accommodation or of a health insurance.

What type of residence permit is issued to a parent of an Italian minor?

Parents of Italian minors can apply for a residence permit on the basis of their condition of non-deportability deriving from cohabiting with their child, or they can apply for a residence permit for family reasons proving not to have lost parenthood rights.

In such case, the issue of a residence permit is granted regardless of the parent's previous holding of a regular residence permit and actual cohabitation with the minor.

When can a residence permit for family reasons be converted?

Holders of a residence permit for family reasons can work both as subordinate and autonomous workers without having to convert their permit into another type of residence permit.

If the residence permit for family reasons can no longer be renewed because failing the necessary conditions - for example, the loss of family bonds – said permit can be converted into another type of permit if meeting the relevant requirements provided for by law (subordinate or autonomous work, elective residence, awaiting employment).

What type of residence permit is issued to a minor with regularly residing parents?

Foreign minors present on the national territory with one or both parents – or with a person legally representing them, for example a foster care parent or a guardian – are subject to the relevant legal conditions.

If the foreign minors' parents or legal representatives regularly reside on the national territory, said minors are granted a residence permit for family reasons up to 18 years of age.

Said regulations are implemented with regard to minors that entered Italy through family reunification before turning 14 years old, as well as to children of foreign citizens born in Italy. Whereas, foreign minors that entered



the national territory being already 14 years old do not benefit from said regulations. In the latter case, in fact, they are granted a residence permit for family reasons with a term equal to that of the residence permit held by the family member already resident in Italy.

How to apply for the renewal of a residence permit for family reasons when turning 18 years old?

When turning 18 years old, foreign citizens holding a residence permit for family reasons have the right to be granted a residence permit for reasons related to: study, access to work, health, subordinate work, autonomous work. However, a strict implementation of said regulation would exclude all those cases – currently very frequent - in which youngsters when turning 18 years old have not yet found a job and, at the same time, are not yet enrolled in university or in a vocational training path. Indeed, this would thwart the years devoted to integration on the national territory. Therefore, the administrative procedures of the single Questure, standardised with Circular No. 17272/7 of 28 March 2008 of the Ministry of Interior, are oriented towards recognising the right for 18-year old foreign citizens, still dependent on parents, to renew their residence permit for family reasons, if meeting the requirements of income and accommodation.

Which requirements must be met in order to marry in Italy?

In order to marry in Italy, foreign citizens must hold a valid passport or equivalent document and a clearance to marry document issued by the diplomatic authorities of their Country of origin in Italy. Said document is necessary to certify that the foreign citizens are not already married in their Country of origin, given the prohibition of bigamy in Italy. Therefore, it must expressly indicate their marital status (unmarried woman/unmarried man, widow/widower or divorced) and the name of the future spouse.

The document must be legalised at the Prefettura UTG, notwithstanding the cases of exemption provided for States that undersigned the Treaty in London on 7 June 1968 (Austria, Belgium, Cyprus, Estonia, France, Germany, Great Britain, Greece, Ireland, Liechtenstein, Luxemburg, Norway, Holland, Poland, Portugal, Czech Republic, the Republic of Moldova, Romania, Spain, Sweden, Switzerland, Turkey.).

After submitting said documentation, the future spouses can ask the Municipality to publish the banns. From said publishing, 8 days must go by before celebrating the wedding.

Foreign citizens are allowed to marry even if lacking a valid residence permit in Italy.



If the spouses or the witnesses do not understand Italian, an interpreter must be present at the spouses' expense.

Which requirements must be met for a holder of a refugee status to marry in Italy?

In the event that one or both of the subject who must marry holds a refugee status as they cannot contact their diplomatic authorities, they will have to ask the court to issue a notorious act that certify, in the presence of two witnesses, that there are no impediments to marrying. The aforementioned notorious act must then be sent in original to the office of the United Nations High Commissioner For Refugees located in Rome, in via Caroncini 19, with a copy of the recognition of the refugee status, of the valid permit residence and an identity document of both spouses. The UNHCR provides for the endorsement of the deed and its return to the applicant. The practice is free. Upon representation of this documentation, the future spouses must then ask the municipality to proceed with the banns of marriage, which can be celebrated no earlier than 8 days from the actual publication. With the circular act of 12th January 2022, the ministry of interior specified that, it is possible for refugees to resort to a substitutive declaration pursuant to presidential decree DPR 445/2000 regarding the in existence of obstacles of a marriage contract or civil union.

What happens if the diplomatic authority does not issue clearance to marry?

If the diplomatic authority does not issue a clearance to marry – for example due to religious differences between the spouses – the Municipality will reject the publishing of the banns. In such case, it will be necessary to request the ordinary Court, Voluntary Jurisdiction, to ascertain the right to marry. In accepting the request, the Judge will order the publishing of the banns, and it will be possible to marry after the terms of law.

What are civil unions?

Civil unions were introduced with Law No. 76 of 20 May 2016. They are unions established between two individuals, of age and of the same gender, through a declaration carried out before a Registry Office official and in the presence of two witnesses.

The parties acquire the same rights and assume the same duties, and they both have the obligation to provide mutual moral and material assistance and to cohabitate.



Civil unions cannot be established if one of the two parties is already married or joined with another person. Should the civil union be dissolved, said dissolution has immediate effects and does not require any period of separation.

In order to celebrate a civil union, foreign citizens must hold a valid passport or equivalent document, as well as a clearance document to celebrate the civil union issued by the diplomatic authority of their Country of origin.

If the clearance document cannot be requested because the laws of the foreign citizens' State do not recognise civil unions between persons of the same gender or similar institution, the clearance document may be replaced with a certificate or other act anyway suitable to certify the subjects' free marital status, or with a substitutive affidavit.

In implementing regulations on immigration, the relationships deriving from the celebration of a civil union between persons of the same gender have the same value of those deriving from the celebration of a marriage.

What are factual cohabitations?

Factual cohabitations are established when two persons of age live together joined by sentimental bonds typical of couples and provide mutual moral and material assistance not bound by kinship, marriage or civil union, neither between them nor with other people. It does not matter if the two cohabiting persons belong to the same gender or not.

The parties interested in establishing a factual cohabitation must already reside in the same apartment and be registered with the Registry Office in the same family unit. Therefore, only foreign citizens that hold a residence permit are allowed to establish a factual cohabitation, since registration with the Registry Office is mandatory for a regular residence.

In implementing regulations on immigration, the relationships deriving from the registration of a factual cohabitation with the Registry Office have the same value of those deriving from the celebration of a marriage.

What is the special residence authorisation issued by the Juvenile Court?

The Juvenile Court can at the request of the interested parties authorize the temporary stay of a relative for serious reasons connected with the psychological development of the minor. The norm in question can be applied in favour of the parents, but also of all parental figures- grandparents, uncles, elder brothers or sisters in which the presence of such relative in Italy is absolutely necessary to avoid significant harm to the minor.

The law does not however specify the possible reason connected to serious psychological development of the minor to justify a derogation from



the rules on the entry and stay of a foreign citizen on national territory, but imitates itself by providing two non-exhaustive parameters, such as the age and health conditions of the minor.

Their identification is therefore left to the juvenile court which may grant it in all cases in which the removal of the minor or one of the parent from national territory represent a serious matter harm to the psychological development of the minor, for example, in case of serious physical illnesses.

Similarly, the duration of the aforementioned authorization is also decided by the juvenile court in reference to laws which follows the issue of a residence permit for minor assistance. Such permit is not renewable, except through a new judicial procedure, it can be however be converted to a permit for work reasons for family reasons through the institute of family cohesion.