

CHANGES TO THE PORTUGUESE NATIONALITY LAW: SIGNIFICANT SHIFTS IN CITIZENSHIP CRITERIA

On January 5, 2024, the Portuguese Parliament approved comprehensive legislation introducing substantial amendments to the well-known "Nationality Law." This law serves as the primary regulatory instrument for the attribution, acquisition, and loss of Portuguese nationality, and its modifications will lead to a significant overhaul in the procedures and criteria associated with obtaining nationality in Portugal.

1) Expansion of activities considered dangerous: One of the initial modifications to this law, found in article 1, paragraph 3, article 6, paragraph 1, letter e), and article 9, paragraph 1, letter d), involves the broadening of activities deemed dangerous. There is an expansion of the situations outlined in these legal provisions, where previously only references to terrorism were made. Now, explicit mention is made of situations involving violent crime, especially violent or highly organized crime. This broadens the scope of these norms, aiming for a more stringent control regarding the security of individuals seeking Portuguese nationality.

2) Changes to the naturalization regime for descendants of Sephardic Jews: The central modification in the recently approved Nationality Law relates to the criteria for granting Portuguese nationality to descendants of Sephardic Jews. This change impacts Article 6, paragraph 7 of the Nationality Law, now with the following wording:

“Art. 6

(...)⁷ - The Government may grant nationality by naturalization, waiving the requirements set out in paragraphs b) and c) of paragraph 1, to the descendants of Portuguese Sephardic Jews who cumulatively meet the following requirements:

- a) Demonstrate the tradition of belonging to a Sephardic community of Portuguese origin, based on proven objective requirements of connection to Portugal, including surnames, familiar language, direct or collateral descent; and
- b) Have legally resided in Portuguese territory for a period of at least three years, continuously or intermittently.”

This alteration implies that, with the implementation of these changes, descendants of Sephardic Jews will be required, in addition to demonstrating tradition and belonging to the Sephardic community of Portuguese origin, to reside legally in Portugal for at least 3 years. This measure aims to maintain this naturalization route as a form of historical reparation and ensure that those benefiting from this regime have effective and current ties to the Portuguese community, evidenced by residency in the country.

The recently approved law goes further, establishing provisions for pending nationality applications. Thus, it stipulates that applications submitted before the entry into force of

this law can only be granted nationality through this naturalization route if they meet the following requirements:

- a) Demonstration of the tradition of belonging to a Sephardic community of Portuguese origin, based on proven objective requirements of connection to Portugal, including surnames, familiar language, direct or collateral descent,
- b) Fulfilment of one of the following:
 - I. Ownership, transmitted by heritage, of real estate rights over properties located in Portugal or shares in commercial or cooperative companies based in Portugal; or
 - II. Regular trips throughout the life of the applicant to Portugal, demonstrating an effective and lasting connection to Portugal; or
 - III. Holding a residence permit for more than one year.

3) Modification of the deadline for opposition by the Public Prosecutor: The approval of this law also resulted in the modification of Article 10, paragraph 1, changing the starting point for the deadline for opposition by the Public Prosecutor to the acquisition of nationality by will. Previously, the Public Prosecutor had a one-year deadline, counted from the date of the event on which the acquisition of nationality depended. With the entry into force of the new law, this one-year period will be counted only from the date of the registration of nationality acquisition. This change extends the period after acquisition, aiming to ensure better protection of situations that may justify opposition after the nationality acquisition process.

4) Biometric data: Article 12-C was added to the Nationality Law, addressing the collection of biometric data to verify the authenticity of data in nationality processes in Portugal. This article specifies the data that can be collected, such as facial images, fingerprints, and height, which can be carried out by qualified personnel or through self-service terminals provided by specific entities. In the case of approval of the nationality application, these data can be reused for purposes determined by current legislation, but in case of rejection, they are deleted after the legal deadlines for judicial contestation or final decision. This article establishes the protocol for the treatment and conservation of these biometric data in the context of nationality processes in Portugal.

5) Suspension of the nationality acquisition procedure: Among the changes now approved, the suspension of the nationality acquisition process outlined in the new Article 13, paragraph 2, stands out. This suspension will be applied in cases where the applicant is subject to "restrictive measures approved by the United Nations or the European Union." This modification was implemented in response to disclosed cases of Russian magnates, subject to sanctions due to the war in Ukraine, who sought to obtain Portuguese nationality under this regime.

6) Establishment of filiation: Article 14 of Law No. 37/81 was revoked. Previously, only filiation established during minority was considered valid for nationality requests in Portugal, limiting recognition after reaching adulthood. With this revocation,

filiation established after reaching adulthood is also recognized, expanding rights and valuing these family ties, regardless of when they are officially acknowledged. However, two circumstances were established in which filiation after adulthood can have effects: (1) when it occurs through a judicial process, after a final decision (with the necessary review of a foreign sentence, if issued in another jurisdiction); and (2) nationality must be applied for within three years of the final judgment of the decision.

- 7) **Counting residence time:** One of the major changes relates to the counting of residence time in Portugal for nationality requests based on residence time. Previously, the requirement of legal residence for 5 years was counted from obtaining the residence permit. Now, with this change, this period is calculated from the request for the permit, a relevant innovation that recognizes the waiting time for approval. This legislative change aims to correct injustices arising from the long waiting period faced by foreigners in the analysis of their processes. For example, an investor who submitted a temporary residence permit application through the Golden Visa in 2020 and received the permit in 2022, due to the pandemic, can apply for nationality in 2025, considering that the 5 years are counted from the initial residence permit application.

These changes to the Nationality Law represent a significant step forward in accessing citizenship in Portugal. By adjusting procedures and criteria, the Parliament seeks to adapt the legislation to current challenges and realities, opening a more inclusive path for those seeking to obtain Portuguese nationality.

The mentioned amendments were approved on January 5th, and the publication of the official document formalizing them is still pending. It is expected that the document will be published by the end of January, leading to the entry into force of the changes in early February.

If you need specialized guidance on the recent changes to the Nationality Law and how they affect citizenship acquisition processes in Portugal, it is advisable to seek assistance from a professional with expertise in immigration and nationality matters.