

EUDO CITIZENSHIP OBSERVATORY

NATURALISATION PROCEDURES FOR IMMIGRANTS SPAIN

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Naturalisation Procedures for Immigrants

Spain

Francisco Javier Moreno Fuentes, Alberto Martín Pérez

Immigrants are gradually being granted Spanish citizenship without much difficulty but the increasing number of applications is becoming a considerable challenge for the agencies responsible for handling the naturalisation procedure. The traditionally busy administration of the Ministry of Justice (as well as the local civil registries in charge of initiating the procedure) are literally overwhelmed by a massive wave of applications (the Ministry of Justice estimates that around 155,000 new naturalisation files have been initiated every year in the last 5 years, whereas only five years earlier that number was ten times smaller). Around 120,000 demands are effectively resolved per year (123,721 in 2010, and 114,599 in 2011), which currently makes an accumulated stock of around 400,000 unresolved files.¹

Despite the legally binding responsibility of the administration to solve the naturalisation procedure in one year (once the file has reached the central services of the Ministry), at this moment the average delay for a decision to be made is estimated to be at least 2 years. There is also extreme variation in the delay for the initial administrative steps taken by local civil registries. While some of them manage to send the applications in around three months, most are taking more than one year.

This situation makes the bureaucracy in charge of the implementation of naturalisations in Spain one of the most active actors in exploring potential policy reforms that could unblock the current situation. In this respect, they often search for inspiration in the international (notably European) liberalising tendencies in nationality law, and in the mechanisms implemented in these countries to handle naturalisation processes. In the last years other social and political actors (human rights groups, left-wing political parties, etc.) have also asked for a reduction of the general 10-year residency requirement for naturalisation. Nevertheless, no measure in this sense has been adopted, or is expected in the near future.

In this report we briefly review the basic procedures that characterise the naturalisation process in Spain focusing on the different mechanisms and room for discretion in the application, processing, decision-making, and appeal stages of this process.

1. Promotion

Incentives for naturalisation in Spain are quite clear (no need to renew residence and working permits and therefore no risk of losing them in case of unemployment or other adverse circumstances, access to full political rights, etc.), particularly for nationals

¹ Europa Press, June 25, 2012: <http://www.europapress.es/epsocial/politica-social/noticia-gallardon-encarga-registradores-tramiten-ano-400000-expedientes-nacionalidad-acabar-atasco-20120625143552.html>

from countries with a preferential treatment in naturalisation, basically citizens of former Spanish colonies (they only need two years of legal residency in Spain to apply, and can maintain their citizenship of origin thanks to the dual nationality agreements signed by Spain with most of those countries). Even nationals of the countries that need to comply with the normal 10-year legal residence requirement have strong incentives to apply for Spanish citizenship (even if they face much stricter conditions to qualify for naturalisation). In this context foreigners are perfectly aware of the potentially positive implications of applying for citizenship (and they increasingly do so). Spanish administrations have not considered the need to promote this option, and no campaigns have been organised to promote the naturalisation of foreign residents.

Similarly, no specific promoting service has been established to reach out to immigrant communities, to explain to them the advantages of naturalising, or the procedures to apply for and obtain Spanish citizenship. Together with the offices of the Ministry of Justice, and those of the civil registries, the website of this Ministry² constitutes the main system through which the Spanish State provides the basic information about naturalisation procedures. This site provides a wide range of information about Spanish nationality legislation, including not only naturalisation, but also the other mechanisms by which Spanish nationality can be acquired. Its purpose is not to promote the acquisition of Spanish citizenship, so it does not elaborate on the advantages that derive from obtaining this status. In relatively simple language it provides basic information about the proceedings that must be followed in order to obtain Spanish citizenship, the different public administrations involved in the process, the documentation that needs to be submitted, as well as some basic information about the steps that need to be taken to materialise the acquisition of Spanish nationality once this circumstance has been granted by the Spanish authorities.

A link to the same website of the Ministry of Justice provides information on the role of the Civil Registry in the implementation of nationality legislation.³ As the institution that handles a large part of the process, and specially some of the most crucial stages of becoming a Spanish national (such as the reception of the application form together with all the documentation that the candidate must submit, as well as the final steps of the process when the newly recognised citizen obtains the documents that accredit him/her as a Spanish national) the website of the Civil Registry plays an important role in providing key information to prospective candidates.

To better reach those who could be interested in this kind of information this website provides downloadable brochures in English, French and Arabic informing of the basic procedures. These brochures can also be found in printed form at the offices of the Civil Registry, the Ministry of Justice, the *Subdirección General de Nacionalidad y Estado Civil* (SGNEC), and the *Dirección General de Registros y del Notariado* (DGRN).

2. Documentation

The Ministry of Justice is the institution responsible for the process of granting Spanish citizenship to those prospective applicants who qualify for it. The different tasks

² http://www.mjusticia.gob.es/cs/Satellite/es/1215198282620/Estructura_P/1215198291413/Detalle.html

³ <http://www.mjusticia.gob.es/cs/Satellite/en/1215197983408/EstructuraOrganica.html>

involved in that process are distributed between different agencies organically depending from that Ministry.

The offices of the Civil Registry (municipal registries in Spain plus Spanish Consulates abroad), the SGNEC, the DGRN, and the website of the Ministry of Justice are the places where the application forms to initiate the process can be obtained. Those are also the places where information and assistance on the naturalisation procedure is provided.

The office of the local Civil Registry of the domicile of the applicant is the only place where the application file (application form plus all the documentation that must be annexed) can be handed in to initiate this process.

The documents to be submitted by the applicant are clearly stated in the application form, and must be produced at the time of submitting the application to the local Civil Registry. The only exception to this rule is the certificate of refugee status (provided by the *Oficina de Asilo y Refugio* of the Spanish Ministry of Interior), in case of applying for naturalisation under the category of political refugee, and which only lasts for six months.

The basic documents that must be provided by all applicants are:

- Application form.
- ID as foreign legal resident in Spain (extended by the Spanish Ministry of Interior).
- Passport of the country of origin.
- Certificate of registration in the municipality of residence in Spain.
- Birth certificate from the country of origin.
- Criminal record from the country of origin.
- Proof of availability of economic resources, which could include a job contract, payslips, a certificate from the Spanish Social Security, or any other document that can prove that the applicant has economic resources.
- Birth certificate of dependent underage children (in case the applicant has any).

All documentation from the country of origin of the applicant must be either legalised at the Spanish consulate or embassy, or have the "The Hague Apostille" stamped on it. Also, all documents originally printed in foreign languages must be translated into Spanish by a certified translator.

In the case of the application for naturalisation by political refugees the documentation to be attached varies a little since they do not need to provide documents from their country of origin (they are not asked to provide their birth certificate or a criminal record from their country of origin since they generally have very limited access to the public administrations of that country). Refugees can use either their passport from their country of origin, or the blue (1951 UN convention of refugees) passport instead. As we previously mentioned, they also have to present a certificate extended by the *Oficina de Asilo y Refugio* (with a validity of six months), in which the basic information of the applicant is stated, and their status as political refugee recognised.

There are no fees involved in the process of application for naturalisation, or in the issuing of the nationality title once the application has been favourably informed by the Ministry of Justice.

Every agency involved in the process of handling the different stages of the naturalisation application can reject an application if they consider that the conditions and requirements they are responsible for evaluating are not fulfilled.

The Civil Registry is responsible for checking whether the file is complete, and to initiate the study of each case. The judge in charge of the local Civil Registry conducts an interview with the applicant to evaluate his/her degree of integration within Spanish society (including the proof of language knowledge), as well as his/her good civic conduct before submitting the file to the SGNEC (depending of the DGRN). Once this agency receives the file a letter is sent to the applicant informing him/her that the procedure has reached this stage of the process.

As the agency responsible for the last stages of the decision-making process, the SGNEC is responsible for taking the final decision about whether to accept or to reject the application, notifying the applicant by letter about its decision, and publishing the list of all those authorised to acquire Spanish nationality at the *Boletín Oficial del Estado* (the official journal of the Spanish State). If the decision is positive, the applicant must report to the office of the Civil Registry where he/she submitted his/her application before 180 days of the notification, to proceed to the last stages of the process and to obtain the documentation that accredit his/her Spanish nationality. If the applicant fails to report to the Civil Registry within that period it is understood that he/she renounces the attempt to acquire Spanish nationality.

Those last steps of the process of the acquisition of Spanish citizenship include a brief ceremony before the judge responsible of the Civil Registry. In that ceremony the successful applicants must promise fidelity to the Spanish King and to the Spanish Constitution, signing a document stating to do as promised.

In addition to that ceremony, the applicant must also sign a document renouncing their nationality of origin in order to acquire Spanish nationality. This process does not imply that they need to provide any additional documentation proving that aspect, and they are not supposed to communicate with the authorities of their country of origin about the fact that they have acquired Spanish nationality. Nationals from countries with a dual nationality agreement with Spain (countries from the Ibero-American Community of Nations, Andorra, the Philippines and Equatorial Guinea) do not need to state their renunciation to their nationality of origin when acquiring Spanish nationality.

The applicant is considered a Spanish national once the judge of the Civil Registry includes him/her in the official registry, after which the new citizen can apply for his/her Spanish ID and passport.

3. Discretion

The main grounds for discretionary practices in the implementation of citizenship law in naturalisation procedures can already be found at its initial steps. The main discretional

authority at this stage is the judge in charge of the Civil Registry responsible for the evaluation of applicants' integration and of their good civic conduct. This judge is responsible for conducting the personal interview with the applicant after having received and processed the regular application and verified that the documentation presented is sufficient and correct. The judge evaluates all the factors involved in the proof of integration within Spanish society, and that of the good civic conduct of the applicant by using the methods he/she understands as useful for fulfilling the purposes of the personal interview (article 22.4, Civil Code-CC). This involves a whole set of verifications, including not only those of social habits and the applicants' respect of law, but also the evaluation of knowledge of Spanish language (or co-official languages in addition to Spanish in those regions that have one).

Although the judge benefits from wide margins of discretion during the interview, in the file he/she submits to the DGRN after the interview due account must be provided about various aspects regulated by law (in the CC and the Civil Registry Code -CRC-) such as the personal behaviour of the applicant, including the proof of "good civil conduct and enough integration in Spanish society", the proof of a clean criminal record in Spain and in the country of origin, and the proof of participation in social organisations in Spain. The judge must also assess the duration of residence and the holding of nationality, the potential implications of naturalisation for both the applicant and his/her family by mentioning the situation of the partner and the children (the applicant's partner can also be heard by the judge responsible for the Civil Registry), and by stating the consequences of naturalisation for the family of a naturalised citizen, and the evidence on the links of the applicant with his/her country of origin (including problems of re-entry for political or citizenship reasons, exceptional circumstances for reducing periods of residence, and exceptional circumstances exempting applicants from proving links with Spanish society). All the proceedings initiated by the judge are supervised by the local attorney general (*Ministerio Fiscal*).

Moreover, the courts (namely the National Court, *Audiencia Nacional*, as well as the Supreme Court, *Tribunal Supremo*) have established over time different grounds for refusing nationality in additional cases in which it is evident that the applicant does not fulfil general legal provisions in Spain. These aspects are different from the evaluation of the criminal record, and involve information obtained from different sources (besides the personal interview, the judge and the central authorities of the Ministry of Justice can ask for the advice of social services, local authorities, and even diplomatic authorities). The most common example having resulted in refusal for the non-fulfilment of general legal provisions in Spain is the case of polygamy, resulting in multiple sentences of the National Court every year.⁴

There is no specific language test for applicants for naturalisation in Spain. As stated above, the proof of sufficient knowledge of Spanish (and regional co-official languages) is included in the personal interview conducted by the judge of the local Civil Registry. This implies a wide margin for potential discretion: the judge freely evaluates language knowledge. Nevertheless, the judge's discretionary powers open the

⁴ Last 10 sentences on refusal due to polygamy: SAN 921/2012, March 1st 2012; SAN 5777/2011, December 26th 2011; SAN 1759/2011, April 5th 2011; SAN 924/2011, February 23rd 2011; SAN 5329/2010, November 22nd 2010; SAN 2794/2010, June 9th 2010; SAN 2016/2010, May 6th 2010; SAN 5893/2010, December 17th 2009; SAN 3068/2009, June 4th 2009; SAN 1640/2009, April 7th 2009.

possibility for the rejected applicant to appeal before the National Court. The sentences of this jurisdictional body on the fulfilment of the language requirement are frequent,⁵ sometimes leading to questioning of the methods used by the judge, but frequently to ratifying the initial rejection. In addition, these sentences show that the proof of language knowledge can also be assessed by other bodies (police, social services, and local authorities) when consulted by the judge or the DGRN.

Regarding other requirements the judge has different margins of discretion. In the case of the fulfilment of the residence requirement the room for discretion is small since a list of mandatory documents is established by law (based on article 220 CRC). In the case of the assessment of integration in Spain, the judge responsible for the local Civil Registry evaluates integration both on the basis of the questions asked during the personal interview (which involve larger discretionary judgments) and on the basis of the documents provided by the applicant and by other administrative bodies (criminal records in both countries, proof of work activity, proof of family links, etc.). Therefore, discretion is, in fact, limited formally by those compulsory documents. With regard to the assessment of the economic requirements the decision is also based on specific documents proving enough resources to live in the country (work contract, payslips, certificate of the Social Security, or other).

In the case of the requirement of lack of criminal records the judge examines documentation from different sources (Spain, the country of origin, or the country where the applicant lived before settling in Spain). At the same time, the report sent to the DGRN by the Ministry of Interior accounts for police records in Spain. The exact requirement is to have an empty criminal record in both countries, which includes the fact of being currently accused of any crime or offence. No further clarifications on which offences make applicants ineligible are provided by law. However, the Supreme Court has established in several sentences⁶ that the existence of a criminal record, on its own, is not a sufficient argument for rejecting an application for naturalisation, as it needs to be evaluated within the whole assessment of good civic conduct and integration in Spain. The appreciation of these facts belongs to the general evaluation of ‘civic conduct’ made by the judge.

Finally every applicant must renounce his/her previous nationality when obtaining Spanish citizenship except those cases established in the law (Latin Americans, Portuguese, Andorrans, Filipinos, and Equatorial Guineans). However, Spanish legislation in this matter contains several vague provisions. Applicants must renounce their previous nationality, but this renunciation is only to be made before the judge responsible for the local Civil Registry, and not before the authorities of the country of origin. This means that, in fact, renunciation can be considered a valid or invalid act depending on whether the authorities of the country of origin accept the renunciation or not. Renunciation before the Spanish Judge is therefore only a formal compromise, sometimes with doubtful legal consequences.

⁵ Last sentences in 2012: SAN 2546/2012, June 14th 2012; SAN 2827/2012, June 13th 2012; SAN 2143/2012, May 14th 2012.

⁶ The Supreme Court established in various sentences that if the crime or offence was committed many years before and the applicant had proven good civic conduct after that the facts included in the criminal record could not be considered a reason for rejecting the application.

4. Bureaucracy

The judge responsible for the local Civil Registry receives the application, checks documentation and confirms that the application is complete. Applicants for naturalisation are compulsorily heard by the judge in charge of the Civil Registry, who conducts the personal interview, and they have the right to be informed on the progress of their application (they can follow the status of their application through the website of the Ministry of Justice⁷).

Once interviewed by the judge, the file is supervised by the local attorney general and sent to the DGRN (this means that the documentation is checked at least twice to guarantee that the applicant meets the legal conditions). Both the local judge and the officials of the DGRN can call to inter-agency systems for document-checking. First, officials of the DGRN must request data from the Ministry of Justice itself (criminal records in Spain) and the Ministry of Interior (certificate of civic conduct). Information from other bodies (police, other ministries, Autonomous Communities, local authorities) is also frequently requested.

The discretionary evaluation of integration made by the judge allows him/her to evaluate the merits of the application before the file reaches the central authorities. Although he/she does not make the final decision, the judge can “block” the procedure at its initial stages by stating that the application is not complete because he/she understands that the integration requirement is not fulfilled, or because some documents are missing. Nevertheless, although the procedure is started by the judge of the Civil Registry the deciding authority is the DGRN, an administrative body dependent on the Ministry of Justice.

There is no regulation on time limits for procedure. In 2011 the average resolution time was well over 2 years due to the saturation of the system with an overflow of applications in recent years. In 2009 the Spanish government undertook a new program for the modernization of the judicial system which included the procedure for naturalisation. More specifically, the authorities stated that the objective was to respect a one year delay for taking decisions on naturalization procedures by mid 2010. However, this well-intentioned purpose was contested by the facts: without an increase in the budget of the DGRN (especially in terms of human resources) it was impossible to deal with the 150,000 application per year presented in 2010. Cases continued to accumulate delays, and the stock of unresolved cases reached approximate 400,000 in 2012. In order to find a solution to this serious holdup, in July 2012 the Ministry of Justice proposed a provisional increase in the resources allocated to the task of qualifying the naturalisation files. No new civil servants were allocated to the DGRN, but other civil servants (notably the body of Property Registrars, now less occupied than in the years of the Spanish real state boom) were assigned to collaborate with the DGRN. Thus, the Ministry of Justice signed an agreement with more than 1,000 registrars including them in the task of collaborating with the DGRN in clearing the huge backlog. This implied an increase of about 1million € in the budget allocated for resolving the accumulated naturalisation application files.

⁷ <http://www.mjusticia.gob.es/cs/Satellite/es/1215198282638/EstructuraOrganica.htm>.

5. Review

The reasoned decision on naturalisation is given to the applicant in the shape of a formal “Resolution of the DGRN”. These resolutions are administrative acts that can be reviewed (before entering jurisdictional instances) by administrative bodies. Therefore, the resolution is reasoned in case of rejection, and it implies a right to appeal before two instances: administrative (the DGRN itself), and jurisdictional (the National and Supreme Courts).

The administrative review procedure consists of the following steps: first, resolutions of the DGRN can be appealed for reversal ("*Recurso de reposición*") before this very same agency. Appeal is to be resolved by this body within 30 days, and can modify the previous decision of rejection of citizenship, and thus grant nationality. The appeal covers both procedural and substantive aspects. After the appeal for reversal, this resolution can enter Contentious-administrative jurisdiction. The resolution can be appealed before the Contentious-administrative Room of the National Court (*Audiencia Nacional*). Finally, the judgment by the National Court can be appealed before the Contentious-administrative Division of the Supreme Court ("*Recurso de casación*"). Therefore, the right of appeal before national courts can be claimed before two instances, which include a court of last instance (Supreme Court).

Both the appeal in administrative (appeal for reversal before the DGRN, and judicial instances -National Court and Supreme Court-) may modify the decision in merit and therefore grant nationality.

Time limits for applicants to launch an appeal after notification are the following: in the case of the appeal for reversal ("*recurso de reposición*") before the DGRN, an appeal can be made within 15 days after notification. The Contentious-administrative appeal before the National Court has a time limit of 2 months after notification. Finally, the appeal before the Contentious-administrative division of the Supreme Court has a shorter time limit of 10 days after notification of the sentence of the National Court (this is the last instance in this particular case).

Additionally, it is important to state that there is no specific procedure of appeal in the case of language and integration tests, as these aspects are jointly evaluated by the judge responsible for the local Civil Registry during the personal interview at the beginning of the administrative process. The general review procedures are to be followed in those cases. In fact, as seen before, frequent sentences of the National Court deal with refusal due to insufficient knowledge of Spanish language or lack of integration. In the case of language and integration tests, appeals may modify the decision in merit, as in the general review procedure. In the same terms, as discrimination in the naturalisation procedure is not explicitly regulated, general anti-discrimination rules are also to be applied by every administrative and jurisdictional body.

