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30 March 2020

COD200186.FE

Democratic Republic of the Congo: Requirements and procedures for the restoration of Congolese nationality after it was lost; the possibility for persons born in the Democratic Republic of the Congo (DRC) who were raised outside of the country to reacquire Congolese nationality; whether the children of Congolese nationals can acquire Congolese nationality (2017-March 2020)

Research Directorate, Immigration and Refugee Board of Canada

1. Congolese Nationality

Article 10 of the Constitution of the Democratic Republic of the Congo of 2006 (*Constitution de la République démocratique du Congo de 2006*) provides that

[translation]

Congolese nationality is singular and exclusive. It may not be held concurrently with any other.

Congolese nationality is acquired either through birth or on an individual basis.

Any person belonging to an ethnic group of which the people and the territory were a part of that which became Congo (presently the Democratic Republic of the Congo) at independence is of Congolese origin.

The conditions for the recognition, acquisition, loss and restoration of Congolese nationality are determined by an organic law. (DRC 2006a)

An article written by Alexis Thambwe-Mwamba [Minister of Justice in 2018 (*Jeune Afrique* with AFP 20 Mar. 2018)] and published in the Congolese newspaper *Le Soft international* states the following:

[translation]

Congolese nationality can be requested and restored only after renouncing foreign nationality to avoid holding multiple nationalities. ... regaining nationality is not automatic, as, pursuant to article 33 of the [L]aw [Law No. 04/024 of 12 November 2004 on Congolese Nationality (*Loi n° 04/024 du 12 novembre 2004 relative à la nationalité congolaise*)], the Government can oppose the restoration of Congolese nationality for the applicant on grounds of indignity. (*Le Soft international* 30 Mar. 2018)

However, sources indicate that in 2018, there were allegations of politicians holding dual nationalities (*La Libre Afrique* 4 Apr. 2018; *Jeune Afrique* 28 May 2018; *Le Soft international* 30 Mar. 2018).

2. Restoration of Congolese Nationality

Law No. 04/024 of 12 November 2004 on Congolese Nationality provides the following:

[translation]

Article 30:

The Congolese nationality of a person who establishes having previously held Congolese nationality can be restored by decree or declaration on the terms set out in articles 31 and 32 of this [L]aw.

The restoration of Congolese nationality by decree or declaration affects the applicant's minor children.

Article 31:

Restoration by decree concerns the person who obtained Congolese nationality through acquisition. It can be granted at any age above the age of majority. It is subject to the conditions and procedures of acquiring Congolese nationality.

Article 32:

Any person of Congolese origin who loses their nationality may recover their nationality by making a declaration in accordance with the provisions of article 34.

That person must have maintained or established substantial cultural, professional, financial, sentimental, familial or other ties to the Democratic Republic of the Congo.

The declaration is effective on the day it is registered.

Article 33:

The Government can oppose the restoration of nationality for the applicant on grounds of indignity. (DRC 2004)

Article 34 of the same law describes the procedure concerning the declaration of Congolese nationality as follows:

[translation]

Article 34:

Any declaration made with a view to acquiring Congolese nationality, or to renouncing or restoring it in the cases set out in this law, must satisfy the following conditions:

1. It must be presented in duplicate;
2. It must indicate that the interested party elected to live in the Democratic Republic of the Congo;
3. It must bear the applicant's authenticated signature.
4. It must be accompanied by documents determined Order of the Minister of Justice and Keeper of the Seals [Arrêté du Ministre de la Justice et Garde des Sceaux] deliberated by the Council of Ministers [*sic*];
5. It must be sent to the Minister of Justice and Keeper of the Seals by registered mail with an acknowledgement of receipt or hand-delivered against receipt upon submission of the required documents. (DRC 2004)

Article 8 of the Ministerial Order No. 261/CAB/MIN/J/2006 of 4 July 2006 on Certain Application Measures of Law No. 04/024 of 12 November 2004 on Congolese Nationality (*Arrêté ministériel n° 261/CAB/MIN/J/2006 du 04 juillet 2006 portant certaines mesures d'exécution de la Loi n° 04/024 du 12 novembre 2004 relative à la nationalité congolaise*) lists the documents to be submitted in support of a Congolese nationality restoration application:

[translation]

The application by virtue of membership, parentage and presumption of the law of a Congolese national who lost their Congolese nationality and who wishes to restore it must, as per article 34 of Law No. 04/024 of 12 November 2004 on Congolese Nationality, be presented in duplicate and bear the applicant's authenticated signature.

It is accompanied by the following documents:

1. A birth certificate extract, duly legalized by the competent authorities of the applicant's country of origin or by the Congolese authorities or, if there is no birth certificate, an administrative or legal record in place of a birth certificate issued by either competent Congolese authorities or the competent authorities of the applicant's country of origin and establishing the applicant's age and identity;
2. A certificate issued by the competent authorities certifying that the applicant held Congolese nationality through birth;
3. A nationality certificate issued by the competent authorities of the applicant's country;
4. A certificate of applicable legislation establishing that, pursuant to the legislation of the applicant's country of origin, nationals of that country lose their nationality if they voluntarily acquire a foreign nationality;
5. At least one confirmation from competent authorities establishing that, on the day the declaration was submitted, the applicant's habitual residence was in the Democratic Republic of the Congo;
6. A certificate of good character and conduct dated less than three months prior and issued by the competent authorities of the applicant's country or countries of residence;
7. A certificate of good character and conduct dated less than three months prior and issued by the competent Congolese authorities;
8. A criminal record extract dated less than three months prior and approved by the General Prosecutor of the Republic (Parquet général de la République);
9. The French translation of documents written in another language, certified by competent authorities from the applicant's country;
10. A curriculum vitae. (DRC 2006b)

According to an article by the Catholic news agency Documentation and Information for Africa (Documentation et information pour l'Afrique, DIA) of the National Episcopal Conference of the Congo (Conférence épiscopale nationale du Congo, CENCO), a person who wishes to restore their Congolese nationality

[translation]

must address a formal request to the Minister of Justice. The Minister must present the applicant's request to the Council of Ministers, and the Council will render a decision following deliberation. He will then inform the foreign government, in writing, that the Congolese national will lose this foreign identity and once again become a citizen of his country. He must then wait for a response. It is only then that the Minister of Justice can sign the Congolese nationality restoration decree. (DIA 29 Aug. 2018)

3. Acquisition of Congolese Nationality

Concerning Congolese nationality by birth, Law No. 04/024 of 12 November 2004 on Congolese Nationality stipulates the following:

[translation]

Concerning Congolese nationals by parentage

Article 7:

A child born to one Congolese parent, either the father or the mother, is a Congolese national by birth.

The child's parentage affects his or her nationality only if it is established while the child is a minor, pursuant to Congolese law. (DRC 2004)

In the same law, the acquisition of Congolese nationality [translation] "by virtue of choice" is set out as such:

Article 13:

The acquisition of Congolese nationality by virtue of choice applies to:

1. A child born in the Democratic Republic of the Congo or in another country and who has one parent of Congolese nationality;
2. A child legally adopted by a Congolese national;
3. A child adopted by a person who voluntarily acquired or restored their Congolese nationality.

Article 14:

A dependent, minor child whose father or mother has obtained Congolese nationality by virtue of choice obtains full Congolese nationality at the same time as the parent.

A dependent, minor child whose father or mother is unknown obtains Congolese nationality pursuant to the provisions of article 8 of this law.

Article 15:

This option is only admissible if the applicant:

1. has been a resident of the Democratic Republic of the Congo for at least 5 years;
2. speaks one of the Congolese languages;
3. submits a statement of commitment to renounce any other nationality.

Article 16:

The declaration to exercise this option must be submitted within six months after reaching the age of majority, pursuant to the provisions of article 34 of this law.

It is effective the day it is registered.

Without prejudice to the provisions of article 22 this law, the Government may oppose a foreign national acquiring nationality by virtue of choice on the grounds of indignity on the part of the applicant. (DRC 2004)

This law also describes as follows the common provisions concerning obtaining Congolese nationality through acquisition:

[translation]

Article 22:

The acquisition of Congolese nationality is subject to the following conditions:

1. reaching the age of majority;
2. formally submitting an individual declaration;
3. submitting a statement of commitment to renounce any other nationality;
4. speaking one of the Congolese languages;
5. being of good character;
6. having had a permanent address in the Democratic Republic of the Congo for at least 7 years on the date of the application;
7. having never carried out, for the benefit of a foreign state, acts that are incompatible with being a Congolese national or harmful to the interests of the Democratic Republic of the Congo;
8. having never been handed a final conviction by a national or foreign authority on one of the following charges:
 - a. high treason;
 - b. endangering national security;
 - c. war crimes, crimes of genocide, crimes against humanity, crimes of assault;
 - d. crimes of terrorism, assassination, murder, rape, child rape and pedophilia;
 - e. white-collar crimes, money laundering, infringement, tax evasion, corruption, weapons trafficking, drug trafficking.

Article 23:

As soon as Congolese nationality is acquired, the Minister of Justice and Keeper of the Seals must, within three months and through diplomatic channels, inform the Government of the applicant's country of origin of the decision to grant nationality.

...

Article 25:

A child under the age of 18 whose father or mother has obtained Congolese nationality obtains full Congolese nationality. (DRC 2004)

Article 2 of the Ministerial Order No. 261/CAB/MIN/J/2006 of 4 July 2006 on certain application measures of Law No. 04/024 of 12 November 2004 on Congolese Nationality lists the documents required in support of an application to acquire Congolese nationality by virtue of choice:

[translation]

The application to acquire Congolese nationality for a child born in the Democratic Republic of the Congo or in another country, with one parent who acquired Congolese nationality by virtue of choice, must be submitted in duplicate with the authenticated signature, as per article 34 of Law No. 04/024 of 12 November 2004 on Congolese Nationality.

It must be submitted with the following documents:

1. Proof of residence in the Democratic Republic of the Congo with the applicant's authenticated signature.
2. A birth certificate extract, duly legalized by the competent authorities of the applicant's country of origin or by the Congolese authorities or, if there is no birth certificate, an administrative or legal record in place of a birth certificate issued by either competent Congolese authorities or the competent authorities of the applicant's country of origin and establishing the applicant's age and identity;
3. A certificate issued in accordance with paragraph 2 of chapter 3 of Law No. 04/024 of 12 November 2004 on Congolese Nationality establishing that on the day of the applicant's birth, one of the parents held Congolese nationality;
4. A certificate of applicable legislation establishing that pursuant to the legislation of the applicant's country of origin, nationals of that country lose their nationality if they obtain a foreign nationality;
5. At least one confirmation from competent Congolese authorities indicating that, at the time of the the declaration, the applicant's habitual residence had been in the Democratic Republic of the Congo for at least five years;
6. Minutes from an interview attesting that the applicant can speak one of the Congolese languages, as certified by the justice service responsible for nationality;
7. A certificate of good character and conduct dated less than three months prior;
8. A criminal record extract dated less than three months prior and approved by the General Prosecutor of the Republic;
9. A medical certificate dated less than three months prior showing that the applicant is of sound mind and that, based on their physical condition, the applicant will not be a burden or a danger to the community;
10. The French translation of documents written in another language, certified by competent authorities from the applicant's country;
11. A curriculum vitae. (DRC 2006b)

Article 6 of the same order lists the [translation] "documents required in support of an application to acquire Congolese nationality by virtue of birth and residence in the DRC":

The application to obtain Congolese nationality for a child born in the Democratic Republic of the Congo to foreign parents by virtue of birth and residence must, as per Article 34 of Law No. 04/024 of 12 November 2004 on Congolese Nationality, be accompanied by the following documents:

1. Proof of residence in the Democratic Republic of the Congo with the applicant's authenticated signature.
2. A birth certificate extract, duly legalized by the competent authorities of the applicant's country of origin or by the Congolese authorities or, if there is no birth certificate, an administrative or legal record in place of a birth certificate issued by either competent Congolese authorities or the competent authorities of the applicant's country of origin and establishing the applicant's age and identity;
3. An attestation of permanent residence in the Democratic Republic of the Congo;
4. A signed and written declaration, duly notarized, in which the applicant expresses their desire to acquire Congolese nationality;
5. The French translation of documents written in another language, certified by competent authorities from the applicant's country. (DRC 2006b)

Information on the application of Law No. 04/024 of 12 November 2004 on Congolese Nationality could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of sources consulted in researching this Information Request.

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Additional Sources Consulted

Oral sources: Democratic Republic of the Congo – embassies in Brussels and in Ottawa.

Internet sites, including: African Union; Democratic Republic of the Congo – embassies in Brussels, Ottawa, Paris and Washington, DC; ecoi.net; Initiative sur le droit à la nationalité en Afrique; Open Society Foundations; Radio France internationale; Radio Okapi.

Date modified:

2018-06-25