

Trying Again After Your First Application is Refused

HONG KONG VISA CENTRE

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WHY DO APPLICATIONS GET DENIED?

Case Fatally Flawed From the Outset

Approval markers, incorrect relationships, security considerations, not approvable *ab initio*, previous denials, poor history with HKID

Very Poor Preparation & Approvability Analysis

Treating all cases the same, argument not persuasive, argumentative not administrative

Insufficient Supporting Documentation

Critical paperwork missing, laziness

Requests of the HKID Not Afforded Significance

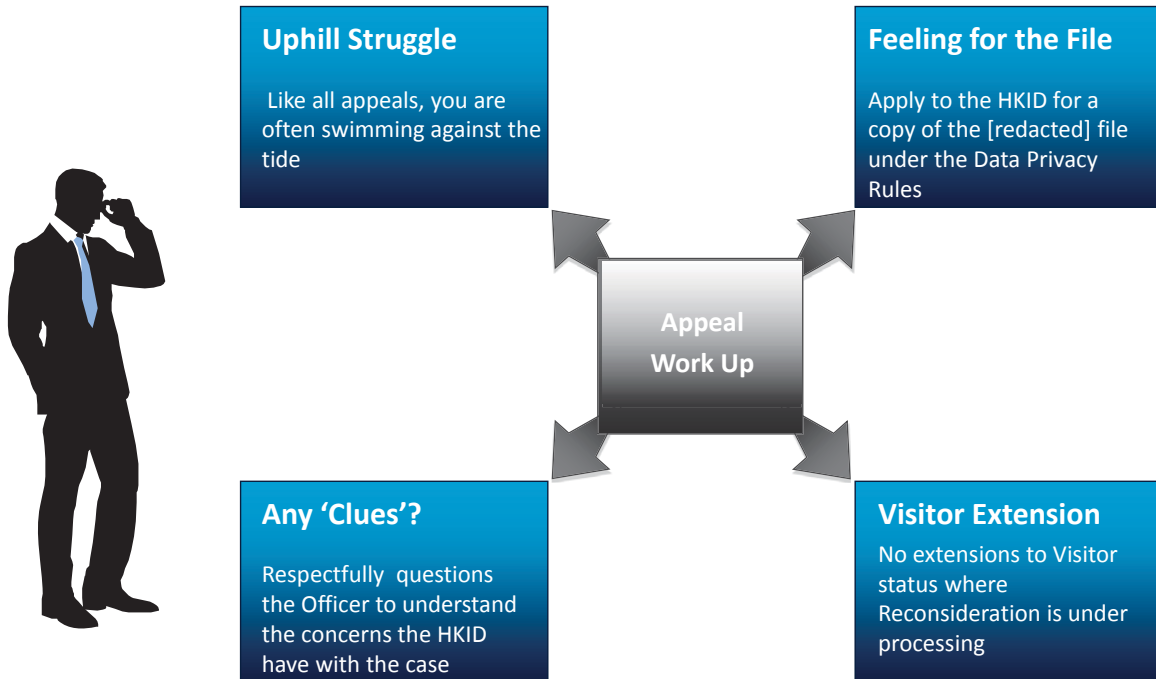
If the HKID request it, they need it – so get it to them – no questions asked!

Applicant Caught Breaching Conditions of Stay

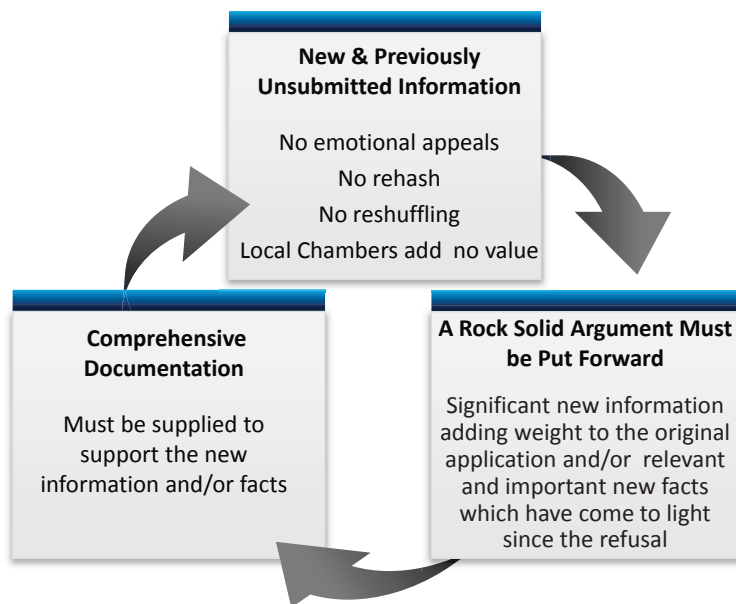
During the application consideration process whilst remaining in Hong Kong as a Visitor or pre-taking up of unapproved employment



REQUESTING A CASE RECONSIDERATION



ARGUING THE RECONSIDERATION



You have only one good chance to fix a previously denied case - make it count!

TIMELINE TO A DECISION



Reconsideration

Why Apply for a Reconsideration?

Your case has been refused. You are disappointed, naturally, and your plans for Hong Kong have been dealt a severe body blow. So what can you do? The answer is to apply to have the decision to refuse your application reconsidered by the HKID but, be warned, it is an uphill struggle - and you only get one good shot at it, so you had better make it count.

Grounds for a Reconsideration

The HKID will only entertain an application for a reconsideration of a decision to refuse an application if there is significant additional, new information adding weight to the original application or relevant and important new facts which have come to light since the refusal - with comprehensive verifying documentation to support.

What Does All this Mean?

It means that you need to be ready to further argue your case stridently and have the bullets ready to fire in support. Emotional appeals are fruitless; as are a collection of mere testimonials from your consulate or chambers of commerce.

How Do I Figure Out What Has Gone Wrong?

There are typically five key underlying reasons why cases get denied. It could be that the case was destined to fail from the get go as the applicant was incapable of passing the approvability test applicable to the visa type applied for. It might be that the case was very poorly put together or incorrectly argued. Often times, applicants are unable to come up with critical supporting documentation required by the HKID or other specific information requests are not adhered to. Finally, if the applicant has a poor immigration record in Hong Kong the Immigration Department could be minded not to afford the applicant the privilege of residence.

Documents Required

This really does all depend on how you intend to further argue your case.

Submitting Your Reconsideration Application

You should submit your application bundle for the Reconsideration in the same way as you submitted your original application. If you are a Visitor in Hong Kong, the HKID will not afford you an interim extension to your current period of stay pending the finalisation of the Reconsideration process and notification of the outcome.

Further Appeal

You can apply under s 53 of the Immigration Ordinance for the review of a decision of a public officer or seek the direct intervention of the Chief Executive if there is a matter of significant public interest at issue.

Further Resources



Discussion

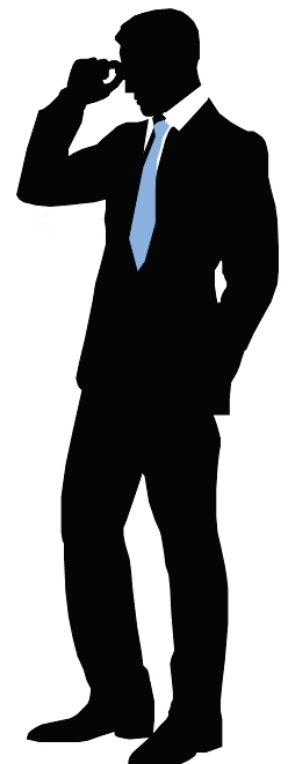


Preparing Your Case

[\(Click to Watch\)](#)

Highlights

- All applicants for residence visas can request a reconsideration of a decision to refuse an application
- Not an easy task and should not be approached lightly
- There are typically 5 key underlying reasons why cases get denied
- The essential ground for a reconsideration is new and previously unsubmitted information
- Reconsiderations without merit get knocked back very quickly





Reconsideration

- Form ID91
- Collected further documentation which serves to support the representations you have made as to new and important facts which have come to light since the application was refused.
- Detailed covering letter which sets out new and important facts which have come to light since the application was refused.

Notes



Discussion

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Appeal Options – When Reconsideration Fails

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TWO OPTIONS FOR FURTHER APPEAL

s.53 Review

Any person aggrieved by a decision, act or omission of any public officer taken, done or made in the exercise or performance of any powers, functions or duties under this Ordinance may by notice in writing lodged with the Chief Secretary for Administration within [14 days] object to that decision, act or omission.

Direct Intervention by the Chief Executive

**BUT ONLY IF THERE IS
A SIGNIFICANT
MATTER OF PUBLIC
INTEREST AT ISSUE**

Both are problematic!



**Alternatively you can instruct a solicitor and seek a
Judicial Review of Administrative Action**

Options for Final Appeal

Two Options Available

If your Reconsideration is finally refused, you do have to consider if the HKID do in fact have solid grounds for denying your application. The road gets very rocky for you now, but there are two further avenues of appeal that you may wish to travel.

s.53 Immigration Ordinance Review

This section of the Immigration Ordinance provides for 'superior officer' oversight of the decisions which 'rank and file' are making in the conduct of their duties under immigration law. Section 53 states any person aggrieved by a decision, act or omission of any public officer taken, done or made in the exercise or performance of any powers, functions or duties under the Immigration Ordinance may by notice in writing lodged within [14 days] object to that decision, act or omission. This process can take up to six months to complete and if the person seeking Review is in Hong Kong as a visitor he will not be allowed to remain whilst the Review process is pending. You progress the Review application by writing to the Chief Secretary, setting out your case and asking for the Review. The HKID will then write back to you with details of how the process will unfold and what you can expect. Upon completion of the Review you will be notified of the outcome and what new decisions have been directed, if any.

Request for Direct Intervention

Only if there is a matter of significant public interest which stems from your case refusal, you could seek to request the direct intervention of the Chief Executive to have the HKID reconsider the Reconsideration. But to be taken seriously, your case situation needs to have obvious public merit.

Judicial Review (Instruct a Solicitor)

Judicial review is a procedure in administrative law by which the courts supervise the exercise of public power. A person who feels that an exercise of such power by a government authority, is unlawful, perhaps because it has violated his or her rights, may apply to the Court for judicial review of the decision and have it set aside (quashed) and possibly obtain damages. A court may also make mandatory orders or injunctions to compel the authority to do its duty or to stop it from acting illegally. You will need to consult a solicitor to this end.

Procedures

Section 53 Review commences with a letter to the Chief Secretary. A request for the direct intervention of the Chief Executive also commences with a letter, typically by fax.

Further Resources



Preparing Your Case

[\(Click to Watch\)](#)

Highlights

- If your Reconsideration fails, there are two options open to you
- Experience suggests none of them are especially attractive
- The procedures are expensive, burdensome and not to be pursued lightly
- Only in very rare instances will these options be suitable
- Judicial Review will require you to take the HKID to court



Discussion

