

Trying Again After Your First Application is Refused

(Reconsideration)

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Has Your Application of Any Kind Been Refused?

What happens if your application gets denied? Cases can be denied for various reasons.

Firstly, they can be denied because they are fatally flawed from the outset, meaning they should never have been submitted in the first place. Cases can also be denied because they have been poorly prepared, lacking a proper analysis of what is required for approval, or failing to understand the difference between a case that requires an argument versus one that is simply administrative in nature. Cases can be denied when applicants do not take the process seriously, neglecting to submit critical paperwork or refusing to provide requested information.

In some instances, denial occurs due to an applicant's negative prior history, such as a previous breach of conditions of stay. If your application is denied, the first step is to request Reconsideration from the Immigration Department. Be prepared for an uphill struggle, as it is often challenging to have a decision overturned. The majority of the time, the Immigration Department makes the correct decision, but occasionally they do make mistakes.

You can try having a conversation with the immigration officer to see if they are willing to provide any insight into the reason for the denial. You can also apply for a copy of your file, which may be redacted under data privacy rules, to glean a sense of what might have gone wrong.

Reconsideration requires submitting new information that was not previously available to the Immigration Department at the time of the refusal decision. This means you cannot simply rehash the original argument, shuffle papers, or rely on letters of support from local Chambers of Commerce. You need a rock-solid argument, providing the Immigration Department with all the necessary information. Successful Reconsideration hinges on presenting significant new information that adds weight to your application, or highlighting new facts that have emerged since the application was refused. You must also submit comprehensive documentation in support of your Reconsideration request.

Reconsideration applications can take a long time to process. If your application does not have merit, the Immigration Department will likely respond within 30 days, telling you to forget it (in more polite terms). If your application has merit, it will go to the bottom of the pile and may take up to 3 months to receive an outcome. Reconsiderations can be a hard slog, but there is plenty of information available in the handbook to guide you through the process. If your Reconsideration request fails, there are two other routes you can explore. You can appeal under Section 53 of the Immigration Ordinance, arguing that the Immigration Department was wrong in their decision. This process involves lodging an application and waiting for a response from the Immigration Department, which will come through the Secretary of Security's office.

The response will typically be quite general and vague, making it difficult to glean any valuable insight. You will have the opportunity to respond before the case goes before the Chief Executive and Council, who will decide whether the Immigration Department was right or wrong in their decision.

Another option is to make a direct application to the Chief Executive, asking them to intervene. This approach is only viable if there is a significant matter of public interest at play. To illustrate how the Immigration Department can sometimes get things wrong, consider a case from the late 1990s. Hong Kong was experiencing an economic crisis, losing thousands of retail jobs every week. A client from another Southeast Asian country had ambitious plans to open several book retail outlets in Hong Kong, employing a unique method of retailing books that involved extensively educating staff members on the books they were responsible for. The company had plans to open six outlets and had already opened one, with negotiations underway for other sites. The company submitted an application for a manager from another country to come to Hong Kong as a "bookseller." Previous applications had not been refused, but in this instance, the Immigration Department denied the application, arguing that there was no shortage of booksellers in Hong Kong and that the role was simply a retail job. The company approached us for help, and we recommended Reconsideration, presenting the whole story and all the relevant arguments. Unfortunately, the Reconsideration was refused within two weeks. At this point, the company's CEO was growing increasingly frustrated, as they had invested heavily in their Hong Kong expansion plans, and their inability to bring in the necessary staff was threatening the success of their venture. We advised them that the only remaining option was to apply to the Chief Executive. We sent a fax to the Chief Executive, succinctly explaining the problem and providing the file reference number. The very next day, we received a call from the same immigration officer, requesting a few more pieces of information. The day after that, the application was approved, subject to a business review after six months. This case serves as a prime example of how the Immigration Department, although generally accurate in their decision-making, can

sometimes get things so wrong that it borders on the absurd. Fortunately, in this instance, we were able to appeal to the Chief Executive and achieve a positive outcome in a relatively short period. In conclusion, while the majority of the time, the Immigration Department makes the right decisions, there are instances when they make mistakes. In such cases, it is crucial to exhaust all available options, from Reconsideration to appealing under Section 53 of the Immigration Ordinance, or even seeking direct intervention from the Chief Executive (not really recommended as our experience was a 30-year outlier).

If you believe there has been mal or mis administration of justice, you can apply for Judicial Review of an Administrative Decision but that will take a solicitor and a barrister and will no doubt cost a significant sum. It is essential to approach each step of the process with determination, providing comprehensive documentation and well-constructed arguments to bolster your case. While it may be challenging and time-consuming, the prospect of ultimately achieving a favourable outcome makes the effort worthwhile.

Remember, when faced with a denial, do not give up easily. Explore all your options, gather the necessary information, and present the most robust case possible. By doing so, you will maximize your chances of success and potentially overcome the obstacles standing between you and your desired outcome.

Useful Resource 1	Reasons for Refusal
Useful Resource 2	How to Go About Applying for the Reconsideration
Useful Resource 3	Overcoming Failure
Useful Resource 4	The Merits of Applying for a Reconsideration
Hong Kong Visa Handbook Contents	
Visa Information	
Preparing Your Case	
Pre-submission Checklist	
Application Templates	
How To Apply	
Consultation	
Quick Summary	
Podcast Discussion	