

Appeal Options – When Reconsideration Fails

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Has Your Reconsideration Request Been Finally Refused?

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.

Section 53 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.

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.

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.

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	Review under s.53 of the Immigration Ordinance
Useful Resource 3	Overcoming Failure
Useful Resource 4	We Appealed to the Chief Executive - and Won
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