



OOD
PM 20-02

Effective: October 2, 2019

To: All of EOIR
From: James R. McHenry III, Director *JRM*
Date: October 2, 2019

ADMINISTRATIVE REVIEW OF RECOGNITION AND ACCREDITATION DETERMINATIONS

PURPOSE:	Establishes EOIR policy and procedures for the administrative review of denied requests for reconsideration related to the Recognition and Accreditation Program.
OWNER:	Office of the Director
AUTHORITY:	8 C.F.R. §§ 1292.13(e), 1292.16(f), 1292.17(d), 1292.18
CANCELLATION:	None

In January 2017, responsibility for the Executive Office for Immigration Review's (EOIR's) Recognition and Accreditation Program was transferred from the Board of Immigration Appeals to the Office of Legal Access Programs (OLAP) within EOIR's Office of the Director. *See Recognition of Organizations and Accreditation of Non-Attorney Representatives*, 81 FR 92346 (Dec. 19, 2016) (effective Jan. 18, 2017).¹ As part of that transfer, the EOIR Director was given authority to administratively review certain denied requests for reconsideration related to that program. *Id.* at 92357; 8 C.F.R. § 1292.18. This PM outlines the procedures that EOIR will follow in reviewing such denied requests for reconsideration.

I. Administrative Review Generally

The EOIR Director has discretionary authority to review requests for reconsideration of determinations regarding recognition and accreditation that the Assistant Director for Policy² has denied. Organizations wishing to have a denied reconsideration request reviewed must file such requests with the Assistant Director, who will forward the request to the EOIR Director. On the EOIR Director's own initiative, the EOIR Director may review any request for reconsideration denied by the Assistant Director.

¹ That responsibility was subsequently transferred to EOIR's Office of Policy. *See Organization of the Executive Office for Immigration Review*, 84 FR 44537 (Aug. 26, 2019).

² The Assistant Director for Policy has delegated this authority to the OLAP Director pursuant to 8 C.F.R. § 1003.0(e)(3).

II. Determinations Subject to Administrative Review

The EOIR Director may review requests for reconsideration that the Assistant Director has denied. Requests for reconsideration and, therefore, requests for administrative review may be made from three types of adverse Assistant Director determinations regarding recognition and accreditation: (1) initial recognition or accreditation determinations; (2) recognition or accreditation renewal determinations; and (3) administrative terminations of recognition or accreditation.³

III. Process

(a) Office of Policy Determinations

Requests for recognition of organizations or accreditation of representatives or renewal thereof are submitted to the Assistant Director. Along with the requests, the Assistant Director reviews, as available, any additional information that is publicly available; that the Office of Policy otherwise obtains or possesses; and that is disclosed to the Office of Policy from the Department of Homeland Security (DHS), the EOIR Disciplinary Counsel, or EOIR anti-fraud officer. Following review, the Assistant Director issues a written determination approving or disapproving the requests. 8 C.F.R. §§ 1292.13(a), 1292.16(e).

After organizations have been recognized or representatives accredited, the Assistant Director may administratively terminate the recognition or accreditation based on specified regulation(s). Prior to administratively terminating recognition or accreditation, the Assistant Director may request information from organizations, representatives, DHS, or EOIR regarding the bases for termination. 8 C.F.R. § 1292.17(a). Upon administrative termination, the Assistant Director informs organizations or representatives of the reasons for the termination. *Id.*

(b) Request for Reconsideration Before the Office of Policy

Organizations may make one request for reconsideration of adverse determinations from the Assistant Director regarding initial recognition or accreditation, renewal of recognition or accreditation, or administrative termination. Requests for reconsideration must be made within 30 days of the adverse determinations. 8 C.F.R. §§ 1292.13(e), 1292.16(f), 1292.17(d).

(c) Request for Administrative Review Before Director

Organizations may file a request for administrative review by the EOIR Director⁴ when the Assistant Director denies a request to reconsider an adverse determination regarding initial recognition or accreditation, renewal of recognition or accreditation, or administrative termination. Requests for administrative review must be submitted to the Assistant Director within 10 days of the Assistant Director's reconsideration denials. The Assistant Director will forward all

³ Only specified administrative terminations are subject to requests for reconsideration and, therefore, requests for administrative review. 8 C.F.R. § 1292.17(d).

⁴ "The Director may delegate this authority to any officer within EOIR, except the Assistant Director for Policy (or the Assistant Director for Policy's delegate)." 8 C.F.R. § 1292.18(a).

administrative review requests, regardless of timeliness, to the EOIR Director. 8 C.F.R. § 1292.18(a)(1).

Alternatively, the EOIR Director may review any request for reconsideration denied by the Assistant Director, provided that the EOIR Director issues a notice of administrative review within 10 days of the denial and the notice identifies the issues to be reviewed. 8 C.F.R. § 1292.18(a)(2).

Whenever the Assistant Director denies a request for reconsideration of a disapproved application for recognition or accreditation, the Office of Policy will forward the determination and associated file to the EOIR Director within one business day.

The EOIR Director will review the file and make a determination as to whether to review it on the EOIR Director's own initiative. If the EOIR Director decides to review the reconsideration denial on the EOIR Director's own initiative, the EOIR Director will issue "a notification of administrative review within 10 days of the denial." 8 C.F.R. § 1292.18(a)(2). "This notification shall state the issues to be reviewed." *Id.* The EOIR Director office will also provide notice to the Assistant Director that the reconsideration denial is being reviewed on the EOIR Director's own initiative.

If the EOIR Director decides not to review a reconsideration denial on the EOIR Director's own initiative, the EOIR Director will note that determination in the file and return the file to the Office of Policy.

IV. Scope of Administrative Review

Organization requests for administrative review must identify the alleged factual and legal errors made in the Assistant Director's determinations. Nonetheless, because any reconsideration denial may be administratively reviewed on the EOIR Director's own initiative within 10 days of the denial, the EOIR Director may consider any factual or legal issue that becomes apparent during the administrative review.

The EOIR Director's administrative review includes the record before the Office of Policy and the organization's request for administrative review. The EOIR Director, in the EOIR Director's discretion, may request additional filings from the organization regarding the matters at issue. 8 C.F.R. § 1292.18(b).

V. Decisions on Administrative Review

The EOIR Director may affirm the Assistant Director's reconsideration denial or vacate the denial. If the EOIR Director vacates the reconsideration denial, the record must be returned to the Assistant Director to take further action consistent with the EOIR Director's decision. The EOIR Director may not approve a request for recognition or accreditation or renewal thereof. 8 C.F.R. § 1292.18(b).

VI. Effect of Administrative Review on Recognition and Accreditation

Organizations or representatives that have been previously recognized or accredited, prior to the adverse Assistant Director determination regarding renewal or administrative termination, may continue to provide immigration legal services while the review remains pending. Pending the EOIR Director's consideration of requests for administrative review in such instances, the recognition of organizations and the accreditation of representatives remains valid. 8 C.F.R. § 1292.18(a)(3).

VII. Referral to the Attorney General

"The Director will refer to the Attorney General for review of decisions pursuant to this section in all cases that the Attorney General directs the Director to refer to him or that the Director believes should be referred to him." 8 C.F.R. § 1292.18(c).

VIII. Decisions as Precedent

The EOIR Director, in his discretion, may cause reconsideration decisions by the Assistant Director or decisions by the EOIR Director to be published as precedents. Such decisions by the Assistant Director, except as overruled by the EOIR Director, and such decisions by the EOIR Director, except as overruled by the Attorney General, will serve as precedents in all proceedings under part 1292 involving the same issue(s). 8 C.F.R. § 1292.18(d).

This PM is not intended to, does not, and may not be relied upon to create, any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person. Further, nothing in this PM should be construed as mandating a particular outcome in any specific case.

Please contact your supervisor if you have any questions.
