U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

U.S. Citizenship and Immigration Services

B-3

[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: JUL 1 2004

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as an Outstanding Professor or Researcher pursuant to Section 203(b)(1)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(B)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Elizabeth O'Brien
Robert P. Wiemann, Director
Administrative Appeals Office

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reconsider. The motion will be granted, the AAO's previous decision will be affirmed and the petition will be denied.

The petitioner is a university. It seeks to classify the beneficiary as an outstanding researcher pursuant to section 203(b)(1)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(B). The petitioner seeks to employ the beneficiary in the United States as a research assistant scientist. The director determined that the petitioner had not established that it had offered the beneficiary a qualifying, permanent position. The AAO concurred with the director's findings, and dismissed the appeal on March 4, 2004.

Section 203(b)(1)(B)(iii) of the Act makes an immigrant visa available to an alien who seeks to enter the United States --

> (I) for a tenured position (or tenure-track position) within a university or institution of higher education to teach in the academic area,
>
> (II) for a comparable position with a university or institution of higher education to conduct research in the area . . .

Regulations at 8 C.F.R. § 204.5(i)(3)(iii)(B) state that a petition for an outstanding researcher must be accompanied by an offer of employment in the form of a letter from a United States university or institution of higher learning offering the alien a permanent research position in the alien's academic field. Pursuant to regulations at 8 C.F.R. § 204.5(i)(2), "permanent," in reference to a research position, means either tenured, tenure-track, or for a term of indefinite or unlimited duration, and in which the employee will ordinarily have an expectation of continued employment unless there is good cause for termination.

The AAO, in dismissing the appeal, observed that the petitioner employs the beneficiary pursuant to a one-year renewable contract. The petitioner had argued that, while the contract has a June 30 expiration date, the contract is automatically renewed when the Board of Trustees approves the annual budget. The petitioner, as evidence, had cited an internal document, Executive Memorandum B-55. The AAO examined this document, and the dismissal notice includes a discussion of why Executive Memorandum B-55 does not establish that annual renewal is automatic for employees such as the beneficiary.

The petitioner's motion consists of a one-page letter from [redacted] director of International Students and Scholars at the petitioning university [redacted] iscusses a meeting between the director and "higher education representatives," including an official of the University of Wisconsin. The record contains no documentation from this meeting, and a Service Center director cannot make policy decisions that are binding on the AAO. Thus, whatever may have transpired at this meeting is beyond the scope of the proceeding at hand.

Regarding the June 30 expiration date of appointments at the petitioning university, [redacted] tates:

> Renewable appointments at [the petitioning university] do not have a termination date. The end date of such appointments is the date by which the University must give notice and reasons if the job were to end. No action is required to continue the appointment – the position is automatically renewed. Staff members with renewable appointments are provided

> with the same benefits that are provided to tenured and tenure-track faculty. . . . This too is indicative of permanent employment.

We do not contest that the beneficiary receives benefits from his employer, but this is not the issue at hand. In the March 4, 2004 dismissal notice, the AAO found that the evidence submitted fails to substantiate the claim that annual appointments are renewed automatically, requiring no further action by the university. Dr. letter on motion simply repeats, rather than corroborates, the petitioner's claim. The AAO found that "the continuation of the beneficiary's appointment is contingent upon action by the Board of Trustees," a conclusion that the petitioner has not overcome on motion.

maintains that the petitioner's "Administrative/Professional staff work their entire careers on renewable appointments." asserts that his own office staff has worked on such appointments, some for "as long as 30 years," and that "I also remain on a renewable appointment and my position is considered to be permanent."

We have consistently held that consecutive, renewable appointments are, by nature, not permanent. The burden of proof is on the petitioner to prove, rather than simply *claim*, that the renewal of the beneficiary's contract is entirely automatic, requiring no action or intervention on the petitioner's part to prevent the expiration or termination of the appointment. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Availability of the immigration benefit sought is contingent on laws passed by Congress, and regulations promulgated by Citizenship and Immigration Services and its predecessor agency, the Immigration and Naturalization Service. The statute requires employment that is comparable to tenure, and the regulations interpret this as a requirement that the position be permanent. Even if the statute and regulations, for whatever reason, fail to reflect accurately the realities of modern university hiring practices, we remain bound by the laws and regulations as they stand. The petitioner states that it employs the beneficiary on, essentially, the same terms as it employs all of its administrative and professional staff, but this assertion has no effect on our findings. Essentially, this claim only demonstrates that the petitioning university does not employ *any* administrative or professional staff on a permanent basis. The AAO is not in a position to modify the statute or regulations, or to set the petitioning university's hiring and employment practices. If the university has voluntarily adopted hiring practices that are not consonant with the statute and regulations, we cannot make accommodations or exceptions to ensure the petitioner's continued access to benefits under the particular sections of law and regulation.

We note that, on June 24, 2004, the petitioner has submitted a new letter, this time from dean of the petitioner's School of Science. The letter is, in essence, an explanation of why the university continues to require the beneficiary's services. We are not insensitive to the concerns expressed in this letter, but the letter does not address or overcome the basis for the prior dismissal of the appeal. Furthermore, there is no regulatory provision to permit a petitioner to supplement a previously-filed motion.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the previous decision of the AAO will be affirmed, and the petition will be denied.

ORDER: The AAO's decision of March 4, 2004 is affirmed. The petition is denied.