

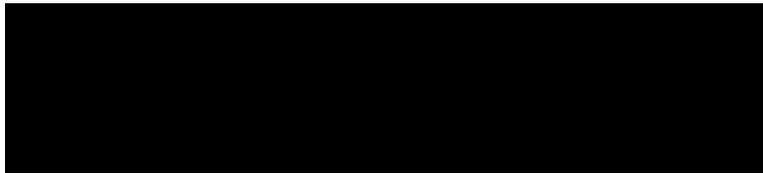
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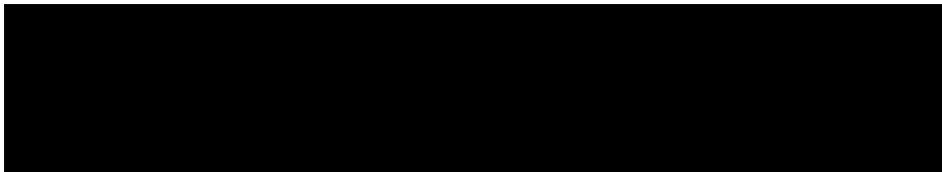
Petitioner:



Beneficiary:

PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:



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.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in business. The director determined the petitioner had not established that the beneficiary has earned the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with Extraordinary Ability. -- An alien is described in this subparagraph if --

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry to the United States will substantially benefit prospectively the United States.

As used in this section, the term "extraordinary ability" means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the regulation at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that the beneficiary has earned sustained national or international acclaim at the very top level.

This petition, filed on April 30, 2003, seeks to classify the beneficiary as an alien with extraordinary ability as an "International Sales and Marketing Manager." The beneficiary works for [REDACTED] an international manufacturer and distributor of high-end guitars.

The regulation at 8 C.F.R. § 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, international recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. The petitioner has submitted evidence that, counsel claims, meets the following criteria.

*Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.*

The petitioner submitted a letter from [REDACTED] Editor-in-Chief, *Gitarre & Bass* magazine, who states that his company, [REDACTED] was the driving force behind establishing the Musikmesse International Press Award (MIPA). He further states:

Together with many magazines from all over the world we started three years ago an award for the best products of last year. The award is called MIPA.

In the year 2002 we got together 51 magazines from all over the world to vote for the best products of 2001/2002 in more than 40 categories. The awards were presented to the winners at a special MIPA-Party/Awards-Ceremony . . . . More than 300 international representatives of manufacturers and distributors of musical instruments and audio equipment attended the 3<sup>rd</sup> MIPA Awards.

The petitioner submitted photographs of two MIPA trophies, from 2000 and 2002, indicating that the beneficiary's employer, [REDACTED] won best product in the electric guitar category. We note here that these awards were presented to [REDACTED] products rather than the beneficiary.

The petitioner also submitted a "Small Business Person of the Year" award certificate presented to [REDACTED] at the "18<sup>th</sup> Annual SBA Maryland Small Business Awards Breakfast 2002." We note here that, aside from being presented to [REDACTED] rather than the beneficiary, this award is reflective of regional recognition (limited to companies based in the state of Maryland), rather than national or international recognition.

The petitioner also submitted an article from the April 2002 issue of *Music Trades Magazine* naming [REDACTED] the "Company of the Year." This article, which does not mention the beneficiary, states:

Fortunately, back in 1987 [REDACTED] wasn't aware of just how long the odds were when he launched the guitar company that bears his name. He readily admits that the evolution from a small workshop to a major producer of high-end electric guitars was not a smooth process and there were some difficult moments. But through even the most trying circumstances, he never once deviated from the most stringent quality standards. This explains why PRS guitars are coveted around the world. Last year, company-wide expertise and quality were on the same lofty plane, and PRS posted a whopping 50% sales gain. For this reason, we designate it Company of the Year.

In explaining the dramatic growth at PRS Guitars, [REDACTED] notes with pride that his instruments have a "huge presence" on MTV, and are in use with all of the top guitar bands, as measured by the *Billboard* charts. However, the real growth driver was a smoother running factory. By boosting production from 37 to 52 units a day, the company was able to whittle down a 12-month backorder position and begin to service pent-up demand.

Reviewing 2001, [REDACTED] says that the stellar performance at PRS was the result of a larger reservoir of guitar-making experience at every level of the company. This increase was responsible for the dramatic boost in daily production.

\* \* \*

We've built up a core of managers, teachers, and experts. It's this team that has allowed us to grow.

In the preceding article, [REDACTED] does not single out the beneficiary from his "core of managers, teachers, and experts."

On appeal, counsel cites an acceptance speech given by Paul Reed Smith at the 2003 MIPA awards ceremony in which [REDACTED] thanks the beneficiary for his "work in the overseas markets" and then declares "[the beneficiary], this is for you!" Counsel states: "[The beneficiary] was directly responsible for PRS Guitars' three MIPA awards and was publicly acknowledged for his critical role." The beneficiary's "critical role" within the PRS Guitars' organization will be addressed under a subsequent criterion. To accept that the beneficiary, a sales and marketing manager, was "directly responsible" for a "best product" award, would be to disregard the published statements in *Music Trades Magazine*, in which Paul Reed Smith attributes his company's success to variety of factors, but most notably product quality, manufacturing efficiency, and a "huge presence" in U.S. media (i.e., MTV and *Billboard*).

Aside from our conclusion that the evidence of record does not establish that the beneficiary was primarily responsible for the preceding "best product" awards, it remains that none of the preceding awards were presented to the beneficiary as individual for his excellence in sales and marketing. The plain wording of this criterion, however, requires the "alien's receipt of lesser nationally or internationally recognized prizes or awards in the field of endeavor."

In regard to awards relevant to sales and marketing, the petitioner submitted a plaque presented by PRS Guitars to Prosound Music of Germany naming it "1988 Distributor of the Year." According to information provided by the petitioner, the beneficiary co-founded and worked for Prosound Music Center KG in Koblenz, Germany from 1978 to 1990. This plaque, however, is indicative of institutional recognition, rather than national or international recognition. There is no indication that this award was widely recognized beyond the presenting entity.

*Published materials about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.*

In order for published material to meet this criterion, it must be primarily about the beneficiary and, as stated in the regulations, be printed in professional or major trade publications or other major media.

On appeal, counsel argues that the "statements of opinion from the editors and publishers of major international industry trade publications relating to [the beneficiary's] work in the field for which

classification is sought” represents qualifying evidence in the present case. “Statements of opinion” from the letters of support, however, do not constitute qualifying “published” material. Based on an absence of qualifying “published materials about the alien,” it is apparent that counsel is attempting to supercede the plain wording of the regulations by formulating his own criterion and then citing the letters of support as “comparable evidence” pursuant to 8 C.F.R. § 204.5(h)(4). However, it has not been established that published material does not readily apply to the beneficiary’s occupation as “senior business executive” in the musical instruments industry.

Throughout his appellate brief counsel argues that, pursuant to 8 C.F.R. § 204.5(h)(4), the solicited opinion letters are adequate to establish the beneficiary’s eligibility as an alien of extraordinary ability. We note here that the regulation at 8 C.F.R. 204.5(h)(4) allows for the submission of comparable evidence, but only if the ten criteria “do not readily apply to the beneficiary’s occupation.” Therefore, the petitioner must demonstrate that the regulatory criteria are not applicable to the alien’s field. Of the ten criteria, several readily apply to the beneficiary’s occupation as a senior business executive in sales and marketing. Where an alien is simply unable to meet three of the regulatory criteria, and multiple criteria are applicable to his occupation, the wording of the regulation does not allow for the submission of comparable evidence.

We cannot ignore the statute’s demand for “extensive documentation” of sustained national or international acclaim. While solicited letters of opinion are not without merit, we find that contemporaneous first-hand evidence of an individual’s acclaim and achievements is of far greater probative value. In the present case, to assert that published material would not be applicable to “the beneficiary’s occupation as a senior business executive” would be to completely disregard the published material in the record about company founder Paul Reed Smith. Furthermore, in regard to the letters from “the editors and publishers of major international industry trade publications,” we note that it is an inherent duty of a sales and marketing executive to promote one’s company’s products in such publications (such as, for example, the purchase of advertising space); therefore, their familiarity with the beneficiary is certainly not unusual.<sup>1</sup> It is also worth noting that while these individuals are certainly in a position to publish material about the beneficiary, they do not explain why their publications have not featured articles reflecting his alleged “national and international acclaim” as a business executive in the industry.

In this case, the record contains no evidence showing that the beneficiary has been the primary subject of sustained major media coverage.

*Evidence of the alien’s original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.*

The petitioner provided several letters in support of the petition. We cite representative examples here.

Associate Professor, School of Journalism, University of Oregon, and former Editor-in-Chief of *Guitar Player*, devotes the majority of his letter to his own accomplishments and those of

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Associate Publisher, *Guitar World*, who offers a letter in support of the petition, states: “*Guitar World* relies on a strong advertiser relationship, which is vital to the magazine and its ability to generate advertising revenue. This is my specific role at *Guitar World*.”

asserts that the beneficiary's international experience, marketing training, and people skills are essential to PRS Guitars. The petitioner, however, must demonstrate that the beneficiary's impact on the musical instruments industry extends beyond PRS Guitars.

In addressing the beneficiary's professional attributes, Dr. Wheeler states:

Over the past three decades, I have come to know a broad range of music authorities, including people formerly trained in marketing; accomplished musicians who can speak to other players in their own language; people sufficiently versed in guitar construction to speak in technical terms to inventors, designers, and factory workers; multi-lingual sales people who understand not only the languages of various peoples around the world but their cultures as well; savvy professionals who know how to use marketing, promotions, and advertising so as to most effectively place products in the highly competitive music market; and marketing veterans with long experience in international commerce.

But in all my years in this industry I have met only one person to my knowledge who combines all of these attributes: [the beneficiary]. He is not only a member of a highly select group; in the entire industry he may well be unique.

We accept that the beneficiary possesses unique skills and knowledge pertaining to the marketing of musical instruments abroad. However, the letter from does not identify specific contributions of major significance to the musical instruments industry directly attributable to the beneficiary.

& Managing Director, England, states: "[The beneficiary] is prominent in public relations, media and business circles within the music industry, his knowledge of which (built up over 20 years) is truly remarkable. He has had a successful career in the guitar business encompassing distribution, marketing and retail."

Owner and Manager Germany, states:

[The beneficiary] has a unique talent finding new, exciting products and doing fantastic marketing. He was (and is) an outstanding salesman, based on knowledge and experience, with an extraordinary personality. When he started his distribution company PRS Germany, I became his customer and one of his best dealers in Germany.

Frank Untermeyer, Vice President states that he has "known and worked closely with the beneficiary for twenty years." He further states: "[The beneficiary's] character, market understanding, interface with professional musicians, distribution skills and sheer energy is unique in the music industry."

Worldwide Director of Sales, states:

[The beneficiary's] extraordinary marketing and business development expertise have enabled him to successfully market and build a great reputation for guitars and musical instruments and accessories in European markets. Within the German and other European music markets, [the beneficiary] has a

distinguished reputation and is widely recognized as an expert in the business development and marketing of high-end guitars and musical instruments.

The letters of support from [REDACTED] Sales Representative, PRS Guitars, [REDACTED] Pesenti, Managing Director, SYNCRO, [REDACTED] Chairman and Co-CEO, Guitar Center, Inc., and [REDACTED] contain several passages with the exact same wording. It is not clear who is the actual author of their duplicative observations, but it is highly improbable that all five of these individuals independently formulated the exact same wording. It is acknowledged that these individuals have lent their support to this petition, but it remains that at least four of them did not fully prepare their own observations.

[REDACTED] Managing Director, [REDACTED] states: "We operate one of the largest musical product distribution companies in Australia, and as such have represented Paul Reed Smith Guitars along with a variety of other major brands . . ." [REDACTED] notes that he has been associated with the beneficiary since 1992 and that the beneficiary "has continually proven his worth" when dealing with [REDACTED] business. [REDACTED] further states: "[The beneficiary's] vast knowledge of the high-end guitar market and his wealth of information about all facets of the guitar business have made him an invaluable asset to my business and an extremely popular and respected public speaker."

[REDACTED] Associate Publisher, *Guitar World*, states: "[The beneficiary's] sense of international business acumen is paramount to the success and phenomenal growth PRS is experiencing. His worldwide contacts and relationships have undoubtedly been uniquely important to PRS since the company's growth in the past three years well exceeds the industry standard." We note here that [REDACTED] latter observation relates to the company's overall growth rather than its international sales growth. Furthermore, the petitioner has provided no comparative data regarding PRS Guitars' competitors' sales growth in the same markets in which the beneficiary is involved.

[REDACTED] Magagna, President, Cobble Hill International, "an export marketing and management firm," states: "[The beneficiary] has been the driving force in helping [REDACTED] Guitars become one of the most successful guitar companies in international markets around the world."

On appeal, the petitioner submits a letter from [REDACTED] Governor of Maryland, who states: "PRS Guitars' international success and recognition is due in large part to [the beneficiary], the company's newly appointed Global Director of Sales and Marketing." We note that the beneficiary's appointment to this new position occurred subsequent to the petition's filing date. See *Matter of Katigbak*, 14 I&N Dec. 45 (Comm. 1971). Subsequent developments in the beneficiary's career cannot retroactively establish that he was already eligible for the classification sought as of the filing date.

The petitioner also submits a letter from [REDACTED] Senior Vice President of Market Development, Fender Musical Instruments Corporation, who states:

It is difficult to get new or established products on the covers of major industry magazines unless the marketing executives are recognized as experts in the field. [The beneficiary] is an accomplished expert in this process and has been a significant contributing factor in the success of PRS Guitars. Due

to his efforts PRS has enjoyed many positive reviews, and given their size, more than their fair share of international press coverage including repeated cover features in international magazines.

On appeal, counsel states: “The beneficiary has been internationally recognized for business-related contributions of major significance in the musical instrument industry, including specifically 1) contributions he has made in founding and promoting the MIPA award process; and 2) contributions he has made in introducing U.S. manufactured high-end guitars and amplifiers to new and existing markets worldwide.

In regard to the MIPA award process, the letter from [REDACTED] states: “Our company, MM-[REDACTED] was the driving behind that award, from the first time it was presented in the year 2000 up to today.”

In regard to contributions that the beneficiary has made in introducing U.S. manufactured high-end guitars and amplifiers to new and existing markets worldwide, it has not been shown that these markets were previously impenetrable to U.S. manufacturers (such as Fender and Gibson). While the beneficiary has certainly enjoyed a degree of success in increasing international sales for his employer, being an effective sales and marketing manager does not constitute an original contribution of *major* significance in the music industry. The preceding letters indicate that the beneficiary has increased overseas sales for his employer, but his ability to significantly impact the music industry in general has not been adequately demonstrated.

The above letters are from impressive experts whose opinions are important in the music industry. Section 203(b)(1)(A)(i) of the Act, however, requires extensive documentation of sustained national or international acclaim. The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim. Evidence in existence prior to the preparation of the petition is of greater weight than new materials prepared especially for submission with the petition. An individual with sustained national or international acclaim should be able to produce unsolicited materials reflecting that acclaim. If the beneficiary’s reputation is mostly limited to his personal business contacts, then he has not achieved national or international acclaim regardless of the expertise of his witnesses.

*Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.*

The preceding letters of support indicate that the beneficiary is a highly effective International Sales and Marketing Manager for a company with a distinguished national and international reputation in the music industry.

[REDACTED] Managing General Partner, PRS Guitars, states: “Approximately 23 percent of PRS Guitars’ gross sales revenue comes from international sales in markets in Europe and Asia.” In 2002, the company had \$23.4 million in revenues.” Additional evidence in the form of international sales data shows that the beneficiary has played an important role in increasing overseas guitar sales for his company. For example, international guitar sales data for PRS Guitars indicates that the company sold 1,978 units in 1998, 1,771 units in 1999, 1,564 units in 2000, 2,246 units in 2001, and 2,760 units in 2002.

On appeal, the petitioner submits a letter from [REDACTED] Chief Financial Officer, PRS Guitars, who states that his company's "260% growth in overseas sales over the past 5 years" is attributable to the beneficiary.

While the letters of support are adequate to satisfy this criterion, it should be emphasized that the regulatory criteria are separate and distinct from one another. If evidence sufficient to meet one criterion mandated a finding that an alien met another criterion, the regulatory requirement that an alien meet at least three criteria would be meaningless.

*Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.*

The petitioner submitted information indicating that the beneficiary earns \$80,000 per year as Sales and Marketing Manager. The petitioner, however, offers no basis for comparison to show that this salary is significantly high in relation to other business executives in the music industry.

In this case, we find that the evidence presented satisfies only one of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim, is one of the small percentage who has risen to the very top of the field of endeavor, and that the alien's entry into the United States will substantially benefit prospectively the United States. The petitioner in this case has failed to demonstrate the beneficiary's receipt of a major internationally recognized award, or that he meets at least three of the criteria that must be satisfied to establish the sustained national or international acclaim necessary to qualify as an alien of extraordinary ability.

Review of the record does not establish that the beneficiary has distinguished himself to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence is not persuasive that the beneficiary's achievements set him significantly above almost all others in his field at the national or international level. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.