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**Classification Appeal Decision**  
**Under section 5112 of title 5, United States Code**

**Appellant:** [Appellant]

**Agency classification:** Interpreter, GS-1040-11

**Organization:** Immigration Court  
U.S. Department of Justice

**OPM decision:** Interpreter, GS-1040-12

**OPM decision number:** C-1040-12 -01

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Kathy Day  
Classification Appeals Officer

(5/31/00)

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Date

As provided in section 511.612 of title 5, Code of Federal Regulations, this decision constitutes a certificate that is mandatory and binding on all administrative, certifying, payroll, disbursing, and accounting officials of the government. The agency is responsible for reviewing its classification decisions for identical, similar, or related positions to ensure consistency with this decision. There is no right of further appeal. This decision is subject to discretionary review only under conditions and time limits specified in the *Introduction to the Position Classification Standards*, appendix 4, section G (address provided in appendix 4, section H).

Since this decision changes the classification of the appealed position, it is to be effective no later than the beginning of the fourth pay period after the date of this decision (5 CFR 511.702). The servicing personnel office must submit a compliance report containing the corrected position description and a Standard Form 50 showing the personnel action taken. The report must be submitted within 30 days from the effective date of the personnel action.

### **Decision sent to:**

[Appellant]

Ms. Samantha Matus, Acting  
Deputy Assistant Director  
Office of Human Resources  
Administration Division  
Executive Office for Immigration Review  
U.S. Department of Justice  
5107 Leesburg Pike, Suite 2300  
Falls Church, VA 22041

Ms. Carol Hall  
Assistant Commissioner for Office  
of Human Resources and Development  
Immigration and Naturalization Service  
U. S. Department of Justice  
800 K Street, NW., Room 5000  
Washington, D.C. 30536

## **Introduction**

On April 3, 2000, the Atlanta Oversight Division, U. S. Office of Personnel Management (OPM), accepted a classification appeal for the position of Interpreter, GS-1040-11, Office of the Chief Immigration Judge, Executive Office for Immigration Review, U.S. Department of Justice, [location]. The appellant believes that his position should be classified as a Court Interpreter, GS-1040-14.

The appeal has been accepted and processed under section 5112(b) of title 5, United States Code. This is the final administrative decision on the classification of the position subject to discretionary review only under the limited conditions and time outlined in part 511, subpart F, of title 5, Code of Federal Regulations.

## **General issues**

The appellant believes that he is performing duties at the GS-14 level and compares his duties favorably to Language Specialist positions in the Federal Bureau of Investigation and the U.S. Department of State. He refers to a similar appeal and also to an evaluation by a contract classifier. He takes issue with the position description and indicates that it does not properly account for his expertise in Haitian Creole and French and also for the extensive dealings with officials of the Bureau of Prisons, and State and Federal correctional institutions. He also requests that the basic grade structure in the standard be raised to the GS-15 grade level.

By law, OPM must make classification determinations solely by comparing the current duties and responsibilities of the position to OPM standards and guidelines (5 U.S.C. 5106, 5107, 5112). Since comparison to standards is the exclusive method for classifying positions, we cannot compare the appellant's position to others as a basis for deciding the appeal. In addition, the adequacy of the grade-level criteria in OPM standards is not appealable (5 CFR, section 511.607.)

OPM considers a position description to be adequate for classification purposes when it is considered so by a person knowledgeable of the occupation and the classification standards and is supplemented by current information about the position's organization, functions, programs, and procedures. The supervisor indicated that the position description does generally describe the duties and responsibilities of the position and that there is nothing erroneous in the description. We find that the position description describes the major duties and responsibilities of the appellant's position and includes information about the job that is significant to the classification. Combined with the supplemental information available about the position, the position description is considered to be accurate for classification purposes.

The appellant provided copies of letters of praise that he received for performance of his interpreting duties. He also states that he has saved the agency over \$200,000.00 to date by using his multiple languages, but has not received any recognition for this feat. Quality of work and efficiency are not considered in determining the grade level of a position.

Performance and incentive awards are properly used to recognize achievements not considered through the classification process.

The appellant requests back pay based on the misclassification of the position for years. When an employee performs the duties of a higher grade level, no entitlement to the salary of the higher grade exists until the individual is actually promoted.

Telephone interviews with the appellant, the appellant's first-line supervisor, and the agency classifier were conducted by an Atlanta Oversight Division representative. This appeal was decided by considering the audit findings and all information of record furnished by the appellant and his agency.

### **Position information**

The appellant is assigned to position description number [#].

The appellant serves as an interpreter in the [Immigration Court], Office of the Chief Immigration Judge. The position is one of ten (10) identical additional positions in the [Immigration Court] and there are 96 identical positions nationwide. It should be noted that this decision applies to the appellant only, and the agency must determine if other positions assigned to similar or identical position descriptions actually function in the same way.

Immigration proceedings involve the admissibility and deportability of aliens. The appellant provides interpretations for the immigration judges, aliens, and attorneys during the immigration proceedings. The translations include a wide variety of general, technical and legal material received by the Immigration Court. Translation and directly related assignments, including several assignments per year outside the [area], make up approximately 75-80 percent of the appellant's duties. Other assignments include some associated clerical and administrative duties for the Court.

The supervisor assigns interpreting and translating duties based on the language capabilities and interpretation workload and assigns clerical and administrative tasks as required. The supervisor provides administrative supervision, and interpreting work is not subject to review. The appellant performs interpreting work independently and uses a considerable degree of ingenuity and initiative in the rendition of interpretations.

The appellant indicates that his duties include use of both the Haitian Creole and French languages, which "... clearly raises the complexity and knowledge requirements of the position..." He indicates that as a group, [Immigration Court] interpreters are scheduled to handle 18 or more individual court cases per week. He also writes that the position involves adjudication of the immigration status of alien inmates incarcerated by Federal, State, and municipal correctional authorities as a result of criminal offenses. As a result, he is responsible for sensitive documents, coordinating matters with outside agencies and personnel including officials of the Bureau of Prisons and State and Federal correction facilities.

**Series determination**

The appellant's position is properly assigned to the Language Specialist Series, GS-1040. This series covers positions which administer, supervise, or perform work in changing the spoken or written word from a foreign language into English or from English into a foreign language, where the objective is accurate translations and/or interpretations.

**Title determination**

The title *Interpreter* is used for those positions in which interpreting the oral statements of others from or into the foreign language is the paramount requirement. The appellant does not dispute that interpreting is the paramount requirement of the position; however, he requests that the title be changed to Court Interpreter to reflect the court-related aspects of the position. While an agency may select a working title for a position, the official position title is limited to the options in the GS-1040 standard. *Interpreter* is the required official title.

**Standard determination**

Language Specialist Series, GS-1040, March 1980.

**Grade determination**

The GS-1040 standard is written in the Factor Evaluation System (FES) format. Under the FES, positions are placed in grades on the basis of their duties, responsibilities, and the qualifications required as evaluated in terms of nine factors common to nonsupervisory General Schedule positions.

A point value is assigned to each factor based on a comparison of the position's duties with the factor-level descriptions in the standard. The factor point values mark the lower end of the ranges for the indicated factor levels. For a position factor to warrant a given point value, it must be fully equivalent to the overall intent of the selected factor-level description. If the position fails in any significant aspect to meet a particular factor-level description in the standard, the point value for the next lower factor level must be assigned, unless the deficiency is balanced by an equally important aspect which meets a higher level. The total points assigned are converted to a grade by use of the grade conversion table in the standard.

The appellant disagrees with the agency evaluation of factors 1, 2, 4, 5, 6, and 7. We have reviewed the agency determination for factors 3, 8, and 9 and concur with their findings. Therefore, our evaluation will address only those factors the appellant questions.

### Factor 1 - Knowledge Required by the Position:

This factor identifies the nature and extent of language and subject-matter knowledge and translating and/or interpreting skills needed to perform language specialist assignments. To be used as a basis for selecting a level under this factor, a knowledge must be required and applied. Translating and interpreting skill varies from the literal rendering of words, phrases, and sentences from one language to another, to skill in instantly interpreting and/or translating concrete factual information and abstract ideas between two languages with such accuracy that the product can be used with confidence in making policy decisions, legal determinations, or the like. Subject-matter knowledge varies from knowledge of common subjects in everyday conversation and the popular press, to broad knowledge of the vocabularies, concepts, principles, and theories of fields such as international law, physical science, medicine, technology, and politics. The agency credited Level 1-7. The appellant believes that Level 1-8 should be credited. We find that the appellant meets Level 1-8.

At Level 1-7, the work requires knowledge of one or more languages in a language group to interpret material involving difficult subject matter. The work requires knowledge of English in order to properly interpret both technical and nontechnical vocabulary. At this level, the interpreter must be able to understand and participate in any conversation, meeting, or conference and must have knowledge of a variety of subject matter and/or terminology to interpret accurately and fluently and must be able to perform literature research to become familiar with current events and topics to be discussed.

At Level 1-8, the work requires spoken command of English and one or more foreign languages to such a degree that the interpreter is a recognized expert in the organization. The work requires a mastery of the vocabulary, grammar, syntax, idiom, colloquialism, culturally based expressions, and technical terms equivalent to that possessed by highly educated native speakers to interpret difficult material into their language. The interpreter must have a mastery of the techniques of consecutive and simultaneous interpretation. The interpreter possesses knowledge of the major fields dealt with by the agency and of current policy objectives in those fields to answer most technical questions from other language specialists concerning terminology or information on the subject. Interpretations and advice given other interpreters concerning the subject matter are considered authoritative. The work also requires knowledge of applicable research methods and experience in the conduct of international conferences, negotiations, and knowledge of protocol procedures.

Level 1-8 is met. The appellant's work requires that he interpret and have a mastery of English, Spanish, French, and Haitian Creole and is a recognized expert in the organization. He is required in the courtroom setting to have a mastery of consecutive and simultaneous interpretation. He conducts extensive research to acquire familiarity with current criminal law and the policy objectives of the agency and is able to answer technical questions from other language specialists. His assignments are primarily in the [Immigration Court], but he may also be called on to independently provide the full scope of interpreter services away from that court, including an occasional assignment outside the United States. He is knowledgeable of

developments, conditions, and situations in the various countries and areas of the world that impact the aliens and cases that come before the court

At Level 1-8, the standard provides that the level can be met by knowledge of one or more languages in each of 2 or more language groups. The appellant contends that he should meet this criterion because Haitian Creole should be placed in a separate language group. The issue of whether or not Haitian Creole is in a separate language group is not addressed here since it would not change the level assigned. The factor level sets up an either/or situation and does not allow for additional credit when both aspects of the level are met.

Level 1-8 is credited for 1550 points.

#### Factor 2 - Supervisory Controls:

This factor covers the nature and extent of direct or indirect controls exercised by the supervisor, the employee's responsibility, and the extent to which completed work is reviewed. The agency credited Level 2-4. The appellant believes that Level 2-5 should be credited. We find Level 2-4 to be correct.

At Level 2-4, the supervisor assigns the work, but the interpreter has the responsibility for obtaining the background information and for carrying out the interpretations independently. The work is reviewed only to verify that it has met the requirements of the user and the agency standard.

The appellant clearly meets Level 2-4. He is assigned work by the Supervisory Interpreter and also is subject to general direction from the Immigration Judge and/or the Court Administrator. He researches, plans, and performs the work independently and exercises initiative, resourcefulness, judgment and expertise in interpretation and language service matters. The work is subject to administrative and policy review.

At Level 2-5, the supervisor's control is limited to selecting the language specialist for the assignment. Language specialists may be requested by name by users. The specialist at this level receives no technical supervision and must function independently in handling administrative and logistical preparations, including requesting personal briefings from principals, and selecting research procedures for the subject of the assignment. These assignments often take place overseas and with no assistance from the home office.

The appellant indicates that he meets Level 2-5 since he may be personally requested for a case by a judge. His work is not reviewed technically and he exercises independent initiative in handling administrative and logistical preparations, requesting personal briefings from immigration judges and selecting research procedures for the assignments which may take place outside of the [area].

While certain aspects of the Level 2-5 are met, e.g., the appellant may be requested by the judge and he operates with a high degree of independence, this does not fully meet the intent of this level. The appellant generally operates in a very structured courtroom situation under very specific courtroom procedures, regardless of the judge or the location of the immigration court. Typically, this level of authority is accompanied by responsibility for a significant program or function. Such program responsibility is not present in this position. The absence of immediate supervision while carrying out assignments and the fact that the appellant may be personally requested by a judge do not serve to raise this factor to the higher level. As a result, the full intent of Level 2-5 is not met and Level 2-4 is assigned.

Level 2-4 is credited for 450 points.

#### Factor 4 – Complexity

This factor covers the nature, number, variety, and intricacy of tasks, steps, and processes in the work performed; the difficulty in identifying what needs to be done; and the difficulty and originality involved in performing the work. The agency credited Level 4-4 while the appellant believes that Level 4-5 should be assigned. We find Level 4-4 to be correct.

At Level 4-4, the work consists of simultaneously and consecutively interpreting a variety of specialized subjects. Decisions regarding what needs to be done differ with the interpreting situation or the subject matter involved. The interpreter must use a high degree of originality to find ways of expressing ideas or images that are uncommon in or unknown to other cultures or languages. The work requires intense concentration over long periods of time; understanding and memorizing complex images and concepts; recalling them and instantly finding suitable equivalents in another language; and analyzing statements made by others and himself to assure that they are logically congruent, factually plausible, and in concert with known policies and objectives.

The appellant clearly meets the criteria at Level 4-4. He must deal with difficult, sensitive, and emotional material that may occur in court proceedings. The range of individuals he encounters requires him to analyze and express a variety of ideas and information in a way that is factual and in agreement with agency policies and objectives. He must understand criminal and immigration law and stay current with any changes.

At Level 4-5, the work consists of interpreting statements in a variety of styles on an unlimited number of topics for which the interpreter cannot always be prepared. The assignments are often difficult and highly sensitive. Decisions regarding interpretation involve major areas of uncertainty because assignments are frequently made in new or unique fields. The interpreter must take what has been said in one language and simultaneously interpret into another language while checking against known government policies. The interpreter must immediately solve conceptual problems without recourse to references.



Although the appellant appears to meet many aspects of Level 4-5, he does not meet the full intent. The complexity of the work does not include major areas of uncertainty because his assignments are not frequently in new or unique fields.

Level 4-4 is credited for 225 points.

#### Factor 5 – Scope and Effect

This factor covers the relationship between the nature of the work and the effect of the work products or services. The agency credited this factor with Level 5-3. The appellant believes Level 5-4 should be credited. We find Level 5-3 to be correct.

At Level 5-3, the purpose of the work is to translate or interpret information requiring the treatment of conventional language problems by using established practices and principles of language specialists. The translation or interpretation affects research conclusions or the social, physical, and economic well being of persons.

Level 5-3 is met. The appellant provides interpretations for the immigration judges, aliens, attorneys, alien representatives, and the public. The work supports the mission of the Office of the Chief Immigration Judge and impacts the alien's social, physical, or economic well being.

At Level 5-4, the work involves interpreting material of a highly sensitive nature. Interpreters must analyze a variety of unusual problems in overcoming any cultural differences. The work product affects a wide range of agency activities or the operation of other agencies.

The appellant believes that the sensitivity of his work, especially with regard to political asylum cases, meets Level 5-4. The sensitivity of his cases, however, does not fully meet the criteria at this level. His assignments primarily affect the courtroom proceedings. They do not impact a wide range of agency activities or the operation of other agencies.

Level 5-3 is credited for 150 points.

#### Factor 6 – Personal Contacts

Factor 6 covers the people and conditions or settings under which contacts are made. It includes face-to-face contacts and telephone and radio dialogue with persons not in the supervisory chain. The agency assigned Level 6-2, and the appellant believes Level 6-3 is correct. We find that Level 6-3 is correct.

At Level 6-2, personal contacts are with officials outside the immediate unit, but within the agency, or with members of the public where the contacts are established on a routine basis.

At Level 6-3, personal contacts are with officials outside the employing agency or the country where the contacts are not established on a routine basis. The appellant's contacts are with immigration judges, aliens, investigators, inspectors, attorneys, alien representatives and the public on a regular and recurring basis. As court interpreter, the appellant has contacts with individuals from a wide variety of social and economic backgrounds, e.g. they may be highly educated professionals or they may be criminals from impoverished backgrounds.

Level 6-3 is credited for 60 points.

#### Factor 7 – Purpose of Contacts

Factor 7 covers the reasons for the contacts described in Factor 6. The agency credited Level 7-2. The appellant believes Level 7-3 is correct. We find Level 7-3 is correct.

At Level 7-2, the purpose of the contacts is to plan, coordinate, or advise on work efforts or to resolve operating problems.

At Level 7-3, the purpose is to motivate, or control persons or groups when the people contacted are fearful, skeptical, uncooperative, or dangerous. For example, the language specialist puts aliens at ease and gains their confidence so that they will answer the questions of the interrogator or the judge.

Level 7-3 is met. As described in the standard, the appellant puts aliens at ease in the courtroom and gains their confidence so they will cooperate with the attorney and the judge.

Level 7-3 is credited for 120 points.

<b>SUMMARY</b>		
<b>FACTOR</b>	<b>LEVEL</b>	<b>POINTS</b>
1. Knowledge Required by the Position	1-8	1550
2. Supervisory Controls	2-4	450
3. Guidelines	3-3	275
4. Complexity	4-4	225
5. Scope and Effect	5-3	150
6. Personal Contacts	6-3	60
7. Purpose of Contacts	7-3	120
8. Physical Demands	8-2	20
9. Work Environment	9-1	5

	<b>TOTAL</b>	2855
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A total of 2855 points equates to GS-12, 2755 to 3150 points, according to the grade conversion table in the guide.

**Decision**

The position is correctly classified as Interpreter, GS-1040-12.