U.S. Office of Personnel Management
Office of Merit Systems Oversight and Effectiveness
Classification Appeals and FLSA Programs

Philadelphia Oversight Division
600 Arch Street, Room 3400
Philadelphia, PA 19106-1596

Classification Appeal Decision
Under Section 5112 of Title 5, United States Code

Appellant:	[appellant's name]
Agency classification:	Immigration Agent GS-1801-9
Organization:	Investigations Branch [name] District Office Eastern Region Office of Investigations Immigration and Naturalization Service U.S. Department of Justice [location]
OPM decision:	GS-1801-9 (Title Optional)
OPM decision number:	C-1801-09-06

Robert D. Hendler
Classification Appeals Officer

/s/ 12/3/99
Date

As provided in section 511.612 of title 5, Code of Federal Regulations (CFR), 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 (PCS's), appendix 4, section G (address provided in appendix 4, section H).

Decision sent to:

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[appellant's name]
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Introduction

On July 9, 1999, the Philadelphia Oversight Division of the U.S. Office of Personnel Management (OPM) received a classification appeal from [appellant's name], one of three appellants who occupy identical positions classified as Immigration Agent, GS-1801-9, under position description (PD) #HI001F. However, their assignments are sufficiently disparate to warrant three separate decisions. The appellant believes the correct classification of his position should be Criminal Investigator, GS-1811-11, or Deportation Officer, GS-1801-11 due to the nature and complexity of the investigatory work he performs. The appellant works in the Investigations Branch, [name] District Office, Eastern Region, Office of Investigations, Immigration and Naturalization Service (INS), U.S. Department of Justice, in [location]. We have accepted and decided this appeal under section 5112 of title 5, United State Code (U.S.C.).

General Issues

The appellant states in his appeal that the Immigration Agent (IA) position was the only officer corps position that is required to carry a caseload but that does not progress to the GS-11 or 12 grade level. He also questioned the thoroughness of the fact-finding procedure used by the agency in response to his initial classification appeal. Finally, the appellant did not believe his PD is accurate or reflects the full scope and depth of the work he performs.

By law, a classification appeal decision is based on comparing the appellant's current duties and responsibilities to OPM PCS's and guidelines (5 U.S.C. 5106, 5107, and 5112). Since comparison to PCS's is the exclusive method for classifying positions, we cannot compare the appellant's current duties to other positions as a basis for deciding his appeal. Similarly, the classification appeal process is a de novo review that determines the duties and responsibilities assigned to the appellant's position and performed by him, and properly applies the appropriate PCS to those duties and responsibilities. Therefore, the appellant's perceptions regarding the agency's handling of the agency appeal are moot. Further, when an employee questions the accuracy of the PD, and cannot resolve the disagreement with the agency, OPM will decide the appeal based on the actual duties and responsibilities assigned by management and performed by the appellant.

On October 6, 1999, we conducted an on-site audit with the appellant and the immediate supervisor, [name]. In reaching our decision, we have reviewed the audit findings and all information of record furnished by the appellant and the agency.

Position information

The appellant works in the Investigations Branch under the direction of a Supervisory Criminal Investigator, GS-1811-13. There are six immigration agents and four criminal investigators in the branch. The appellant's PD, with the modifications discussed below, contains the major duties and responsibilities performed by the appellant and are hereby incorporated by reference into this decision.

The appellant is responsible for enforcing and administering immigration and naturalization rules and laws. The PD states the primary purpose of the position is to perform a variety of enforcement and compliance functions associated with identifying deportable aliens in Federal, State, and local criminal institutions, ensuring employer compliance with immigration laws, and apprehending deportable aliens. We found, however, that performing employer sanction procedures, identified in the PD as comprising 30 percent of the workload, was virtually removed from the duties as a result of an agency policy decision communicated by memorandum on May 28, 1998. It states, "Except on ad hoc or exigent bases, Immigration Agents should not perform Worksite Enforcement activities." The supervisor and appellant concur that since the policy was effected, the appellant has had little involvement in on-site inspections or employer compliance visits.

The appellant describes his duties as:

> assisting higher grade investigators during investigative work assignments, interviewing witnesses and other persons both informally and on the record for the purpose of determining amenability to Service action including arrest for administrative or criminal prosecution and preparing reports to be included in case records, securing signed statements, affidavits, and documentary evidence for reports and case records, performing assignments in which the appellant is responsible for the planning and completion of investigations involving subjects on which information is readily available, issues are straightforward, persons are not controversial and exchanges and cooperation with other agencies are routine.
>
> In addition, the appellant is performing . . . IRP, ACAP, pro-active ACAP, and responding to police calls. . . . Due to lack of manpower in the [location] sub-office, the appellant assists Criminal Investigators in the investigations of cases involving marriage fraud, fraudulent document vendors, and alien smuggling. Besides assisting the Criminal Investigators, the Immigration Agents conduct their own criminal investigations involving re-entry after deport, false claims to U.S. Citizenship, false statements, forgery, and fraud and misuse of visas and other documents.

Under the Institutional Removal Program (IRP), the appellant identifies violators of INS laws and regulations who are in Federal, State, or local correctional facilities and who are subject to deportation. The suspect is present and the case background is often a matter of record. The appellant interviews sentenced aliens, takes fingerprints, conducts sworn statements, and analyzes the evidence to obtain the true facts of each case. The subjects of investigation, who have entered the country without inspection (EWI), have already violated a Federal law and may be deported. Since deportation may be preferable to serving a prison sentence, EWI subjects are often cooperative. Other subjects may be uncooperative, such as those who have re-entered the country after prior deportation or who claim to be lawful permanent residents (LPR) entitled to certain protections. Investigation includes examining records and files, interviewing family members, and reviewing data from INS and the Federal Bureau of Investigation's information systems to

establish identity, alienage, and deportability. Cases involving LPR's require careful investigation to support charges that will be brought before an INS judge, Bureau of Immigration Appeals, or the courts. The appellant prepares INS documentation to initiate deportation proceedings.

As part of the Alien Criminal Apprehension Program (ACAP), the appellant also locates, identifies, and apprehends violators who are not in custody but are on the street (pro-active cases). Leads come from the court (e.g., a judge or Pre-Trial Intervention Coordinator), probation officers, local police officers, or the public and require investigation of the subject's alienage and deportability. Some suspects require investigation because they have absconded after deportation was ordered. Others are suspected of criminal reentry or other deportable offenses that must be established and for which a judgment of conviction is required. Surveillance may be necessary to locate the individual and cases are developed for possible prosecution. Pro-active cases differ from IRP cases in that the suspects are not in custody, information must be gathered from sources other than the subject, and the appellant must prepare arrest warrants and bond determinations.

During the audit, the appellant provided descriptive information on the types of cases handled. A case that he described in greater detail was that of undercovering alien smuggling and money laundering. He assisted in the criminal investigation by gathering information and performing surveillance. The appellant also performed limited undercover work when a local police officer attempted to enlist the appellant's participation in the illegal activity. The supervisor, however, indicated that these assignments are not typical and that the undercover work was unavoidable once the appellant was contacted by the police officer.

The appellant advises the alien of the rights, benefits, privileges and entitlements regarding his or her residency and removal status under INS laws. Regardless of the type of case, when the subject is uncooperative, claims to be an LPR, or seeks a waiver that bars removal, such as political asylum or parolee status, the facts of alienage may not be straightforward, but require more investigation. The appellant fully documents the record so that he can present the strongest case to the attorneys. If the case is accepted for prosecution, the appellant may provide case assistance up to the point of conviction, including court room testimony when necessary.

The appellant responds to a variety of contacts from Federal, State, and local governments, including local police officers, private citizens, members of Congress, and legal representatives of the aliens. These contacts either supply information to the appellant about suspected violators or request the status of a suspect's case and the applicable INS violations. The appellant is required to be proficient in the Spanish language.

Series, title, and standard determination

The appellant believes that his position should be classified in the Criminal Investigator Series, GS-1811. The GS-1811 series includes positions that involve planning and conducting investigations relating to alleged or suspected violations of criminal laws. These positions require primarily a knowledge of investigative techniques and a knowledge of the laws of evidence, the rule of criminal procedure, and precedent court decisions concerning admissibility of evidence,

constitutional rights, search and seizure and related issues; the ability to recognize, develop and present evidence that reconstructs events, sequences, and time elements, and establishes relationship, responsibilities, legal liabilities, conflicts of interest, in a manner that meets requirements for presentation in various legal hearings and court proceedings; and skill in applying the techniques required in performing such duties as maintaining surveillance, performing undercover work, and advising and assisting the USAO in and out of court.

The Grade-Level Guides for Classifying Investigator Positions (GS-1810/1811 Guides), point out that not all positions that involve fact-finding and reporting are classified as investigators. Investigator positions are those that involve cases whose development requires application of the full range of knowledge, skills, and abilities (KSA's) described in the GS-1810/1811 Guides. Typically, this full range of KSA's is called into use only in the development of cases that are so complex that they normally unfold over a period of time. Thus, investigator positions covered by the GS-1810/1811Guides are distinguished from certain law enforcement occupations that require incumbents to use some investigative techniques like interviewing and records checking in short-term situations that end with the arrest or detention of the suspect.

GS-1811 work also requires a knowledge of the criminal laws and Federal rules of procedure that include knowledge of what constitutes a crime; what evidence that is required to prove that a crime was committed; decisions and precedent cases involving admissibility of evidence, search and seizure, and arrest authority; sources of information (informants); patterns of criminal operations; and use of modern detection devices, laboratory services, and investigative technology.

While there is a wide range of work assignments and corresponding variations in agency programs, criminal investigators apply a number of techniques, such as interviewing or interrogation; searching for evidence or clues; substantiating findings or conclusions; using cameras and photostatic machines to record evidence; doing undercover work; developing and using informants; maintaining surveillance; and preparing reports of investigations.

Criminal investigators are called upon to perform certain other tasks that are characteristic of work in other law enforcement occupations as well. Because criminal investigators perform these tasks does not mean that all persons who perform them are also investigators. Rather, the total context of a position must be taken into account by comparison with the series definition, occupational information, and grade-level criteria of the appropriate standard. Examples of these tasks include testifying before grand juries; working with the USAO in and out of court; serving subpoenas or other official papers; obtaining and using search and arrest warrants; serving on a full-time, detail, or rotational basis on protection assignments; and carrying firearms and making arrests.

As stated previously, the PD explains that, exclusive of the employer sanction activities that have been virtually removed, the primary purpose of the position is to perform a variety of enforcement and compliance functions associated with criminal aliens and the apprehension of absconders from deportation proceedings. An INS memorandum, dated June 15, 1995, provides policy guidelines for GS-1801 IA positions and states that IA's are not authorized to conduct investigations beyond routine fact-finding as required by the functions described in the PD. We found that pro-active

casework comprised a substantial part of the appellant's workload, beyond that envisioned in the PD or the policy guidelines, and that more of the basic law enforcement methods and techniques were often required.

We found that the appellant is required to make determinations regarding alienage, immigration status, and deportability. However, these assignments do not require application of the *full* range of KSA's typical of positions classified in the GS-1811 series. Rather, investigations are typically limited to identifying criminal reentry, evidence that is often straight-forward, or proving that a prior conviction violates INS laws and is a deportable offense. Researching the facts of cases that involve an LPR claim or a waiver to INS regulations requires more diligence than uncovering the facts of a typical EWI case. However, such investigative duties do not rise to the level of that described in the GS-1811 series. While the appellant gathers evidence to prove that a conviction violates INS laws, the facts to be uncovered are typically a matter of record. Investigatory work performed does not rely on the use of informants or detection devices, a knowledge of patterns of criminal operations, undercover work, or surveillance other than to apprehend a suspect at his home or work site.

Though the appellant states that 5 percent of his time is spent assisting criminal investigators in other kinds of criminal investigations, he is not the case agent. The GS-1810/1811Guides cautions that in classifying investigative positions, it is particularly important, because of the variety of tasks and assignments normally carried out by an investigator, to consider the work assignments that are typical and representative of the cases for which he has *primary* responsibility over a period of time. In confirming *primary* responsibility, we found the supervisor directs the complex cases such as employer sanctions, smuggling, fraud, and kidnaping to the Criminal Investigators [Special Agents], GS-1811 in the branch. Therefore, the appellant's position does not meet the criteria for inclusion in the GS-1811 series.

We agree with the agency's allocation of the appellant's position to the General Inspection, Investigation, and Compliance Series, GS-1801. Positions covered by that series administer, coordinate, supervise, or perform inspection, investigative, analytical, or advisory work to assure understanding of and compliance with Federal laws, regulations, or other mandatory guidelines when such work is not more appropriately classifiable in another series in the Investigation Group, GS-1800, or in another occupational group. Compliance is assessed by such means as inspections, investigations, and analysis of reports and may also require actions such as citation of violations, drafting of complaints, and referral of cases for administrative or legal proceedings. Compliance positions require knowledge of program related legislation and regulations, a knowledge of the type of activities where compliance is sought, and knowledge of inspections or investigative techniques including the writing of reports that substantiate findings and serve as a basis for administrative or legal action. Programs range from strict enforcement by arrest and prosecution of violators to obtaining voluntary compliance by persuasion. The appellant's position involves reviewing documents and files, interviewing aliens and others, obtaining and serving search warrants and warrants of arrest, and preparing INS documentation for deportation. This work requires knowledge of basic investigative methods that fit well within the GS-1801 criteria.

The GS-1801 PCS does not include grade level criteria. The PCS explains that positions classified to this series should be evaluated by reference to PCS's for related kinds of work. It indicates that investigation aspects of compliance work may be evaluated by reference to the GS-1810/1811 Guides. The more recent Grade Evaluation Guide for Compliance Work (GEGCW) covers positions that involve investigations to determine compliance with both the civil and criminal laws related to the regulatory program when the primary knowledges required are those of the laws and regulations enforced, the investigative techniques and methods used, and the nature and operational characteristics of the regulated entities.

We find the criteria in the GEGCW more directly applicable to the appellant's work than the GS-1810/1811 Guides. It contains criteria that are directly applicable to a broad range of investigation and compliance work. In contrast, the fact that the appealed position is excluded from the GS-1811 series shows that applying the GS-1810/1811 Guides would require significant adjustment of its criteria in order to apply it properly. We have also referred to the Border Patrol Agent, GS-1896 PCS because these positions require knowledge and understanding of the laws, regulations, precedent decisions, and instructions pertaining to such matters as acquisition and derivation of U.S. citizenship, naturalization and expatriation; admission, exclusion, and deportation of persons; right of an alien to be in or remain in the U.S.; and illegal entry, re-entry, assisting in entry of aliens for immoral or other purposes in violation of criminal provisions of the law. This PCS, therefore, provides criteria for assessing the subject matter demands of the appealed position.

Though the appellant believes the work he performs is more properly titled Deportation Officer, GS-1801, section 511.607(a)(4) of title 5, CFR states that the title of a position is not appealable. Exceptions are when a specific title is authorized in a published OPM classification standard or guide, or the title reflects a qualification requirement or authorized area of specialization, none of which applies in this case. OPM has no prescribed titles for positions in the General Inspection, Investigation, and Compliance Series, GS-1801. As such, the agency has discretion to determine the title of the position. Therefore, the position is allocated properly as (Title Optional), GS-1801.

Grade Determination

Both the GEGCW and the Border Patrol Agent, GS-1896 PCS are written using the factor evaluation system (FES) format. FES places positions in grades by comparing their duties, responsibilities and qualification requirements with nine factors. A point value is assigned to each factor based on a comparison of the position's duties with the factor level descriptions (FLD's) and/or the benchmark position descriptions in the standard. The factor point values mark the lower end of the ranges for the indicated levels. For a position factor to warrant a given point value, it must be fully equivalent to the overall intent of the selected FLD. If the position fails in any significant aspect to meet a particular FLD 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 that meets a higher level. The total points assigned are converted to a grade by use of the grade conversion table in the PCS. Our evaluation with respect to the nine FES factors follows.

Factor 1, Knowledge required by the position

This factor measures the nature and extent of information or facts that the worker must understand to do acceptable work (e.g., steps, procedures, practices, rules, policies, theories, principles, and concepts) and the nature and extent of the skills needed to apply these knowledges. To be used as a basis for selecting a level under this factor, a knowledge must be required and applied.

Level 1-6 (950 points) in the GEGCW requires knowledge of the basic provisions of the laws and regulations enforced, of key precedent case decisions, and other program guidelines. It requires the ability to apply them to factual situations and reach conclusions about matters of coverage, exemption, and compliance. This level also requires a knowledge of basic investigative methods for reviewing records, interviewing, and analyzing information from records, documents, statements of witnesses, subjects, and other persons as well as the skill to use these methods to gather the facts needed to decide and document issues of compliance. These KSA's are used to complete investigative assignments when the legal coverage and issues are clear cut either on their face or by reference to precedent cases that are directly applicable. The facts needed can be gathered from sources of information that are readily accessible, substantially complete and accurate, and directly applicable to the issue. Level 1-6 in the GS-1896 PCS requires an intensive practical knowledge of the laws, concepts, operational practices and law enforcement methods and techniques to perform independently the full range of duties typically encountered in the enforcement of immigration and nationality laws and apprehension of violators. For example, performance at this level requires knowledge of immigration and nationality law precedents and court decisions and INS instructions and regulations concerning nationality and citizenship, illegal entry, rights of aliens, and the protection and recording of evidence. Techniques for identifying fraudulent documents and methods for interrogating searching, seizing, arresting and self-defending are examples of law enforcement knowledges and skills needed to enforce INS laws and apprehend violators.

The work of the appellant compares favorably to both references at Level 1-6. The appellant performs work that is consistent with investigative assignments characteristic of compliance work and, in dealing directly with aliens, performs duties similar to the Border Patrol Agent. He obtains and analyzes data and develops findings regarding alien compliance with INS rules and laws. Performing these duties requires a basic knowledge of pertinent parts of the Immigration and Nationality Act, as amended, and related State laws, Board of Immigration decisions, regulations, operations instructions and Service policy to make appropriate determinations of alienage, immigration status, and deportability, and the applicable criminal or administrative violation procedure. He also applies investigative techniques to perform basic law enforcement functions such as locating and arresting immigration law violators, interviewing subjects, and reviewing documents. He also prepares reports and other written technical material in the preparation of evidence, testimony, and information about illegal activities and practices encountered in daily activities.

Level 1-7 (1,250 points) in the GEGCW requires, in addition to knowledges and skills described at the previous level, a thorough knowledge of the laws and regulations of the compliance program, including up-to-date knowledge of a significant body of court and administrative decisions. This level also requires a thorough knowledge of, and skill in selecting, adapting, and applying investigative methods and negotiating techniques to obtain or reconstruct missing or withheld information and persuade reluctant persons to provide information or access to it. Significant difficulties are encountered in investigations. For example, the work involves analyzing a complex set of policies, practices, and operations involving the activities of an organization with several branches; drawing conclusions when more than one reasonable interpretation exists of legal or regulatory guidance; or overcoming serious obstacles to gathering and interpreting evidence, such as instances where important records have been falsified and witnesses are intimidated. Level 1-7 of the GS-1896 PCS requires an extensive knowledge of INS laws, regulations, precedents, court decisions, and current instructions; skill in consolidating ostensibly disparate facts, events, and other types of intelligence material, to develop information, guidelines, and techniques for broader application in the detection, apprehension and prosecution of persons attempting to violate INS laws; skill in coordinating intelligence gathering operations; and skill in developing continuing sources of information.

The appellant applies knowledges that fall short of Level 1-7. The appellant's assignments involve subjects on which information is readily available and the compliance issues are usually clear cut. Cases typically involve aliens who are removable because they were convicted of criminal offenses, information on which is accessible, complete, and accurate. Investigations do not involve complex alien operations, difficult legal interpretations, or serious impediments to gathering evidence as envisioned at this level in the GEGCW. While the appellant draws upon a broad base of immigration law and case precedents to present the strongest case possible, he does not perform the work envisioned at this level in the GS-1896 PCS. For example, he does not develop guidelines for others in the detection, apprehension and prosecution of INS violators, coordinate intelligence gathering operations, or develop systems of information to affect illegal alien activity. Therefore, Level 1-6 (950 points) is credited.

Factor 2, Supervisory controls

This factor covers the nature and extent of direct or indirect controls exercised by the supervisor, the employee's responsibilities, and the review of completed work. Controls are exercised by the supervisor in the way assignments are made, instructions are given to the employee, priorities and deadlines are set, and objectives and boundaries are defined. Responsibility of the employee depends on the extent to which the employee is expected to develop the sequence and timing of various aspects of the work, to modify or recommend modification of instructions, and to participate in establishing priorities and defining objectives.

At Level 2-3 (275 points) in the GEGCW, the employee independently plans investigations including the approach to take, issues to review, and questions to ask. Solutions for unusually difficult or sensitive situations are developed jointly with the supervisor. Supervisory review focuses on the soundness of results rather than the application of work methods and techniques.

Work products are reviewed to ensure appropriate factors have been considered, sufficient evidence has been gathered to support conclusions, and pertinent regulations and precedents have been applied. Similarly, in the GS-1896 PCS, the work is planned and carried out independently. Work is reviewed for general adequacy, soundness of decisions made, and conformity to established procedures and instructions.

The appellant's work compares favorably to Level 2-3. Leads are provided to the supervisor who assigns the cases. The appellant independently plans and carries out his assignment. The supervisor is kept informed of progress and checks that the work is technically correct and that documentation and evidence are in place.

At Level 2-4 (450 points) of the GEGCW, the employee carries out assignments that typically include resolution of difficult or sensitive situations. This includes deciding whether to limit the investigation or expand it to other entities. Where assignments require additional resources, the employee is responsible for independently planning, organizing, and coordinating the work of team members. In the GS-1896 PCS, the agent's recommendations are accepted as authoritative statements of fact. The supervisor reviews the work primarily to determine its basis for modifying operating instructions, procedures, or program emphases.

Level 2-4 is not met. The appellant's supervisor decides how the case will be pursued. The appellant does not independently decide the scope of the investigation or organize and coordinate the work of team members. While the appellant works independently during the investigation and the development of the case, the supervisor ensures that the final case is technically correct; i.e., necessary documentation and evidence are in place before presentation. Furthermore, the appellant's assignments do not involve the extensive planning and coordination demands found at Level 2-4. Therefore, Level 2-3 (275 points) is credited.

Factor 3, Guidelines

This factor covers the nature of guidelines and the judgment needed to apply them.

At Level 3-3 (275 points) in the GEGCW, guidelines covering both the legal aspects and investigative process related to the work are available, but there are gaps in specificity due to variations in fact or circumstances in each assignment. Judgment is needed to interpret and adapt the guidelines for application to specific cases and problems. Selecting the tactic for gathering evidence depends on the employee's assessment of the attitudes and likely behavior of the subject or on a preliminary evaluation of the data. Level 3-3 is the highest level for this factor in the GS-1896 PCS. It describes that the agent frequently must apply standard practices and techniques to new situations, relate new situations to old precedents and adapt and modify guidelines to individual cases of re-entry, deportation, etc.

The appellant's work compares favorably to Level 3-3 in both the GEGCW and the GS-1896 PCS. He refers to INS handbooks, manuals, instructions and orders, immigration and related criminal law, and precedent court decisions and rulings. The appellant must adapt to changes in the

Immigration law, as well as their interpretation by the courts. He uses considerable judgment in interpreting and applying these guidelines to his cases.

Level 3-4 (450 points) is not met. At this level, the GEGCW describes that assignments are covered by legal guidelines that are generally applicable. However, assignments involve such complex, sensitive, or intricate issues or problems that established investigative approaches, as described in handbooks, are of limited use. At this level, the employee uses resourcefulness to deviate from established methods to treat unusual issues in investigations or analyze trends to supplement or develop new program guidelines. The appellant's work does not rise to the level envisioned in the GEGCW. The IRP and pro-active cases assigned are typically straightforward and are resolved with standard INS investigative approaches. Therefore, Level 3-3 (275 points) is credited.

Factor 4, Complexity

This factor covers the nature, number, variety, and intricacy of tasks, steps, processes, or methods in the work performed; the difficulty in identifying what needs to be done; and the difficulty and originality involved in performing the work.

At Level 4-3 (150 points) in the GEGCW, casework involves a range of investigative functions from planning through fact-finding to reporting of results. Assignments involve conventional problems that can be resolved through analysis of fact, the selection and application of appropriate legal and regulatory guidelines, and application of a variety of standard investigative techniques. Typically there are no serious obstacles that impede the development of facts. There may be some disputed facts, but conclusive information is accessible. The employee must recognize and apply the appropriate regulatory and legal precedents that apply and must determine what to examine or persons to interview so that sufficient information has been gathered to prove noncompliance. At this level of the GS-1896 PCS, agents use established procedures to apprehend, interrogate and process illegal aliens. Assignments are complicated by the difficulty in establishing facts and protecting the suspect's civil rights. The requirements of individual assignments may alter established procedures or require new interpretations and a different application of statutory authorities conferred by the Immigration and Nationality Act.

The appellant's position compares favorably to Level 4-3. He uses established procedures to investigate and report on his cases and must select the appropriate legal and regulatory guidelines to apply. Though cases vary in complexity, determining what to examine and who to interview leads to conclusive information. The difficulties associated with cases involving an LPR require careful selection of alternatives that are subject to statutory authorities and their interpretations.

The appellant's position does not meet Level 4-4 (225 points), distinguished from Level 4-3 in the GEGCW as work that involves the full range of duties associated with a compliance program, including investigations, negotiations, and public information. Assignments typically involve at least one complicating situation where the review focuses on the activities of organizations having several branches or subsidiaries; or more than one reasonable interpretation exists of legal or

regulatory guidance; or serious obstacles hinder progress in establishing facts, interpreting evidence, and achieving compliance. For example, important records have been hidden or destroyed, witnesses have been intimidated, various facts are in conflict, or facts must be identified from among especially voluminous data. At Level 4-4 of the GS-1896 PCS, the work is usually performed in connection with anti-smuggling or intelligence activities, including planning, organizing and carrying out a variety of complex assignments that involve the use of incomplete or inconclusive information, the need for variation in approach, and the resolution of unacceptable, inconsistent or unforeseen results. The agent is confronted by large numbers of disparate operating situations that fit no common pattern.

The appellant does not perform work that encompasses the difficulty described at Level 4-4 in either reference. The most complex work involves very similar operating situations requiring the appellant to establish the alienage of the subject, identify whether the subject has committed a deportable offense, prepare the facts of the case in writing for presentation, and provide assistance to the litigator as needed. The appellant performs investigatory work that focuses on individuals, legal guidance is typically clear, and no serious obstacles such as that described in the GEGCW exist. Therefore, Level 4-3 (150 points) is credited.

Factor 5, Scope and effect

This factor covers the relationship between the nature of the work, i.e., the purpose, breadth, and depth of the assignment, and the effect of the work products or services both within and outside the organization.

At Level 5-3 (150 points) in the GEGCW, work involves the treatment of a variety of conventional problems and issues for which there are known and accepted solutions contained in a wide range of established compliance regulations, practices, and procedures. Activities include interviewing the subject, analyzing pertinent court or prison records, reviewing laws and regulations to identify specific provisions that apply, and presenting findings to obtain compliance. The impact of the employee's independent decisions is usually on an individual subject or a small number of individuals. At Level 5-3 of the GS-1896 PCS, the agent's actions prevent unauthorized persons from entering the U.S. and effect the apprehension and expulsion of aliens who are in an illegal status. Successful completion of assignments has considerable impact on the reservation of employment opportunities for U.S. citizens and legal resident aliens; reduction of unlawful drains on economic, social and political services and institutions and the operations of other enforcement units of the INS.

The appellant's work compares favorably to Level 5-3 because his cases typically involve established procedures of interviewing, analysis of records, review of laws, and presentation of findings regarding one subject or a small number of subjects. He identifies violators of Immigration and Nationality laws who are incarcerated in Federal, State, and local prisons. His work also involves locating and arresting aliens who have criminal backgrounds, failed to appear for deportation hearings, failed to depart from the country voluntarily, or may have escaped from

INS custody. His work affects the apprehension and expulsion of aliens who are in an illegal status.

Level 5-4 (225 points) is not met. At this level in the GEGCW, work involves investigations where conclusive findings or evidence are difficult to develop because of unusual conditions such as especially large and complex sets of interrelated data, the concealment of facts by highly sophisticated schemes, or issues with significant regional impact. The work at this level in the GS-1896 PCS involves uncovering suspected conspiracies and attempted violations of law before they occur. The appellant's work involves straightforward issues of compliance where evidence may be easily accessed or, in more difficult situations, obtained with reasonable diligence. The work does not involve uncovering suspected conspiracies and attempted violations of law before they actually occur. Therefore, Level 5-3 (150 points) is credited.

Factor 6, Personal contacts

This factor includes face-to-face contacts and telephone and radio dialogue with persons not in the supervisory chain. Levels described under this factor are based on what is required to make the initial contact, the difficulty of communicating with those contacted, and the setting in which the contact takes place. Above the lowest level, points should be credited under this factor only for contacts which are essential for successful performance of the work and which have a demonstrable impact on the difficulty and responsibility of the work performed.

At Level 6-3 (60 points) in the GS-1896 PCS, personal contacts are with the general public including legal and illegal immigrants, officials of other Federal agencies, e.g., the U.S. Departments of Agriculture, Justice and Interior, representatives of State and local governments, personnel from other law enforcement agencies, Federal and non-Federal, foreign officials and attorneys. These contacts are established on a non-routine basis and may take place in a wide variety of settings within or outside the station.

The appellant's contacts are comparable to Level 6-3. His law enforcement contacts are with prisoners, members of the general public, law enforcement officials, and other Federal, State, local and county governments, criminal justice, and legal communities.

Level 6-4 (110 points) in the GS-1896 PCS is not met. It describes personal contacts with high ranking officials from outside the INS including key official and top law enforcement personnel from other Departments and agencies, representatives of foreign governments, congresspersons, top officials from State and local governments and leaders from the law enforcement, criminal justice and legal communities. These contacts are not a frequent, regular and recurring part of the appellant's work.

Personal contacts and the purpose of these contacts is addressed as a matrix in the GEGCW and will be discussed in total with Factor 7 below.

Factor 7, Purpose of contacts

The purpose of personal contacts ranges from factual exchanges of information to situations involving significant or controversial issues and differing viewpoints, goals, or objectives. The personal contacts which serve as the basis for the level selected for this factor must be the same as the contacts which are the basis for the level selected for Factor 6.

At Level 7-3 (120 points), the highest level described in the GS-1896 PCS, contacts are established to detain, control or interrogate apparent violators of the immigration laws. Persons contacted frequently are uncooperative, uncommunicative, hostile, afraid, evasive or dangerous. These conditions require agents to be extremely skillful in how they approach individuals and groups and very selective in the methods and techniques used to collect and evaluate information and interrogate suspects. The appellant's contacts compare to Level 7-3 because he interviews illegal aliens, who may be evasive or uncooperative. He contacts a wide variety of law enforcement personnel to gain information about the criminal and immigration history on suspects.

Using the GEGCW matrix for the *purpose* and *persons* contacted, we found that the *purpose* of the appellant's contacts compares to Level "c" which describes the *purpose* as to persuade individuals or groups who are fearful, skeptical, uncooperative, threatening, or potentially dangerous to provide information, accept findings, or take corrective action required by law. Level "d" does not match the *purpose* of the appellant's contacts but rather describes a *purpose* to negotiate and resolve major, highly controversial issues or to justify and defend decisions on such issues. Positions taken by the employee on behalf of the agency are strongly contested, typically by a team of attorneys, accountants, or representative of major interest groups.

We also found that a description of the *persons* contacted by the appellant compare to Level "3" in the GEGCW matrix which describes them as individuals or groups from outside the employing agency where the purpose of each contact is different. Contacts are not established on a routine basis and the role and authority of each party is unclear. Typically, the employee must carefully establish and structure contacts to get or convey needed information and evidence.

The final combination in the GEGCW matrix is 3-c and equates to 180 points. Using the GS-1896 PCS, Level 6-3 (60 points) and Level 7-3 (120 points) results in a total of 180 points. Therefore, both determinations result in the crediting of 180 points.

Factor 8, Physical demands

This factor covers the requirements and physical demands placed on the employee by the work assignment. This includes physical characteristics and abilities (e.g., specific agility and dexterity requirements) and the physical exertion involved in the work (e.g., climbing, lifting, pushing, balancing, stooping, kneeling, crouching, crawling, or reaching). To some extent, the frequency or intensity of physical exertion must also be considered (e.g., a job requiring prolonged standing involves more physical exertion than a job requiring intermittent standing).

At Level 8-2 (20 points), the highest level described in the GEGCW, assignments regularly require visits to construction, industrial, agricultural or other outdoor sites, and movement over rough and uneven surfaces to reach suspects for observation. At Level 8-2 of the PCS, work requires frequent and recurring surveillance in which there is considerable walking, stooping, bending and climbing. The agent also may be required to lift and carry moderately heavy objects occasionally. This level requires some physical exertion and compares favorably to the appellant's activities that involve working in prisons and the physical circumstances encountered while investigating, apprehending, and detaining uncooperative suspects.

The appellant's physical demands do not meet Level 8-3 (50 points) in the GS-1896 PCS that describes protracted periods of strenuous physical exertion such as long periods of standing, walking, and running over rough, uneven or rocky terrain; operating vehicles over rough or uneven surfaces in cold and hot climates or in dry, dusty areas and climbing trees or buildings of various heights or in mountainous country. In addition, the agent must be able to defend himself and others as required against physical attacks. The appellant is not confronted with periods of strenuous physical exertion described in the PCS. While he carries a firearm, he is not, on a regular and recurring basis, required to defend himself or others against physical attack. Therefore, Level 8-2 (20 points) is credited.

Factor 9, Work environment

This factor considers the risk and discomforts in the employee's physical surroundings or the nature of the work assigned and the safety regulations required. Although the use of safety precautions can practically eliminate a certain danger or discomfort, such situations typically place additional demands upon the employee in carrying out safety regulations and techniques.

At Level 9-2 (20 points), the highest level described in the GEGCW, work involves exposure to moderate risks or discomforts such as high levels of noise and vibration, dust, grease, exposed moving parts of machinery, contagious diseases, engine exhaust, or irritant fumes. Protective clothing and gear and observance of safety precautions are required. At Level 9-2 of the GS-1896 PCS, the work involves frequent exposure to moderate discomfort, unpleasant working situations or exposure to high noise levels and adverse weather conditions, hot, cold, wet and dry. Safety or security precautions sometimes are required, and the agent may have to use appropriate clothing or gear. This level compares to the appellant's environment that involves moderate risks working in a prison environment and moderate safety risks associated with investigating, apprehending, and detaining a population of criminal illegal aliens.

Level 9-3 (50 points) is not met. At this level in the GS-1896 PCS, work involves high risks with exposure to a wide variety of potentially dangerous situations or unusual environmental stresses such as operation of motor vehicles in high speed chases, boarding of moving trains and vessels, and possible gunfire or physical attack. The agent typically works long and irregular hours, on weekends, and at night and frequently changes shifts and duty stations. While the appellant may

work in an environment where, at times, an element of danger may exist, his work environment does not meet the kind of environmentally stressful situations envisioned at Level 9-3.

Therefore, Level 9-2 (20 points) is credited.

Summary

In summary, we have evaluated the appellant's position as follows:

Factor	Level	Points
1. Knowledge required by the position	1-6	950
2. Supervisory controls	2-3	275
3. Guidelines	3-3	275
4. Complexity	4-3	150
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	9-2	20
Total points:		2,020

A total of 2,020 points falls within the GS-9 range of 1,855-2,100 points on the Grade Conversion Table. Crediting Level 3-c in application of the GEGCW results in the same point values for each factor as discussed above.

Decision

The appellant's position is properly classified as (Title Optional), GS-1801-9.