

U.S. Office of Personnel Management
Office of Merit Systems Oversight and Effectiveness
Classification Appeals and Grievance Proceedings



Chicago Oversight Division
230 South Dearborn Street, DPN 30-6
Chicago, Illinois 60604

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

Appellant: [Appellant]

Agency Classification: Criminal Investigator, GS-1811-12

Organization: U.S. Department of Justice
Immigration and Naturalization Service
[city] District
[city, state]

OPM decision: Criminal Investigator, GS-1811-12

OPM decision number: C-1811-12-15

/s/

Frederick J. Boland
Classification Appeals Officer

November 6, 2000

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).

Decision sent to:

[Appellant]
[address]
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Introduction

The appellant contests his agency's decision classifying his position, number NRW40T, as Criminal Investigator, GS-1811-12. The position is located in the U.S. Department of Justice, Immigration and Naturalization Service (INS), [name] Region, District, [name] Branch, [name] Unit, [city, state]. The appellant states that his position description accurately reflects his major duties, but believes that his work in the course of the ongoing "Operation [name]" investigation, which began in April 1998, and which continues to occupy him full-time, meets the criteria for classification at the GS-13 level. He also notes that he works with GS-13 Criminal Investigators assigned to other agencies in the course of that investigation and believes that there are no significant differences between his duties and those performed by them.

Regarding this latter point, OPM is required by law to classify positions on the basis of their duties, responsibilities, and qualification requirements by comparison to the criteria specified in the appropriate classification standard or guide. Other methods of evaluation, such as comparisons to other positions, are not permitted. Agencies, though, are required to apply classification standards and OPM decisions consistently to ensure equal pay for equal work. OPM will require a consistency review upon showing that specifically identified positions classified at different grades have identical duties. The appellant may pursue this issue by identifying the title, series, grade, organizational location, and duties of a higher grade position he believes the same as his own. The differences between the positions will either be explained or corrective action taken. The classification of the position certified in this decision, however, may not be changed.

Position Information

The appellant is one of 18 Criminal Investigators, all GS-12 level and below, in the [city] District's [name] Unit. The appellant reports to a GS-14 Supervisory Criminal Investigator.

His principal duties include responsibility for conducting comprehensive investigations of high profile/impact employers who are suspected of violating the civil and/or criminal provisions of the Immigration and Nationality Act and related legislation. These investigations target employers of high visibility in the community who are implicated in schemes to employ large numbers of illegal immigrants, the smuggling or preparation of fraudulent documents providing a spurious basis for residency in the United States, and related illegal activities. They often may result in spin-off investigations going beyond the original case and call for close coordination with other law enforcement agencies at various governmental levels and U.S. Attorney's Office

(USAO) prosecutorial staff.

Operation [name] has demanded most of the appellant's time since his assignment to the case and is representative of his duties. The agency's [city] District Office opened the Operation [name] case in April 1998, assigning the appellant at that time as the INS case agent, after receiving information that the owner of a [city] travel agency was selling fraudulent immigration documents to illegal immigrants. Subsequently, additional subjects were added to the scope of the investigation, including the operators of three other [city]-based travel agencies and a gift shop and other individuals who were determined to be engaged in related activities. The case had INS authorization for conducting undercover operations through April 1999, during the course of which time the appellant was successful in using the services of an informant (termed a "cooperating private individual," or CPI) having links to the primary case subject to set up a store front travel agency to work with the latter and the other subjects in marketing fraudulent immigration documents to illegals. The purpose of doing so was to develop evidence (through the filming and recording of such transactions by the principal subjects who were directly involved in these illegal activities) that could eventually be used in criminal prosecutions. The appellant also successfully arranged to have an INS Immigration Adjudicator, who was involved in issuing documents authorizing residency in the United States, work as an undercover agent (UCA), portraying a corrupt official willing to take bribes to issue such documents to customers of the case subjects.

As the case has progressed, its scope has expanded. The following excerpt from a report prepared by the appellant, dated July 5, 2000, on the status of the Operation [name] investigation portrays this situation:

This is a continuing joint investigation being conducted by Special Agents from the Federal Bureau of Investigation (Hereafter FBI), the Office of the Inspector General for the Social Security Administration (Hereafter: OIG/SSA) and the INS.

The investigation has revealed that certain Subjects in the U.S. and abroad are involved in among other things: (1) (manufacturing) and selling fraudulent documents including but not limited to social security cards, entry/departure records (Form I-94), alien registration cards (Form I-551), U.S. and foreign passports, drivers' licenses and birth certificates, etc.; (2) paying bribes to an INS UCA (\$735,000 to date [involving 151 individuals]) to have their clients processed for [residency] status; (3) selling stolen property including automobiles, electronics equipment, cigarettes, etc.; (4) selling illegal drugs including cocaine; (5) money laundering; and (6) printing and selling counterfeit U.S. currency.

Intelligence information suggests that other illegal areas that the Subjects appear to be engaged in are: smuggling people/property into the U.S.; not filing and/or filing false income tax returns; shipping stolen property including automobiles to European countries including [foreign country]; insurance fraud with respect to stolen vehicles; and certain physicians may or may not be performing the required medical examinations for applicants who are paying bribes to the INS UCA to have their cases processed for

[residency] status.

Other agencies have joined in the investigation. In April 1999, the case passed under Federal Bureau of Investigation (FBI) jurisdiction for undercover authorization and monitoring purposes, including lead responsibility for operation of the bogus store front travel agency. The Office of the Inspector General (OIG) of the Social Security Administration (SSA) is also participating. In terms of their respective roles, the appellant describes his own case agent role as that of being a “co-lead,” with the FBI and OIG/SSA providing their own co-lead counterparts to him. The appellant, as the INS case agent, monitors and logs the gathering of evidence through surveillance at the travel agency store front operation (this includes buying stolen and other illegal merchandise, which he estimated had a value of one million dollars, and the use of telephone pen registers), coordinates the setting up of undercover monitoring of the supposititious bribery of the INS UCA, and otherwise coordinates all other local INS activities in the joint investigation. He also liaises with INS offices in other parts of the country (specifically [city], [city], [city], [city], [city], and [city, state]) from which illegals have journeyed to [city] to obtain fraudulent immigration documents. This primarily involves requesting case files and, occasionally, surveillance of selected subjects.

Analysis and Findings

Series and Title Determination

The Criminal Investigator, GS-1811, series, covers work like the appellant’s that requires planning and coordinating investigations relating to alleged or suspected violations of criminal laws.

The prescribed title for non-supervisory positions in the GS-1811 series is *Criminal Investigator*. A parenthetical title indicating a subject matter specialization or functional area may be added to the title at the discretion of the agency.

Grade Determination

The OPM *Grade Level Guide for Classifying Investigator Positions (GLGCIP)*, GS-1810/1811, Series position classification standard, dated February 1972, presents grading criteria in terms of two factors: Complexity of Assignment and Level of Responsibility.

The first of these, Complexity of Assignment, assesses the scope, complexity, and sensitivity of investigative assignments and takes into account six principal elements:

1. Level of difficulty involved in resolving conflicting facts or evidence;
2. Extent of difficulty and complexity stemming from investigations' subjects;
3. Nature of separate investigative issues that evolve out of the original investigations;
4. Skill necessary to develop facts and evidence in assigned investigations;
5. Sensitivity in assigned investigations; and
6. Inter-jurisdictional problems that arise in the course of conducting investigations.

The second factor, Level of Responsibility, evaluates the type and extent of supervision received by investigators and the degree of resourcefulness they must exhibit to find and verify information germane to assigned investigations.

A position must substantially meet most or all of the characteristics of a grade to be classified to that grade.

Factor 1: Complexity of Assignment

1. *Level of difficulty involved in resolving conflicting facts or evidence.*

The following relevant discussion regarding this factor is excerpted from a supervisory memorandum the appellant submitted to support his appeal.

Although it will take several more months of investigation to piece together the full breadth of the criminal organization in Operation [name], it is already apparent that it is a very complex organization with a large number of primary and secondary activities, with interregional and international implications. The individual who is currently the principal Subject, a naturalized U.S. citizen . . . , has a large client base, probably in the hundreds, and he has extensive contacts with owners of other travel agencies, and other individuals who are engaged in an unusually wide variety of criminal activity It is anticipated that the successful completion of the case will have a significant impact as a deterrent in curbing this type of activity.

Unlike GS-13 cases, Operation [name] does not involve the exceptionally difficult resolution of evidence and facts that surround an enterprise or group whose scope of activities are so complex and pervasive that they constitute a threat to the peace or stability of the nation. Organizations of this type threaten the social fabric because they involve large scale drug distribution, large scale terrorist activity, or similar undertakings that are well managed and financed, have a secretive, insulated, and influential leadership, and employ intimidation, violence, graft, and corruption to protect and further their interests.

Both organized crime with its extensive resources and foreign agents with government

backing operate in such a capacity. Penetration and gathering of evidence on these organizations and their principals present exceptionally difficult challenges. The four travel agencies and related small businesses identified as prime targets of Operation [name] present difficult but not exceptionable challenges. Their principals cooperate in carrying out many activities, but, unlike typical targets of GS-13 level investigations, are not part of an extensive and clandestine organizational structure, among other things. Although there are interregional and international aspects to the overall case, the appellant's involvement as the INS case agent is primarily focused on criminal activities occurring in the [city] area. He does not exercise case agent control over his counterparts in other parts of the country, and the FBI has the primary responsibility for dealing with those international aspects of the case. Consequently, the difficulty confronting his resolution of facts or evidence in the case is tempered by the target organizations' limited complexity and his limited scope of authority.

We evaluate this element at the GS-12 level.

2. Extent of difficulty and complexity stemming from investigations' subjects.

From the memorandum the appellant submitted to support his appeal:

The criminal organization under investigation is extraordinarily complex in its structure and interests, including a vast network of individuals in the community who refer clients to members of the organization. The organization, by virtue of its interest in so many different types of criminal activity, is compartmentalized in a manner which requires inventive and creative investigative techniques to fully clarify. . .[T]hese methods have included the use of undercover operatives, the use of a 'store front' operation to establish credibility with members of the criminal organization, the use of sophisticated consensual monitoring devices for collection of evidence, and the creative use of a variety of 'sting' operations which will serve to identify the full scope of the organization and each member's responsibility within the organization.

The subjects the appellant is investigating engage in a range of illegal activities, but not on the scale or in the context expected at the GS-13 level. The Operation [name] investigation involves such issues as bribery of a public official, passport/visa fraud, transportation of stolen goods, procurement of an illegal weapon, import violations, narcotics sales, counterfeit currency, and money laundering. These varied activities do not equate to the range of interrelated activities characteristic of the GS-13 level, where extremely complex organizations manufacture, distribute, and sell to a national market via a complex network of widespread distribution and sales outlets. The targets the appellant investigates operate on a much smaller scale and lack the organization necessary for such an extensive and pervasive reach. The hundreds of clients they cater to fall well short of a national market requiring widespread distribution and sales outlets.

Instead, the subjects of the Operation [name] most closely approximate those described at the

GS-12 level. They are best described as principals in organizations with multiple components, each of which is separately involved in some form of criminal activity, or having overlapping financial interests involving a conjoining of legal and illegal activities, and which use accomplices in positions of public trust, like the INS UCA, to achieve their goals.

We evaluate this element at the GS-12 level.

3. Nature of separate investigative issues that evolve out of the original investigations.

From the memorandum the appellant submitted to support his appeal:

The investigation began as an apparently straightforward matter involving the sale of counterfeit documents, and has rapidly expanded to involve at least four different suspect travel agencies in [city, state], whose operators have at their disposal an extensive array of contacts within the community for the purpose of furthering the criminal enterprise. It appears to be a classic example of a criminal organization which uses legitimate business activities as a cover to conceal its criminal activities and the significant monetary proceeds of that activity. The operators of the suspect travel agencies are, ostensibly, respected business leaders in their community, enjoy excellent reputations, and maintain high profiles with members of the public and other business leaders in the area. Already the number of activities under investigation have multiplied exponentially, and it is anticipated that other activities and individuals will be exposed as the investigation proceeds with the use of even more aggressive investigative techniques.

The evolution of the Operation [name] investigation has essentially followed the typical GS-12 case development. From its initial inception stemming from reports of the involvement of a [city] area travel agency operator in the sale and distribution of fraudulent immigration documents, through the use of standard investigative techniques (e.g., surveillance, undercover operations, use of an informant, etc.), the case has expanded to include additional subjects operating other such enterprises. These individuals are also involved in similar illegal activities, primarily concerning the provision of false documentation to support residency petitions for immigrants. While the investigative reports provided by the appellant indicate that the subjects are aware of each others' activities and that, to varying degrees, they may cooperate with one another, they remain by and large independent operators.

Unlike subjects typical of GS-13 investigations, they do not constitute a highly organized crime group from which many investigative matters of great scope and complexity evolve. Rather, like GS-12 investigations, separate investigations have grown from accumulated evidence linking the Operation [name] principals to criminal elements and activities outside their own limited organization and control.

Though there will be raids conducted over a multi-state area when the Operation [name] case eventually "breaks," unlike GS-13 Investigators, the issues the appellant is pursuing are not so extensive and complex that he must lead several units of investigators from his own and other agencies to trace lead and gather information. Rather, he coordinates his activities with other offices and agencies during the investigation and will do the same during the raids.

We evaluate this element at the GS-12 level.

4. Skill necessary to develop facts and evidence in assigned investigations.

From the memorandum the appellant submitted to support his appeal:

The Subjects of the investigation are already numerous, and a large volume of evidence has already been compiled by SA [special agent] [name] and the other agents. This imposes unusual difficulties on the case agents in organizing the evidence gathered and in planning future investigative activities. Clearly, this is a case which must be conducted by an experienced agent, who has demonstrated an ability to maintain focus on many different issues simultaneously, carefully document all investigative activities, and develop a coherent and flexible plan which drives the case forward to a successful conclusion. Additionally, in this case SA [name] is required to coordinate the activities of several other GS-13 level agents, as well as several GS-12 level agents, who will perform subsidiary roles in the investigation.

Contrary to the quotation above, the appellant does not directly “coordinate the activities of several other GS-13 level agents,” but rather functions as the INS case agent solely. In this connection, he is responsible for directing the efforts of other INS Special Agents assigned to the case (none of whom are GS-13s), while his FBI and OIG/SSA co-leads (with whom he coordinates) act in a similar capacity regarding their own agencies’ assigned staff, a number of whom may be GS-13s.

Development of evidence concerning the subjects of the appellant’s investigation is similar in difficulty to the GS-11 level, where surveillance techniques are used against principals who are more clearly and directly involved in criminal activities. Unlike cases at higher grade levels where subjects conceal their identities and insulate themselves from the criminal activities they direct, the Operation [name] principals are directly involved in the illegal activities under investigation and do not take the precaution of working through others to conceal their involvement. The appellant’s cultivation of an informant (i.e., the CPI), which enabled him to gain access to the original principal subject employed a well-established investigative technique. Surveillance techniques in use at the store front travel agency are employed by the appellant to gather evidence, rather than to identify the principals themselves.

We evaluate this element at the GS-11 level.

5. Sensitivity of assigned investigations.

From the memorandum the appellant submitted to support his appeal:

It is fully expected that this case will generate sustained and widespread coverage in the major news media due to the prominence of the Subjects and the significant scale of the criminal activity in which they are engaged. It is also a case in which premature news coverage would severely damage the investigation and endanger the lives of a number of individuals involved in the

investigation. Beyond that, it is expected that bringing this case to successful conclusion will have a significant impact on the movement of aliens, particularly from [foreign country] and other Eastern European countries, and, potentially, on the travel agency business in [city] and other cities in the United States and Europe. It could also have a significant impact on the availability of counterfeit documents throughout the [city] area. The Subjects in this case have demonstrated that they wish to bribe public officials [i.e., the INS UCA] to further their criminal schemes, a factor that adds substantially to the sensitivity of the case, and may lead to identifying other individuals who have accepted bribes from members of the organization.

Intense, sustained media interest once the appellant's case goes public, similar to the attention given the prosecution of major figures in organized crime or prominent politicians, is far from given because of the limited breath and scope of the organization under his direct investigation. Should developments in the case stemming from his personal work actually generate sustained media interest in the associated investigation, indictment, prosecution, trial, deliberations, and verdict, credit may be awarded under this element at that time.

To date, however, the sensitivity of the appellant's investigation is similar to GS-11 cases where the success of the investigation depends on not disclosing its details to avoid the possibility of losing potential leads. Unlike GS-12 cases, none of the subjects under the appellant's investigation are prominent enough to be very often the subject of major news media. Neither are they so prominent that potential witnesses would be reluctant to testify. Instead, like GS-11 cases the subjects at best may be sufficiently prominent to create local publicity that could cause embarrassment to the agency and consternation in the community by casting suspicion on otherwise respected individuals.

Speculation concerning the personal safety of some of the individuals involved in the appellant's investigation (presumably, the CPI informant and, possibly, the INS UCA), is insufficient to establish higher credit under this element without the subjects under investigation demonstrating a history of intimidation or violence. Substantiation of such claims is necessary to establish that informants' or witnesses' lives would actually be in jeopardy from ill timed disclosures.

The reference to bribery in the above quote refers to the work of the INS UCA, whom the suspects believe is corruptly accepting bribes from them. There are, in addition, several brief comments in the appellant's status reports referring to the possibility that there may have been bribes paid to SSA employees to acquire blank Social Security cards at several locations, but this has not been established. None of these events suggest the existence of widespread, serious corruption of public officials envisioned at the GS-13 level, where multiple levels of government are compromised through attempted bribery, fraud, collusion, or extortion of public officials.

We evaluate this element at the GS-11 level.

6. Inter-jurisdictional problems that arise in the course of conducting investigations.

From the memorandum the appellant submitted to support his appeal:

The extensive and multidimensional nature of the criminal activities engaged in by the Subjects of the investigation, in itself creates difficulties in planning and coordination. SA [name] is required to make critical decisions concerning the course of the investigation, coordinate his activities with two other Federal agencies, organize a large volume of evidence, completed reports setting forth the evidence and investigative activities, and direct the actions of subordinate personnel, many of them GS-13 level agents with the FBI. Due to the sensitivity of the case, extra care must be taken by SA [name] to prevent leaks of information which would severely damage prospects for a successful conclusion to the case.

While the appellant and other agency co-leads must work closely together to develop a strategy for dealing with the criminal activities in which the case subjects are engaged, each retains direction and control over his/her agency's staff resources assigned to this investigation. The manner in which the participating agencies have chosen to coordinate their combined efforts is primarily through the co-lead case agent each has designated. In the case of INS, the appellant has the lead responsibility for directing the Criminal Investigators that INS has assigned to this case.

The coordination issues involved, while undeniably placing complex demands upon the respective co-leads, do not approach the level of extreme difficulty envisioned at the GS-13 level, where extensive jurisdictional problems produce extremely difficult planning and coordination problems, e.g., as when the local or state law enforcement agencies partnering in the investigation are themselves linked to wide-scale criminal conspiracies.

As at the GS-12 level, the subjects of the appellant's investigation have attracted the concern of several law enforcement agencies because of their varied criminal activities. The scope of their activities and the differing agency jurisdictions demand a more extensive than usual knowledge of law enforcement on the appellant's part, comparable to that outlined at the GS-12 level in the guide.

We evaluate this element at the GS-12 level.

In summary, we evaluate four of the six elements under Factor 1 at the GS-12 level, with the remaining elements being assessed at the GS-11 level. Given the work meets most of the characteristics described at the GS-12 level, our overall evaluation of Factor 1 is at the GS-12 level.

Factor 2: Level of Responsibility

The kind and extent of supervision given to investigators and the degree of resourcefulness required in finding and verifying information pertinent to assigned cases.

Since the appellant's assignments fall short of the most difficult investigative assignments, as discussed under Factor 1, his credit under this factor is constrained. The higher order complexity, importance, and sensitivity of GS-13 level cases (e.g., such a case may often be the first of its kind to be pursued under a new legal provision and the outcome may affect other pending cases or otherwise influence the decisions reached on such cases subsequently; the investigative methods and approaches devised by the GS-13 Criminal Investigator often set the pattern for later investigations involving similar issues; etc.), when coupled with substantial independence, warrant GS-13 level credit. While the appellant operates independently, it is without the higher responsibility associated with GS-13 level work.

We accordingly evaluate Factor 2 at the GS-12 level.

Decision

Based on the above analysis, the proper classification of the appellant's position is *Criminal Investigator, GS-1811-12*.