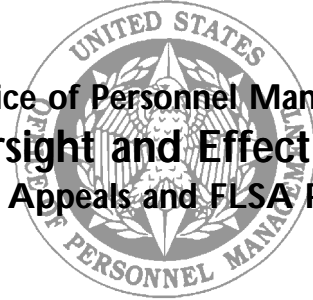


U.S. Office of Personnel Management  
Office of Merit Systems Oversight and Effectiveness  
Classification Appeals and FLSA Programs



Dallas Oversight Division  
1100 Commerce Street, Room 4C22  
Dallas, TX 75242

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

**Appellant:** [appellant]

**Agency classification:** Immigration Agent (Enforcement)  
GS-1801-9

**Organization:** [appellant's activity]  
Office of Investigations  
Immigration and Naturalization Service  
U.S. Department of Justice  
[geographic location]

**OPM decision:** GS-1801-9  
title at the discretion of the agency

**OPM decision number:** C-1801-09-09

/s/ Bonnie J. Brandon  
Bonnie J. Brandon  
Classification Appeals Officer

2/8/2000  
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, appendix 4, section G (address provided in appendix 4, section H).

**Decision sent to:**

[appellant's name and address]

Chief  
Classification and Compensation Policy  
Immigration and Naturalization Service  
U.S. Department of Justice  
800 K Street, NW., Room 5000  
Washington, DC 20536

Assistant Commissioner for  
Office of Human Resources and Development  
Immigration and Naturalization Service  
U.S. Department of Justice  
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Director of Personnel  
JMD Personnel Staff  
U.S. Department of Justice  
1331 Pennsylvania Avenue, NW., Suite 1110  
Washington, DC 20530

## **Introduction**

On October 5, 1999, the Dallas Oversight Division of the U.S. Office of Personnel Management (OPM) accepted a classification appeal from [the appellant]. He works in the Alien Criminal Apprehension Program (ACAP) unit and [a specific county jail unit] of the [appellant's activity], Office of Investigations, Immigration and Naturalization Service (INS), U.S. Department of Justice, in [geographic location]. The appellant's position is currently classified as Immigration Agent (Enforcement), GS-1801-9; however, [the appellant] believes it should be classified in the GS-1811 Criminal Investigator Series. Although the appellant does not specify a grade in the GS-1811 series, he indicates that his work is comparable to the GS-12 level. We have accepted and decided this appeal under section 5112 of title 5, United States Code (U.S.C.).

On December 10, 1999, we conducted an on-site audit of the appellant's position and interviewed the appellant's first and third-level supervisors. Earlier, we discussed the appellant's position with his second-level supervisor. In reaching our decision, we reviewed the appellant's position description (PD) of record, [PD number], the audit and interview materials, the work assignment examples provided by the appellant, and other information of record furnished by the appellant and his agency.

## **General issues**

The appellant does not believe his assigned duties and responsibilities are accurately depicted in his PD of record. When an employee questions the accuracy of the PD and cannot resolve the disagreement with the agency, OPM decides the appeal based on the actual duties and responsibilities assigned by management and performed by the appellant.

The appellant also believes that the work he does is similar to that performed by GS-12 criminal investigators who are assigned to his unit. By law, a classification appeal decision is based on comparing the appellant's current duties and responsibilities to OPM position classification standards and guidelines (5 U.S.C. 5106, 5107, and 5112). Since comparison to the standards is the exclusive method for classifying positions, we cannot compare the appellant's current duties to other positions as a basis for deciding an appeal. Similarly, the classification appeal process is an independent, third-party review that determines the duties and responsibilities assigned to the appellant's position and performed by him and properly applies the appropriate standards to those duties and responsibilities. Therefore, the appellant's perceptions regarding similarity of his position and others have no bearing on the proper classification of his duties and responsibilities.

Each agency has primary responsibility for ensuring its positions are classified consistently with OPM appeal decisions and for consistency in applying the principle of equal pay for substantially equal work. If the appellant considers his job so similar to others that they all warrant the same classification, he may pursue the matter by writing to his agency's personnel headquarters. In doing so, he should specify the precise organizational location, classification, duties, and responsibilities of the positions in question. If the jobs are found to be basically the same as his, the agency must correct its classification of the positions to be consistent with this appeal decision.

Otherwise, the agency should explain to the appellant the differences between his job and the others.

### **Position information**

The [appellant's activity] is an interior enforcement arm of INS charged with investigating possible violations of the criminal and administrative provisions of the Immigration and Nationality Act (INA) and other provisions of the United States Code. The [appellant's activity] enforcement mission has five broad objectives: identify and return illegal aliens, counter alien smuggling, root out immigration fraud, enforce employer provisions of the INA, and respond to community complaints regarding illegal criminal alien activity. The primary purpose of the appellant's position is to perform a variety of INS enforcement and compliance functions associated with criminal aliens and to apprehend absconders from deportation proceedings. The appellant is assigned to the ACAP unit and [a specific jail unit] of the [appellant's activity] where he interviews and identifies suspected aliens who have committed crimes and then takes appropriate action to detain, arrest, deport, and/or assist in their prosecution.

The two units consist of 18 nonsupervisory employees who are directed by a Supervisory Criminal Investigator. There are 3 Criminal Investigators, 13 Immigration Agents (Enforcement), and 2 Investigative Assistants assigned to these two units. The appellant usually works a rotating assignment between [a specific jail unit] and the ACAP unit. When at [a specific jail unit], the appellant interviews subjects who are being held for various crimes, pulls up their booking sheets on the computer, reviews other available records, and, if needed, requests additional information from INS and other law enforcement entities (e.g., Federal Bureau of Investigation, State and local law enforcement agencies) and other Federal agencies such as the Department of State. The appellant detains any suspected violators of INS law and regulations who are incarcerated at [a specific jail unit].

Identification of suspected illegal aliens may be more time consuming if the suspect has used multiple aliases and has multiple criminal convictions. Such suspects require the appellant to conduct more intensive interviewing and closer review of the suspects' records as well as make additional contacts with other law enforcement agencies. A few of the subjects interviewed may also be less cooperative, e.g., those who have reentered the country after prior deportation or who claim to be lawful permanent residents and entitled to certain protections. Some suspects interviewed and detained by the appellant have committed multiple felonies, e.g., delivery of a controlled substance, aggravated sexual assault, theft greater than \$10,000, burglary of a habitation.

In most of the cases which the appellant processes, the suspects are present and usually cooperative, case materials are readily available, INS issues are straightforward, suspects are not controversial, and exchanges and cooperation with other agencies are considered routine. Most of the suspects at the jail have entered the country without inspection and have clearly violated a Federal law and they may be summarily deported. If the appellant reasonably believes the suspect

is in violation of INS law or regulation, he places a detainer on the suspect and, when legal action is finally completed, the suspected violator is arrested and returned to INS custody for further disposition, e.g., deportation or criminal prosecution.

After serving a two-week assignment at [a specific jail unit], the appellant rotates to the ACAP unit where he does processing, prosecution, and other proactive arrest assignments. He begins his processing work by reviewing the current jail release log which contains a list of the people who have been released or “bonded out” that day from [a specific jail unit]. He pulls the Alien (“A”) files of the detainees and reviews the information that was obtained during the jail interviews. He contacts the National Crime Information Center for possible suspect identification and additional information. He may also contact criminal courts to get certified copies of conviction documents and call other INS Districts for “A” files to help identify suspects. He takes fingerprints of the suspect’s left and right index fingers and gets two photographs of the suspect to assure a solid identification. If necessary, the appellant interviews the suspect further when additional questions of identity or criminal activity may exist. Using specific INS guidelines and instructions, the appellant makes a determination whether the person should be released, voluntarily returned to his country of record, referred to the Immigration Judge, or further investigation is needed.

While assigned to the ACAP unit, the appellant processes assigned prosecution cases by gathering and reviewing the suspect’s records to assure that the subject meets United States Attorney’s Office (USAO) legal prosecution requirements, e.g., the subject has been legally deported before, the subject has reentered the United States illegally, the subject has committed a felony crime. After the appellant writes up an affidavit which thoroughly documents the evidence for prosecution and he has gained his supervisor’s approval, the appellant attempts to convince the USAO to accept the case. If the USAO accepts the case, the appellant may be called upon to testify to the accuracy of the record he compiled and/or to his personal involvement in the case.

Although the appellant’s position description of record depicts performance of on-site inspections of businesses and organizations in order to review employment practices and to ensure that unauthorized aliens are not employed, the appellant has not done this work for over one year. Processing and prosecution work at [a specific jail unit] and the ACAP unit has absorbed most of the time originally projected for on-site inspections. Also, the appellant states that he spends approximately 20 percent of his time involved with the administrative implementation and coordination of [a higher organization’s] early efforts to establish a National Criminal Alien Removal Plan (NCARP) which is designed to use video teleconferencing equipment to establish an effective identification, removal, and deterrence plan for incarcerated criminal aliens. The appellant and management officials project that an increasing amount of the appellant’s time will be spent on NCARP activities. Inasmuch as PD’s must meet the minimum standard of adequacy as discussed in the *Introduction to the Position Classification Standards*, the appellant’s agency must assure that the appellant’s official PD reflects the actual duties and responsibilities required for the position.

### Series, title, and standard determination

The appellant believes his position should be classified in the GS-1811 Criminal Investigator Series. The GS-1811 series includes positions that involve planning and conducting investigations related 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 rules 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 relationships, responsibilities, legal liabilities, and 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 U.S. Attorney in and out of court.

The Grade-Level Guides for Classifying Investigator Positions (GS-1810/1811 Guides), dated February 1972, 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 described in the GS-1810/1811 Guides. Typically, this full range of knowledge, skills, and abilities is called into use only in the development of cases that are so complex that they normally unfold over a period of time, i.e., days, weeks, or months. Thus, investigator positions covered by the GS-1810/1811 Guides are distinguished from certain law enforcement occupations that require employees to use some investigative techniques (e.g., interviewing, checking records) but do not require the full range of knowledge, skills, and techniques as described in these Guides.

Positions classified in the GS-1811 occupation are concerned with investigations of alleged or suspected violations against the laws of the United States. The work requires a knowledge of what constitutes a crime or violation, what evidence is required to prove that a crime was committed, sources of information (i.e., informants) and methods of obtaining required evidence, availability and use of modern detection devices and laboratory services, awareness of continuing advances in investigative technology, and decisions and precedent cases involving admissibility of evidence. Criminal investigators apply a number of techniques, such as interviewing or interrogation, searching for evidence or clues, substantiating findings or conclusions, using cameras or other devices 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 warrant warrants; serving on a full-time, detail, or rotational basis on protection assignments; and carrying firearms and making arrests.

Information obtained during our audit with the appellant and interviews with his supervisors reveals that the appellant's investigative assignments do not require the *full range* of knowledge, skills, and techniques typical of positions classified in the GS-1811 series. The appellant applies investigative techniques in performing a variety of enforcement and compliance functions associated with locating criminal aliens and apprehending absconders who are evading deportation proceedings. His investigative duties are not comparable to the wide range of complex and sensitive investigations anticipated for GS-1811 Criminal Investigators.

An INS memorandum, dated June 15, 1995, provides policy guidelines for the establishment of GS-1801 Immigration Agent positions. This memorandum states that Immigration Agents are not authorized to conduct investigations beyond routine fact-finding as required by the functions described in the position description. The memorandum also clearly states that these positions were established to perform important, high-volume (but lower-grade) interior enforcement functions which do not require the full range of investigative techniques.

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 inspectional, 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 either 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 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 analyzing information from records and documents or statements taken from individuals to decide and document issues of deportability and compliance. This work requires knowledge of basic law enforcement methods for reviewing records, interviewing, and analyzing information from records and documents. The appellant's position is appropriately included within the GS-1801 series.

The GS-1801 position classification standard does not include grade level criteria. The *Introduction to the Position Classification Standards* explains that if there are no specific grade level criteria for the work, an appropriate general classification guide or criteria in a standard or standards for related kinds of work should be used. The appellant's position, therefore, must be classified by reference to standards that are as similar as possible to the appealed position considering the kind of work performed, qualification requirements of the work, level of difficulty

and responsibility, and the combination of classification factors which have the greatest influence on the grade level.

Grade level derivation for the appellant's position can best be made by application of the standard for the Border Patrol Agent Series, GS-1896, dated September 1978, and the Grade Evaluation Guide for Compliance Work (GEGCW), dated June 1991. The GS-1896 standard is used to evaluate the appellant's law enforcement and administrative duties because this standard covers two-grade level work similar to the appellant's and has as its primary functions the enforcement of the immigration and nationality laws and the corresponding criminal code and the apprehension of violators of these and related laws within the jurisdiction of INS. Border Patrol Agent positions require knowledge and understanding of the laws, regulations, precedent decisions, and instructions pertaining to such matters as admission, exclusion, and deportation of persons; right of an alien to be in or remain in the United States; and acquisition and derivation of United States citizenship, naturalization, and expatriation. The appellant's position requires similar knowledge, skill, and ability in enforcing and administering immigration and naturalization rules and laws.

The GEGCW evaluates nonsupervisory work involving either on-site efforts at securing compliance of persons or organizations subject to a Federal regulatory program, or staff support efforts in regulatory compliance program development, evaluation, or administration. This Guide 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. The criteria in the GEGCW are directly applicable to the appellant's work.

OPM has no prescribed titles for positions in the General Inspection, Investigation, and Compliance Series, GS-1801. Therefore, the agency has discretion to determine the title of the position following general guidelines on titling practices in the *Introduction to the Position Classification Standards*.

### **Grade determination**

Both the GS-1896 Border Patrol Agent standard and the GEGCW are written in 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 description (FLD) 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 are converted to a grade by use of the grade



conversion table in the standard or guide. 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 which the worker must understand in order to do acceptable work and the nature and extent of the skills needed to apply those knowledges. To be used as a basis for selecting a level under this factor, a knowledge must be required and applied.

Level 1-6 in the GS-1896 standard 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. 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.

Level 1-6 in the GEGCW requires knowledge of the basic provisions of the laws and regulations enforced, 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 the 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 knowledges, skills, and abilities 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 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. The appellant obtains and reviews information 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 and related State laws and INS decisions, regulations, operations instructions and policy to make appropriate determinations of alienage, immigration status, and deportability. The appellant also applies investigative techniques to perform basic law enforcement functions such as locating and arresting immigration law violators, interviewing subjects, and reviewing documents. He prepares written technical material in the preparation of evidence, testimony, and information for prosecution cases to be presented to the USAO.

In addition to the knowledge described at Level 1-6, Level 1-7 work in the GS-1896 standard requires a more extensive knowledge of immigration and nationality laws, regulations, precedents, court decisions and current instructions concerning nationality and citizenship, admission, exclusion, deportation, inspection, rights and requirements of aliens, smuggling, illegal entry, etc. Greater skill is required at this level to consolidate ostensibly disparate facts, events, and other types of intelligence material and to develop information, guidelines, and techniques for broader application in the detection, apprehension, and prosecution of persons attempting to violate INS laws. Level 1-7 also requires skill in coordinating intelligence gathering operations and in developing continuing sources of information.

Level 1-7 in the GEGCW requires, in addition to knowledges and skills described at Level 1-6, 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 the 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.

Neither the breadth nor the complexity of the appellant's assignments require Level 1-7 knowledge and skill. The appellant's [specific jail unit] and ACAP processing work and prosecution assignments are straightforward. Of the seven examples of prosecutions provided by the appellant, six were for illegal reentry by aggravated felons who were previously deported, reentered the United States illegally, and committed an aggravated felony. The appellant develops an affidavit which states the facts of the case, submits it to the USAO, and then makes himself available for testimony. Most of the subjects of the appellant's prosecutions plead guilty because of the overwhelming fact evidence, and they are quickly deported. The appellant's investigations do not involve complex alien operations, difficult legal interpretations, or serious impediments to gathering evidence as envisioned at Level 1-7 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 that requires knowledge and skill comparable to Level 1-7 in the GS-1896 standard.

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 responsibility, and the review of the 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 in the GS-1896 standard, the work is carried out independently, reviewed for general adequacy, soundness of decisions made, and conformity to established procedures and instructions. Similarly 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, and review of work focuses on the soundness of results rather than the application of work methods and techniques. Work products are reviewed to assure appropriate factors have been considered, sufficient evidence has been gathered which supports conclusions, and pertinent regulations and precedents have been applied.

The appellant's supervisory controls compare favorably to Level 2-3. The supervisor makes assignments and the appellant independently carries them out. The appellant resolves problems or deviations in the work in accordance with guidelines, INS practices, and previous training or accepted techniques. He keeps the supervisor informed of progress, and his supervisor checks to assure that the work is technically correct and that appropriate documentation and evidence are in place. The appellant's supervisor reviews completed work to assure clarity and conciseness, thoroughness of analysis, soundness of judgment exercised, and results.

At Level 2-4 in the GS-1896 standard, the agent's recommendations are accepted as authoritative statements of fact, and the supervisor reviews the work primarily to determine its basis for modifying operating instructions, procedures, or program emphases. The supervisor assigns work in a specific specialized area. The agent typically has a continuing responsibility in this area of work, e.g., anti-smuggling or intelligence functions for a particular geographic area. Agents plan and carry out their work independently, establishing priorities, setting deadlines, and determining the scope and intensity of their effort based on the needs and objectives of INS. At this level, agents typically have developed considerable expertise in the work of the assigned area and their decisions and recommendations typically are accepted as authoritative statements of fact. In most instances, the work of the agent is performed at locations or in situations that do not lend themselves to supervisory oversight. Completed work products (usually technical reports, digests of situations encountered, informative abstracts or letters) are accepted as technically sound. Unusual or controversial findings are reviewed primarily to ascertain if they are a potential basis for modifications of operating instructions, procedures, or program emphases.

Similarly, Level 2-4 in the GEGCW anticipates the employee carrying 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.

Level 2-4 is not fully met in that the appellant's assignment is more narrowly defined, more closely monitored and reviewed, and does not require the planning and coordination efforts anticipated at that level.

Level 2-3 (275 points) is assigned.

### *Factor 3, Guidelines*

This factor covers the nature of guidelines and the judgment needed to apply them. Individual jobs in different occupations vary in the specificity, applicability, and availability of the guidelines for performance of assignments. Consequently, the constraints and judgmental demands placed upon employees also vary. For example, the existence of specific instructions, procedures, and policies may limit the opportunity of the employee to make or recommend decisions or actions. However, in the absence of procedures or under broadly stated objectives, employees in some occupations may use considerable judgment in researching literature and developing new methods.

At Level 3-3, the agent must frequently apply standard practices and techniques to new situations, relate new situations to old precedents and adapt and modify guidelines to individual cases of reentry, deportation, etc. At Level 3-3 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.

The appellant's work compares favorably to Level 3-3 in both the GS-1896 standard and the GEGCW. The appellant applies a wide variety of specific guidelines including Federal codes, the Immigration and Nationality Act, INS handbooks, manuals, precedent decisions, and policies. His assignment requires him to identify and select the appropriate guideline and apply it to the case or situation at hand. There is no regular and recurring requirement for the appellant to adapt and modify guidelines because of new situations.

Level 3-4 is not met. The GEGCW describes this level as one where 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 assignments are not characteristic of this level. His case assignments are typically resolved with standard INS investigative procedures.

Level 3-3 (275 points) is assigned.

#### *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, the GS-1896 standard anticipates agents using established procedures and methods 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. At Level 4-3 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.

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 a lawful permanent resident require careful selection of alternatives that are subject to statutory authorities and their interpretations.

At Level 4-4 of the GS-1896 standard, 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 information is typically difficult to standardize. Work performed at this level requires use and control of information and the conduct of probing interrogations. At Level 4-4 of the GEGCW, the work 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.

Level 4-4 work which is comparable to either reference is not found in the appealed position. 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 to the USAO, and provide assistance to the U.S. Attorney 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.

Level 4-3 (150 points) is assigned.

*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 in the GS-1896 standard, the work involves actions that prevent unauthorized persons from entering the United States; deter the smuggling of aliens, narcotics, and other contraband goods; promote the detection and prevention of crime at or near the borders of the United States; and effect the apprehension and expulsion of aliens who are in an illegal status. Effective accomplishment of assigned duties 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 INS. At Level 5-3 in the GEGCW, the 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.

The appellant's work compares favorably to Level 5-3. His cases typically involve established procedures of interviewing, analyzing records, reviewing laws, and presenting findings regarding one subject or a small number of subjects. He identifies those violators of Immigration and Nationality laws who are incarcerated. He also locates and arrests 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.

At Level 5-4 in the GS-1896 standard, the work involves uncovering suspected conspiracies and attempted violations of law before they occur. At Level 5-4 in the GEGCW, the 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.

Level 5-4 is not met. 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.

Level 5-3 (150 points) is assigned.

#### *Factor 6, Personal contacts*

This factor includes face-to-face contacts and telephone 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 are 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 in the GS-1896 standard, personal contacts are with the general public, including legal and illegal immigrants; officials of other Federal, State, and/or local government agencies; foreign officials; and attorneys. These contacts are established on a nonroutine basis and may take place in a wide variety of settings within or outside the assigned area. At Level 6-4, personal contacts are with high ranking officials from outside the assigned area including key officials 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.

The appellant's personal contacts match Level 6-3. His law enforcement contacts are with aliens, members of the general public, law enforcement officials of other Federal agencies, and State and county personnel. Contacts take place on a nonroutine and routine basis, in various settings of the appellant's work environment. The appellant's contacts are not comparable to Level 6-4. There is no regular, recurring contact with members of congress, key officials and top law enforcement personnel from State and local governments, criminal justice, and legal communities.

Level 6-3 (60 points) is assigned.

The GEGCW evaluates personal contacts and purpose of contacts by using a matrix. Our comparison of the appellant's contacts to the GEGCW is included in the discussion of Factor 7.

### *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, contacts are established to detain, control, or interrogate apparent violators of the immigration laws. Persons contacted frequently are frightened, uncooperative, uncommunicative, hostile, evasive, or dangerous. These conditions require agents to be extremely skillful and discreet in the manner in which they approach individuals and groups and very selective in the methods and techniques used to collect and evaluate information and interrogate subjects. The purpose of the appellant's contacts compares favorably to Level 7-3. The appellant interviews illegal aliens who may be evasive or uncooperative. He contacts a wide variety of law enforcement personnel to gain information about the suspect's criminal and immigration history and to coordinate efforts.

Level 7-3 (120 points) is assigned.

Application of the GEGCW matrix to evaluate purpose of contacts and persons contacted results in assignment of Level 3c for the appellant's position. As at Level c, the appellant must 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. The purpose of the appellant's contacts does not meet Level d where the purpose is to negotiate and resolve major, highly controversial issues or to justify and defend decisions on such issues. At Level d, positions taken by the employee on behalf of the agency are strongly contested, typically by a team of attorney or representatives of major interest groups.

At Level 3 in the GEGCW, the persons contacted are 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.

Using the GEGCW matrix, a combination of Level c and Level 3 for persons contacted results in 180 points. This is the same point credit results obtained by application of the GS-1896 standard.

### *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 of the GS-1896 standard, the work requires some physical exertion such as bending, crouching, stooping, stretching, reaching, or similar activities. The work may require lifting and carrying moderately heavy objects occasionally. At Level 8-2 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. The appellant's activities that involve working in a prison setting and the physical circumstances encountered while investigating, apprehending, and detaining uncooperative suspects compare favorably to this level in both the GS-1896 standard and the GEGCW.

The appellant's physical demands do not meet Level 8-3 in the GS-1896 standard which 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 a mountainous country. At Level 8-3, agents must be able to defend themselves and others as required against physical attacks. The appellant is not confronted with the protracted periods of strenuous physical exertion as described.

Level 8-2 (20 points) is assigned.

#### *Factor 9, Work environment*

This factor considers the risks 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 in the GS-1896 standard, 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. At Level 9-2 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. Comparable to Level 9-2, the appellant's prison environment involves moderate safety risks associated with investigating, apprehending, and detaining a population of criminal illegal aliens.

The appellant's work environment is not characteristic of Level 9-3 in the GS-1896 standard which depicts an environment with high risks of 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 situation envisioned at Level 9-3.

Level 9-2 (20 points) is assigned.

### *Summary*

The appellant's position is properly evaluated as follows:

<b>Factor</b>	<b>Level</b>	<b>Points</b>
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
<b>Total</b>		<b>2,020</b>

Using the Grade Conversion Table found in the GS-1896 standard, 2,020 points fall within the GS-9 range of 1,855-2,100 points. Application of the GEGCW Grade Conversion Table also results in the same point values creditable after assigning Level 3c for personal contacts and purpose of contacts.

### **Decision**

The appellant's position is properly classified as GS-1801-9 and titled at the agency's discretion.