

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's name] et al.

Agency classification: Immigration Agent (Enforcement)
GS-1801-09

Organization: Immigration and Naturalization Service
U.S. Department of Justice
[geographic location]

OPM decision: GS-1801-09
(title at agency discretion)

OPM decision number: C-1801-09-10

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

3/6/00
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:

[appellants' names and address]

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Introduction

On October 28, 1999, the Dallas Oversight Division of the U.S. Office of Personnel Management (OPM) accepted a classification appeal from [the appellants]. The appellants occupy identical positions classified as Immigration Agent (Enforcement), GS-1801-09, under a standard position description (PD) that carries two PD numbers, [numbers]. The appellants work in [their activity], Immigration and Naturalization Service (INS), U.S. Department of Justice (DOJ), in [geographic location]. We have accepted and decided this appeal under section 5112 of title 5, United States Code.

On September 18, 1998, the INS Classification and Compensation Policy office issued an evaluation statement affirming its classification of the appellants' positions as Immigration Agent (Enforcement), GS-1801-09. The appellants appealed the decision to DOJ on October 20, 1998, requesting reclassification to GS-1811-12. On October 1, 1999, DOJ issued its decision which upheld the INS classification determination. The appellants then appealed to our office, seeking reclassification of their positions to GS-1801-12.

The appellants, their supervisor, the Officer-in-Charge of [their activity], and the agency all agree that the appellants' official position description is inaccurate. According to the agency's evaluation statement, the appellants' position description was written in 1992, based on projected duties. During its review of the appellants' positions in 1998, the agency found, as we have, that the appellants are assigned to work exclusively on the Institutional Removal Program (IRP). Consequently, the appellants do not perform all of the major duties in the position description. That is, they do not conduct on-site inspections of businesses and organizations to ensure that unauthorized aliens are not employed, locate and arrest aliens who have failed to appear for deportation hearings, or arrest and process aliens for deportation.

To help decide the appeal, we conducted audits by telephone with each appellant, the first-line supervisor, and the Officer-in-Charge. In reaching our decision, we reviewed all information of record furnished by the appellants and their agency as well as samples of work products provided in conjunction with our telephone audits. Our decision is applicable to all five appellants because the major duties and responsibilities performed are substantially the same. Four of the five appellants also perform specific collateral duties that occupy no more than 10 percent of the time. These duties are not addressed in our decision because they do not affect the grade determination.

The appellants informed us of prospective agency plans to change the duties and responsibilities of Immigration Agent (Enforcement), GS-1801-09, positions nationwide to handle IRP cases from start to completion. They also indicated the possibility they would be taking on State prison inmate alien work. Our decision does not consider future work. It is based on current duties and responsibilities assigned by management and performed by the appellants.

General issue

The appellants question why the agency, in its September 18, 1998 decision, compared their positions to the classification standards for Border Patrol Agent, GS-1896, and Paralegal Specialist, GS-950. As the DOJ decision explains, no grade level criteria are provided in the General Inspection, Investigation and Compliance Series, GS-1801. The agency classifier selected the GS-1896 and GS-950 classification standards for cross series comparison. Chapter 5 of the *Introduction to the Position Classification Standards* instructs classifiers to use standards for related kinds of work to evaluate positions for which no directly applicable grade level criteria have been published.

Position information

The appellants are assigned to [their activity] under the direction of the Assistant Officer-in-Charge, a Supervisory Detention and Deportation Officer, GS-1801-13. There are five immigration agents and one criminal investigator in the [appellant's activity]. As previously noted, the appellants are assigned to work exclusively on IRP cases. Because the position description is not completely descriptive of IRP duties, the Officer-in-Charge provided a written statement redescribing these duties.

[The] Immigration Agents stationed at [the appellants' activity] spend 100 percent of their time conducting a Federal IRP program. This program is designed to research, identify, and document removable aliens within the Bureau of Prisons system. These aliens are designated for relocation to the Federal Correctional Institution or the Federal Detention Center in [geographic location] for the IRP process. The agents are responsible for identifying the aliens and obtaining documentation of removability. The agents personally interview sentenced aliens, take fingerprints and photographs, conduct sworn statements and analyze the evidence to obtain the true facts of each case. They prepare charging documents in a manner that will meet with the approval of an Assistant District Counsel. They serve the alien with official documents and process the alien for request of a travel document. They oversee the alien's initial entry in DACS [an automated data base]. The agents must process aliens for removal expeditiously to assure case completion prior to the alien's release from Federal custody.

The agents must routinely make difficult determinations of alienage, immigration status, and removability. The agents must be knowledgeable of the Immigration and Nationality Act, Code of Federal Regulations, Operations Instructions, and Service manuals and directives. They must have complete comprehension of District and Regional instructions, and titles 8, 18, and 21 of the United States Code. They continually learn and apply the precedents of the Federal Courts and the Board of Immigration Appeals. The agents must frequently adapt to changes in the Immigration law, as well as their interpretation by the courts. The agents must maintain an awareness of the political and economic conditions

of the aliens' native countries to assess the eligibility of relief from removal. The agents must be proficient in communicating in the Spanish language.

The agents respond to a variety of inquiries from Federal, State, and local governments, private citizens, members of Congress, and legal representatives of the aliens. These inquiries concern the IRP process as well as issues within an individual case.

During the audit, the appellants described their duties and gave examples of cases in their individual dockets. The [appellant's activity] handled all Federal IRP work for INS nationwide until about two years ago when six more sites were activated. When [the appellants' activity] was the only IRP site, it was responsible for issuing detainers on all Federally incarcerated felons. In June 1999, its area of geographic responsibility was reduced to prisons in [six sites]. However, because of the large number of detainers the [appellant's activity] issued in the past, it still receives inmates from outside this area.

Because of its acknowledged IRP expertise, [the appellants' activity] gets more complex cases and a higher volume than other IRP sites. In FY 1999, the appellants cleared 1,618 cases, representing an average of 323 cases per agent. At least one-third of the subjects the appellants investigate are uncooperative. Often, these are felons who have reentered the country after prior removal or who claim to be lawful permanent residents entitled to certain protections. Some subjects claim derivative citizenship, forcing delays in judgments while extensive research is required to verify or disprove the claim. Investigations include locating and examining records and files, interviewing inmate aliens and family members, contacting Consular personnel to obtain identity verifications, investigating fraudulent identities where aliens have used aliases or assumed another person's identity, and reviewing data from INS, Bureau of Prisons, and the Federal Bureau of Investigation's information systems to establish identity, alienage, and removability. Regardless of the type of case, when subjects are uncooperative, claim to be legal permanent residents, or seek relief that bars removal (such as political asylum), the facts of alienage may not be straightforward and further investigation may be required.

Using their knowledge of the criminal code, the appellants determine whether inmate aliens are considered "aggravated felons" for INS purposes, making them eligible for expedited administrative removal with no right to a hearing. Cases involving legal permanent residents require careful investigation to support charges that will be brought before an INS judge, the Board of Immigration Appeals, and possibly the courts. The appellants work independently to prepare thorough, legally sufficient charging documentation so that they can present the strongest case for submission to Federal attorneys. The adequacy of their charging documentation is crucial because it forms the Government's basis for deportation of the alien. On occasion, some appellants have been called to testify before the Immigration judge concerning the authenticity of documents and to answer questions about sworn statements.

Two days a week, the appellants are admitted to the Federal Correctional Institution at [the appellants' activity] to take sworn statements from inmate aliens. The appellants carry laptop

computers and 10 to 12 case files into a prison housing unit where they conduct interviews. The appellants have to exercise extreme care because they are inside a unit with 300 inmates and only two correctional officers. Gaining access to the housing unit requires walking one-quarter to one-half mile without shelter inside the prison compound.

The appellants respond to a variety of contacts from U.S. and INS attorneys, prison staff, members of Congress or their staff, legal representatives of aliens, private citizens, family members of aliens, and embassy representatives. These contacts either supply information requested by the appellants, discuss the status of an inmate alien's case, or request information about applicable INS laws. The appellants are required to maintain firearm proficiency.

Series, title, and standard determination

We agree with the agency's assignment of the appellants' positions to the General Inspection, Investigation, and Compliance Series, GS-1801. Positions in 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 require actions such as 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 investigative techniques including the writing of reports that substantiate findings and serve as a basis for administrative or legal action. Investigations require evaluative judgment based on application of statutory or regulatory provisions and administrative procedures to varied situations that arise in the course of an assignment. Programs range from strict enforcement by arrest and prosecution of violators to obtaining voluntary compliance by persuasion.

The appellants research, identify, and document removable aliens within the Bureau of Prisons system. They personally interview sentenced aliens, take fingerprints and photographs, conduct sworn statements, and analyze the evidence to obtain the true facts of each case. They prepare charging documents in a manner that will meet with the approval of an Assistant District Counsel. They must process aliens for removal expeditiously to assure case completion prior to the alien's release from Federal custody. This work requires knowledge and application of the basic investigative methods described in the GS-1801 standard.

As previously mentioned, the GS-1801 Position Classification Standard does not include grade level criteria. The standard explains that positions classified to this series are to be evaluated by reference to position classification standards of related kinds of work. The appellants' positions, therefore, must be classified by reference to standards that are as similar as possible to the subject 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.

The Grade Evaluation Guide for Compliance Work, dated July 1999, covers positions that involve investigations to determine compliance with 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 this Guide are directly applicable to a broad range of investigation and compliance work and have been used to evaluate the grade of the appellants' positions.

We have also referred to the Border Patrol Agent, GS-1896, position classification standard, dated July 1999, because these positions require knowledge and understanding of the statutes, regulations, instructions, and precedent decisions pertaining to the enforcement of the immigration and nationality laws and the ability to effectively use basic investigative procedures to enforce them. Border Patrol Agents also form judgments on whether violation of immigration laws has occurred, whether the person involved is amenable to criminal or administrative proceedings, alienage or citizenship of the person detained, removability of the alien detained, and admissibility and significance of evidence collected. The GS-1896 standard, therefore, provides criteria for assessing the subject matter demands of the appealed positions.

The appellants do not espouse any particular title for their positions, and OPM has no prescribed titles for positions in the General Inspection, Investigation, and Compliance Series, GS-1801. As such, the agency has the discretion to determine the title of the position consistent with guidance in the *Introduction to the Position Classification Standards*.

Grade determination

Both the Grade Evaluation Guide for Compliance Work (the Guide) and the GS-1896 Border Patrol Agent standard are written in Factor Evaluation System (FES) format. FES places positions in grades by comparing their duties and responsibilities with nine grade-influencing factors, each of which is evaluated separately and assigned a point value consistent with factor-level descriptions. In order for a duty or responsibility to warrant a given point value, it must be fully equivalent to the overall intent of the selected description. If the responsibility fails to meet a particular factor-level description in any significant aspect, the lower point value must be assigned. When all the factors and comparable benchmarks have been evaluated, the total points are converted to a grade by using the standard's grade conversion table. The following is a factor-by-factor analysis of the appealed work using the Guide for Compliance Work and the GS-1896 standard.

Factor 1, Knowledge required by the position

This factor measures the nature and extent of information or facts that the worker must understand in order 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 in the Guide requires knowledge of the basic provisions of the laws and regulations enforced by the compliance organization, 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 documents or statements of witnesses. These knowledges, skills, and abilities are used to complete investigative assignments where legal coverage and issues are clear cut either on their face or by reference to precedent cases that are directly applicable. 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 standard requires an intensive practical knowledge of the laws, concepts, and operational practices to independently perform the full range of duties typically encountered in the enforcement of immigration and nationality laws and apprehension of violators. Performance at this level requires sound practical knowledge of immigration and nationality law precedents and court decisions and INS instructions and regulations concerning nationality and citizenship, illegal entry, fraud and conspiracy, rights of aliens, and the protection and recording of evidence. Skill is required also in the preparation of reports, other written technical material, evidence, testimony, and information about illegal activities and practices encountered in daily activities. Knowledge of techniques for identifying and categorizing fraudulent documents and expertise in methods such as interrogation, search, seizure, arrest, and self-defense are characteristic of performance at this level.

In addition to the knowledges and skills described in the Guide at Level 1-6, Level 1-7 requires a thorough knowledge of the laws and regulations of the compliance program, including an up-to-date knowledge of a significant body of court and administrative decisions that help define how to apply the law and regulations to case situations. 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. These knowledges and abilities are used to conduct investigations or reviews where significant difficulties are encountered. For example, the work requires analyzing a complex set of policies, practices, and operations involving 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 standard requires 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, and illegal entry. Skill is needed in consolidating ostensibly disparate facts, events, and other types of intelligence material and developing information, guidelines, and techniques from it to apply in detection, apprehension, and prosecution of persons attempting to violate immigration and nationality laws.

The appellants' work compares favorably with and is fully equivalent to both references at Level 1-6. The appellants spend 100 percent of their time conducting a Federal IRP program. They personally interview sentenced aliens, take fingerprints and photographs, conduct sworn statements and analyze the evidence to obtain the true facts of each case. They must routinely make difficult determinations of alienage, immigration status, and removability. They must also be knowledgeable of the Immigration and Nationality Act, various codes and operating instructions, as well as precedential decisions of the Federal Courts and the Board of Immigration Appeals. The appellants are responsible for preparing thorough, legally sufficient documentation so that trial attorneys are provided the strongest possible case for prosecution. Regardless of the type of case, when subjects are uncooperative, claim to be legal permanent residents, or seek relief that bars removal, such as political asylum, the facts of alienage may not be straightforward and may require more investigation.

The appellants' work is not fully equivalent to the overall intent of the Level 1-7 descriptions in the Guide and the GS-1896 standard. Their work does not require an up-to-date knowledge of a *significant body* of court and administrative decisions to apply to case situations. While proof of alienage may be difficult to establish in some instances, cases typically involve aliens who are removable because they were convicted of criminal offenses, information on which is accessible, complete, and accurate. The appellants' work does not require them to analyze a complex set of practices and operations involving multibranch organizations or to develop guidelines and techniques for others to apply in detection, apprehension, and prosecution of persons who attempt to violate immigration and nationality laws.

This factor is evaluated at Level 1-6 (950 points).

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 upon 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.

According to Level 2-3 of the Guide, the employee independently plans investigations including the approach to take, issues to review, and questions to ask. The employee conducts investigations by interviewing witnesses and getting documentary evidence, determining its relevance and reliability, analyzing findings, and drawing conclusions. The supervisor and the employee jointly develop solutions to unusually difficult or sensitive situations. Work products are reviewed to ensure appropriate factors have been considered, sufficient information or evidence has been gathered to support conclusions, and pertinent regulations and precedents have been applied.

At Level 2-3 in the GS-1896 standard, the agent plans and carries out assignments independently in accordance with established operating procedures and instructions. In carrying out day-to-day assignments, the agent makes independent on-the-spot decisions based on available evidence because the supervisor is generally not available for advice and assistance. Supervisory review focuses on general adequacy, soundness of decisions made, and conformity to established procedures and instructions.

At Level 2-4 of the Guide, the employee independently plans and carries out assignments which typically include resolving difficult or sensitive situations. This includes deciding whether to limit or expand the investigation to other organizational levels or entities. The employee independently determines the course of the investigation and reaches conclusions. Work products are typically submitted to the supervisor as recommendations and the employee's judgment is accepted as technically sound.

At Level 2-4 in the GS-1896 standard, agents plan and carry out work independently, establish priorities, set deadlines, and determine the scope and intensity of their effort, the limitations posed by statute and precedent, and constraints imposed by time, area, and alien activity. Agents use their own initiative to resolve problems, even those that involve deviations from established procedures. Completed work products, other than unusual or controversial findings, are accepted as technically sound.

The appellants' positions fully meet the Level 2-3 definition of the Guide and the GS-1896 standard. They operate very independently and need little or no supervision in deciding what investigatory actions are appropriate for their assigned cases. The supervisor and INS attorneys are available to assist them in jointly developing solutions to unusually difficult or sensitive situations. The supervisor reviews all cases before they are forwarded to an INS attorney to determine legal sufficiency. The supervisor ensures that charging documents support removability, for example, correctly applying the law and properly depicting the crime for which the alien was incarcerated.

Level 2-4 is not met. Assignments do not typically include resolution of difficult or sensitive situations, and the appellants are not at liberty to decide whether to expand an investigation to other organizational levels or entities. Although the appellants work independently during the

investigation and development of the case, the supervisor ensures that the final case is technically correct.

This factor is evaluated at Level 2-3 (275 points).

Factor 3, Guidelines

This factor covers the nature of guidelines and the judgment needed to apply them. Jobs in different occupations vary in the specificity, applicability, and availability of the guides used to perform assignments.

At Level 3-3 of the Guide, guidelines covering both the legal aspects and investigative process of the work are available. The employee must use judgment to interpret and adapt guidelines to specific cases and problems. Where guidelines outline alternative methods of gathering evidence, the choice of a specific tactic depends on the employee's assessment of the attitudes and likely behavior of subjects or witnesses.

In the GS-1896 standard, Level 3-3 is the highest level for this factor. While guidelines such as various laws, interpretations, precedent court decisions, and rules of evidence are always available, the agent must frequently apply standard practices and techniques to new situations, adapting and modifying them whenever it becomes necessary.

At Level 3-4 of the Guide, assignments are covered by legal guidelines that are generally applicable. However, assignments involve complex, sensitive, or intricate issues or problems for which established investigative approaches are of limited use. Typically, the employee must use initiative and resourcefulness to deviate from established methods to treat unusual issues or problems or develop new guidelines where none exist.

The appellants' work fully meets the intent of Level 3-3 of the Guide and the GS-1896 standard. To perform their duties, the appellants refer to the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, the Federal Criminal Code and Rules, precedent court decisions and rulings, and INS handbooks, manuals, and instructions. The appellants must adapt to changes in immigration laws as well as to interpretations by the courts and use considerable judgment in applying them to their cases.

Level 3-4 of the Guide is not met. The appellants' assignments are not so complex that established investigative approaches are of limited use. They do not develop new guidelines in order to handle their assignments.

This factor is evaluated at Level 3-3 (275 points).

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 of the Guide, work involves a range of investigative functions on assigned cases from planning through factfinding to reporting results. Assignments involve conventional problems which can be resolved through analysis of facts, the selection and application of appropriate legal and regulatory guidelines, and the application of a variety of standard investigative techniques and procedures. Typically, assignments involve investigations that focus on one or a few compliance issues and are based on applications of established legal and regulatory precedents. There may be some disputed facts or obstacles that impede the development of facts, but conclusive information is accessible when a variety of standard factfinding techniques are used. The employee decides when sufficient information has been gathered to substantiate findings so that they can be linked to elements of proof to demonstrate compliance or noncompliance with particular legal or regulatory provisions.

At Level 4-3 in the GS-1896 standard, the agent uses established procedures and methods to apprehend, interrogate, and process illegal aliens. Assignments are complicated by changing conditions or situations such as the nature of the illegal activity encountered, the degree of difficulty involved in establishing facts, and the need to protect the suspect's civil rights. Requirements of individual assignments may require new interpretations and a different application of statutory authorities conferred by the Immigration and Nationality Act.

At Level 4-4 of the Guide, the work involves the full range of duties associated with a compliance program. Assignments typically involve a complicating situation such as having to focus on the activities of organizations with several branches or subsidiaries; having more than one reasonable interpretation of legal guidance which leads to alternate conclusions drawn from the facts; having serious obstacles hinder progress in establishing facts, interpreting evidence, and achieving compliance. For example, establishing facts may be complicated because important records have been hidden, destroyed, or falsified; witnesses are uncooperative; various facts are in conflict; or pertinent facts must be identified from among especially voluminous data. These conditions cast some doubt on which of several possible approaches to take to resolve the compliance issues.

At Level 4-4 of the GS-1896 standard, the agent's work is usually performed in connection with anti-smuggling or intelligence activities. The agent is confronted by large numbers of disparate operating situations which fit no common pattern and are not susceptible to solution by a single method. Work at this level requires the agent to use and control informants and conduct subtle, probing interrogations.

The appellants' work fully meets Level 4-3 of the Guide and the GS-1896 standard. The appellants research, identify, and document removable aliens within the Bureau of Prisons system.

They personally interview sentenced aliens, take fingerprints and photographs, conduct sworn statements, and analyze the evidence to obtain the true facts of each case. Judgment is required to select the appropriate legal and regulatory guidelines to apply. Assignments are sometimes complicated by changing conditions or situations such as the nature of the criminal conviction encountered, the degree of difficulty involved in establishing facts, and the need to protect the suspect's civil rights.

The appellants do not perform work that is fully characteristic of the difficulty described at Level 4-4 of the Guide or the GS-1896 standard. Although the appellants' cases vary in complexity, determining what to examine and who to interview leads to conclusive information. Difficulty in establishing inmate alien identities and alienage usually occurs when illegal reentry aliens are uncooperative and refuse to provide information about their true identity or previously used aliases, assume fraudulent identities, or claim unsubstantiated derivative citizenship. Although many of the inmate aliens seen by the appellants may be uncooperative, few cause serious obstacles (such as multiple aliases or fraudulent identification) which hinder the appellants' ability to establish facts. When these instances occur, the appellants' research efforts are made more difficult because of the lack of a centralized repository within INS for historical records of deported aliens. Although the appellants must determine which INS office would most likely have the records, this degree of difficulty in establishing facts is fully within the intent of Level 4-3.

This factor is evaluated at Level 4-3 (150 points).

Factor 5, Scope and Effect

This factor covers the relationship between the purpose, breadth, and depth of the assignment and its effect both within and outside the organization.

At Level 5-3 in the Guide, the work involves handling a variety of conventional issues for which there are known and accepted solutions contained in a wide range of established compliance regulations, practices, and procedures. This includes such activities as interviewing witnesses, analyzing pertinent records, reviewing laws and regulations to identify specific enforcement provisions that apply to the case, and presenting findings to obtain compliance. The impact of the employee's decisions is usually on an individual or a small number of individuals.

At Level 5-3 in the GS-1896 standard, the agent's actions prevent unauthorized persons from entering the United States and effect the apprehension and expulsion of aliens who are in an illegal status. Effectively accomplishing assigned duties has considerable impact on maintaining employment opportunities for U.S. citizens and legal resident aliens and on the operations of other INS enforcement units.

At Level 5-4 in the Guide, the work involves investigating or analyzing a variety of unusual conditions or problems or, at a staff level, providing authoritative interpretations of guidance and regulations issued by the compliance program, or planning and conducting program evaluations

of subordinate activities throughout a multistate region. The work may affect the eligibility of officials to exercise authority throughout a sizable organization, or it may aid the policy-making activity of the compliance program.

At Level 5-4 in the GS-1896 standard, the agent's work involves uncovering suspected conspiracies and collecting and refining information in cooperation with officials of other countries. Management uses information developed by the agent to shift areas of surveillance and alter sector complements.

The appellants' work fully meets Level 5-3 as described in both the Guide and the GS-1896 standard because their cases typically involve determining alienage and removability through such activities as interviewing inmate aliens, researching and analyzing pertinent records to determine criminal convictions, reviewing laws and regulations to identify specific enforcement provisions that apply to the case, and presenting charging documents to obtain removal. Their work affects the expulsion of convicted felons who are in an illegal status in the United States. As described in the GS-1896 standard, the removal of illegal aliens has considerable impact on the operations of other INS enforcement units and on U.S. citizenry by reducing the ranks of residents who are convicted felons.

The appellants' work does not fully meet the Level 5-4 descriptions. The appellants do not investigate a variety of unusual conditions, operate at a staff level, or conduct program evaluations throughout a multistate region. They are not involved in uncovering conspiracies.

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. Points are credited above the lowest level 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 agencies, representatives of State and local governments, personnel from other law enforcement 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 station.

At Level 6-4 in the GS-1896 standard, personal contacts are with high ranking officials from outside INS 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 community.

The appellants' contacts are comparable to Level 6-3. Their contacts are with INS and U.S. attorneys, staff of congresspersons, embassy staff, Federal Probation Officers, inmate aliens and family members, Bureau of Prison officials and prison staff, and personnel from other law enforcement agencies such as the FBI.

Level 6-4 is not met because the appellants do not have frequent, regular, and recurring contacts with any of the individuals described in Level 6-4.

The Guide combines personal contacts and the purpose of those contacts and addresses them in a matrix. This will be discussed in total with Factor 7 and points will be allocated accordingly.

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 in Factor 6.

At Level 7-3, the highest level described in the GS-1896 standard, 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 the agents to be extremely skilled 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 appellants' contacts compare to Level 7-3 because they interview inmate aliens, including illegal aliens, who may be uncooperative and evasive. They also contact law enforcement personnel, DOJ and INS attorneys, and embassy staff to obtain information about the true identity and immigration history of inmate aliens.

Using the Guide's matrix for the *purpose* and *persons* contacted, we found the *purpose* of the appellants' contacts equates 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 appellants' contacts because it describes the *purpose* as to negotiate and resolve major, highly controversial issues or to justify and defend decisions on such issues.

The highest level described in the Guide's matrix for *persons contacted* is Level "3." At this level, contacts are with individuals or groups from outside the employing agency where the purpose of each contact is different. In each case, the 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 *persons contacted* by the appellants are comparable to the Level "3" description in the Guide's matrix.

The final combination in the Guide's matrix is 3c which equates to 180 points. Using the GS-1896 standard, Level 6-3 and Level 7-3 also total 180 points.

Factors 6 and 7 are evaluated at 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, stooping). To some extent, the frequency or intensity of physical exertion must also be considered. For example, a job requiring prolonged standing involves more physical exertion than a job requiring intermittent standing.

At Level 8-2, the highest level described in the Guide, assignments regularly require visits to construction, industrial, or other outdoor sites, and movement is over rough and uneven surfaces to reach interviewees and observe operations. At Level 8-2 of the GS-1896 standard, the work requires frequent and recurring surveillance in which there is a considerable amount of walking, stooping, bending, and climbing. The agent also may be required to lift and carry moderately heavy objects occasionally.

At Level 8-3 of the GS-1896 standard, the work requires protracted periods of strenuous exertion such as long periods of standing, walking, and running over rough, uneven, or rocky terrain or climbing various heights.

The physical demands of the appellants' work is comparable to Level 8-2. It does not meet Level 8-3, as described in the GS-1896 standard. Twice a week the appellants have to carry laptop computers and inmate alien files to the prison, walking approximately one-quarter to one-half mile over somewhat uneven surfaces to access the inmates' housing unit. Although the appellants must maintain firearm proficiency, they are not, on a regular and recurring basis, required to defend themselves or others against physical attack.

This factor is evaluated at Level 8-2 (20 points).

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, the highest level described in the Guide, assignments regularly involve 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 standard, the work involves frequent exposure to moderate discomfort, unpleasant working situations, exposure to high noise levels, or adverse weather, such as hot, cold, wet, and dry conditions. Safety or security precautions sometimes are required, and the agent may have to use appropriate clothing or gear.

At Level 9-3 of the GS-1896 standard, the 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. Assignments are subject to change without advance notice and, in some instances, with very little lead time.

The appellants' work environment fully meets Level 9-2. It does not meet Level 9-3. Their work involves frequent exposure to unpleasant working situations and adverse weather conditions. When visiting the prison facility to take sworn statements from inmate aliens, they must carry moderately heavy files and computers, walk a distance on uneven surfaces, and perform their duties inside the housing unit of 300 convicted felons, some of whom are emotionally unstable and/or have committed acts of violence. Although the appellants may work in an environment where, at times, an element of danger may exist, their work environment does not meet the kind of environmentally stressful situations envisioned at Level 9-3.

This factor is evaluated at Level 9-2 (20 points).

Summary

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		2,020

A total of 2,020 points falls within the GS-9 range of 1,855 to 2,100 points on the Grade Conversion Table of the Guide and the GS-1896 classification standard. Crediting Level 3c in applying the Guide results in the same point values for Factors 6 and 7, as previously discussed.

Decision

The appellants' positions are properly classified as GS-1801-09 and titled at the agency's discretion.