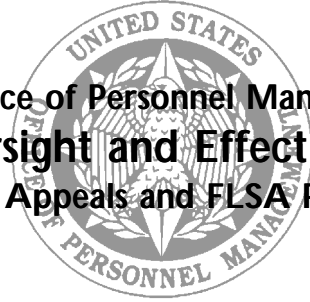


U.S. Office of Personnel Management  
Office of Merit Systems Oversight and Effectiveness  
Classification Appeals and FLSA Programs



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]

**Agency classification:** Supervisory Immigration Agent  
(Enforcement), GS-1801-12

**Organization:** [appellant's immediate organization]  
Immigration and Naturalization Service  
Department of Justice  
[city, state]

**OPM decision:** GS-1801-12  
title at agency discretion

**OPM decision number:** C-1801-12-05

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

6/7/99  
Date

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

### **Decision sent to:**

[appellant's name and address]

[servicing personnel office]  
Immigration and Naturalization Service  
U.S. Department of Justice  
[address, city, state]

Chief, Classification and Compensation Policy  
Immigration and Naturalization Service  
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  
800 K Street, NW., Room 5000  
Washington, DC 20536

Director of Personnel  
U.S. Department of Justice  
JMD Personnel Staff  
1331 Pennsylvania Avenue, NW., Suite 1110  
Washington, DC 20530

## Introduction

The Dallas Oversight Division of the U.S. Office of Personnel Management (OPM) received a classification appeal on November 2, 1998, from [the appellant], an employee assigned to the Immigration and Naturalization Service's (I&NS) [appellant's immediate organization] located in [city, state]. That facility is under the jurisdiction of the I&NS District Office in [city, state]. At the time the appeal was filed, the appellant's position was classified as a Supervisory Immigration Agent (Enforcement), GS-1801-11. The appellant believes his subordinate agents' positions should be classified as Criminal Investigators, GS-1811-12, and that his position should be classified as GS-1811-13.

The appeal has been accepted and decided under section 5112 of title 5, United States Code. To help decide the appeal, an Oversight Division representative conducted a telephone audit that included interviews with the appellant and his first- and second-level supervisors. In reaching our decision, we have given careful consideration to all the information contained in the written record, including the official position description, [number], as well as that obtained in our telephone interviews.

In response to our request for information, the agency reviewed the appellant's position and the subordinate Immigration Agent (Enforcement) (IEA) positions. The IEA positions were established in 1992 to perform a variety of enforcement and compliance functions associated with employer sanctions, criminal aliens, and the apprehension of absconders from deportation proceedings. Much of this work had previously been performed by Criminal Investigators. These duties were defined in a standardized position description that indicated assignment to the District Offices. As immigration laws changed, the Institutional Hearing Program (IHP) was revised and the duty station was established at [city, state], in 1995 to work with [a specific state's prison system]. As a result of a recent study conducted by [a specific] District, the Immigration Agents assigned to the IHP have been limited to performing the first duty of that position description, i.e., identifying those in criminal institutions who have violated immigration laws and are subject to deportation. This is the primary mission of the [appellant's] facility. The employer sanctions and apprehension work has been removed from employees of the IHP facility and is being performed at the District Office level. If these duties are to be removed on a permanent basis, the position description must be revised to properly reflect the actual assignments performed.

The I&NS Classification and Compensation Policy staff determined the subordinate positions were correctly classified at the GS-1801-09 level. They did find the appellant's position was now classifiable at the GS-12 level based on the April 1998 revision of the General Schedule Supervisory Guide, Factor 3, and organizational changes that affected Factor 2. A promotion for the appellant was effected in January 1999. The appeal was continued because the appellant's issue of series and grade level was not resolved. The appellant is currently on detail to [a specific] District Office but is expected to return to the [appellant's] duty location.

## **Position information**

The appellant is responsible for managing the process of identifying, interviewing, and processing criminal aliens within the state prison system. He provides first-level supervision to a staff of 10 Immigration Agents (Enforcement), GS-1801 (6 GS-9's, 2 GS-7's, and 2 GS-5's); 4 Investigative Assistants, GS-1802-7; and 1 Investigations Clerk, GS-1802-5. The appellant's supervisor has certified to the accuracy of the position description of record. The appellant believes the position description is inaccurate because it has not properly taken into account the recent changes in law relating to removal of criminal aliens. He believes these changes require a higher level of knowledge of the Immigration Agents to perform their duties. We find the appellant's position description describes his duties and responsibilities as a supervisor and is adequate for classification purposes.

## **Series determination**

As previously indicated, the primary purpose of the unit's work is identifying, interviewing, and processing foreign born criminals housed within the [specific state's] Department of Criminal Justice facilities to determine if they are subject to deportation at the conclusion of their sentences. The IEA must determine the inmate's immigration status, if the crime for which the inmate was convicted is of sufficient nature so that the inmate can be removed under current immigration laws, and if there are any other aspects of immigration and nationality laws that may have a bearing on the individual's case. The IEA will make a determination of the inmate's deportability and prepare the appropriate documents for review by higher level officials. Aliens may appeal the I&NS's action through various levels, including Immigration Judges, the Board of Immigration Appeals, and the courts. The IEA must ensure that proper procedures are followed and that violations of criminal and immigration laws are fully cited and documented.

This work requires basic knowledge of the immigration and nationality laws and the procedures, policies, and precedents used to enforce them; I&NS regulations and instructions pertaining to criminal aliens; and basic law enforcement methods for reviewing records, interviewing, and analyzing information from records and/or statements from various persons pertaining to the immigration status of an individual inmate.

The appellant believes that his work and that of his subordinates should be classified in the GS-1811 Criminal Investigator Series. That series includes positions involved in planning and conducting investigations relating to alleged or suspected violations of criminal laws. These positions require primarily a knowledge of investigative techniques and a knowledge of the laws of evidence, the rules of criminal procedure, and precedent court decisions concerning admissibility of evidence, constitutional rights, search and seizure, and related issues. They require 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 GS-1810/1811 Grade Level Guides for Classifying Investigator Positions indicates 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 knowledges, skills, and abilities described in this standard. Typically, the full range of these knowledges, 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. Other positions, both inside and out of law enforcement, require use of some investigative techniques but not the full range required for allocation to the GS-1811 series. This is supported by the information provided in the classification standard for the GS-1896 Border Patrol Series. While there are requirements for use of some investigative techniques such as interrogation and document review, most assignments do not involve the protracted investigative work typical of the GS-1811 series. We find this is true for the work of the IEA positions supervised by the appellant and allocation to the GS-1811 series is not appropriate.

The GS-1801 General Inspection, Investigation, and Compliance Series covers positions involving administering, coordinating, supervising, or performing 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 Investigative Group, GS-1800, or in another occupational group. The work performed by the Immigration Agents in the appellant's organization has some aspects of the GS-1896 Border Patrol Series and aspects of the GS-1816 Immigration Inspection Series but is not truly appropriate for either series. We concur with the agency's determination that the work of the subordinate IEA positions as well as that of the appellant is most appropriately allocated to the GS-1801 series.

### **Title determination**

There are no prescribed titles for positions in the GS-1801 series. Therefore, the agency may construct a title consistent with the guidance in the Introduction to the Position Classification Standards. The Supervisory designation is appropriate.

### **Grade determination**

The appellant's position is supervisory and is properly graded based on those supervisory responsibilities. The General Schedule Supervisory Guide provides evaluation criteria for determining the grade level of supervisory positions in grades GS-5 through GS-15. This guide uses a factor-point method that assesses six factors: program scope and effect, organizational setting, supervisory and managerial authority exercised, personal contacts, difficulty of typical work directed, and other conditions. The appellant's duties and responsibilities meet the criteria for coverage by this guide.

### *Factor 1 - Program scope and effect*

- a. *Scope* addresses the general complexity and breadth of the program directed and the work directed, the products produced, or the services delivered. The geographic and organizational coverage of the program within the agency structure is included under scope.
- b. *Effect* addresses the impact of the work, the products, and/or the programs described under *scope* on the mission and programs of the customer, the activity, other activities in or out of government, the agency, other agencies, the general public, or others.

Level 1-2a describes work that is administrative, technical, complex clerical, or comparable in nature. The functions, activities, or services provided have limited geographic coverage and support most of the activities comprising a typical agency field office, an area office, a small to medium military installation, or comparable activities with agency program segments.

At level 1-2b, the services support and significantly affect installation level, area office level, or field office operations and objectives, or comparable program segments; or provide services to a moderate, local, or limited population of clients or users comparable to a major portion of a small city or rural area.

Illustrations at the 1-2 level include a field office that provides a portion of its services to the general public, often on a case basis to a small population of clients. The size of the population serviced may be the equivalent of the citizens or businesses in a portion of a small city. That population may be concentrated or spread over a wider geographic area.

Level 1-3a discusses directing a program segment that performs technical, administrative, protective, investigative, or professional work. The program segment and the work directed typically have coverage which encompasses a major metropolitan area, a State, or a small region of several States.

At level 1-3b, the activities, functions, or services accomplished directly and significantly impact a wide range of agency activities, the work of other agencies, the operations of outside interests (e.g., a segment of a regulated industry), or the general public. At the field activity level (involving large, complex, multimission organizations and/or very large serviced populations comparable to the following examples), the work directly involves or substantially impacts the provision of essential support operations to numerous, varied, and complex technical, professional, and administrative functions.

One illustration provided at the 1-3 level describes furnishing a significant portion of the agency's line program to a moderate-sized population of clients. The size of the population served is the equivalent of several rural counties, a small city, or a portion of a larger metropolitan area.

The work directed by the appellant involves the administration and enforcement of Immigration and Nationality laws for the criminal aliens under the custody of [a specific state's] Department of Criminal Justice [abbreviation of the state organization]. [The specific state's department of criminal justice] notifies I&NS of all new foreign born inmates received into the system. I&NS staff are then responsible for checking records to determine the inmates' immigration status and scheduling an interview. Decisions are made as to the appropriateness of initiating deportation proceedings and the means to be used so that all paperwork is completed prior to the completion of the inmates' sentences. The appellant reviews the removal documents prepared by subordinate staff. Staff attorneys review documents for legal sufficiency prior to signature by the IHP director. The supervisor indicates the unit serves approximately 9,000 inmates of the total [specific state's department of criminal justice] population of 145,000. A portion of these individuals will be served each year. The record indicates that in 1998, 4,294 offenders were interviewed. This work is most comparable to the 1-2 level in scope. This program involves only a portion of the agency's mission, one function of the District Office mission. While the [specific state's department of criminal justice] system includes the entire state of [state], the population of clients served in any given year does not approach the intent of level 1-3 for either *scope* or *effect*. Level 1-2 is credited for 350 points.

### *Factor 2 - Organizational setting*

This factor considers the organizational situation of the position in relation to higher levels of management.

Level 2-2 is credited when a position is accountable to a position that is one reporting below the first SES, flag or general officer or equivalent, or higher level position in the direct supervisory chain. The appellant reports to the IHP Director at [city], a GS-1801-14 position. The IHP Director reports to the Deputy District Director, a full deputy to the District Director, which is an SES position. Level 2-2 and 250 points are credited.

### *Factor 3 - Supervisory and managerial authority exercised*

This factor covers the delegated supervisory and managerial authorities which are exercised on a recurring basis. To be credited with a level under this factor, a position must meet the authorities and responsibilities to the extent described for the specific level. Where authority is duplicated or not significantly differentiated among several organizational levels, a factor level may apply to positions at more than one organizational level.

Level 3-2 requires that the position must meet one of the paragraphs: a, b, or c. Paragraph a discusses production-oriented work, and b describes situations where work is contracted out. Neither a nor b is appropriate for the appellant's position. At level 3-2c, the position must have responsibility for carrying out at least three of the first four, and a total of six or more of the following 10 authorities and responsibilities:

1. Plan work to be accomplished by subordinates, set and adjust short-term priorities, and prepare schedules for completion of work;
2. Assign work to subordinates based on priorities, selective consideration of the difficulty and requirements of assignments, and the capabilities of employees;
3. Evaluate work performance of subordinates;
4. Give advice, counsel, or instruction to employees on both work and administrative matters;
5. Interview candidates for positions in the unit; recommend appointment, promotion, or reassignment to such positions;
6. Hear and resolve complaints from employees, referring group grievances and more serious unresolved complaints to a higher level supervisor or manager;
7. Effect minor disciplinary measures, such as warnings and reprimands, recommending other action in more serious cases;
8. Identify developmental and training needs of employees, providing or arranging for needed development and training;
9. Find ways to improve production or increase the quality of the work directed;
10. Develop performance standards.

Based on the record and discussions with the appellant and his supervisor, the appellant is a first-level supervisor responsible for planning and assigning the daily work, approving sick and/or annual leave, interviewing applicants for positions and making recommendations to the supervisor, recommending training, resolving simple complaints and grievances at the first level, evaluating the performance of subordinate employees, and working with the supervisor to quantify generic performance standards to fit the IHP work situation. We find the appellant has delegated responsibility for the first six authorities and exercises only limited aspects of authorities eight and ten. Level 3-2 is met.

Level 3-3 envisions the delegation of greater and more diverse supervisory and management authorities used in supervising a substantially greater workload, requiring use of multiple subordinate supervisors, team leaders, group leaders, etc., to help the manager direct and coordinate the work of the organization. To be credited at the 3-3 level, paragraph a or b must be met. Paragraph a describes exercising delegated managerial authority for a series of long-range work plans and schedules, assuring implementation of goals and objectives by subordinate organizations, and working closely with high level program officials in development of overall goals and objectives for assigned functions or programs. In the appellant's case, the managerial



authority for determining overall goals and objectives is determined at a higher level in the agency. Level 3-3a is not appropriate for the appellant's position.

Paragraph b may be credited when the position exercises all or nearly all of the delegated supervisory authorities and responsibilities described at the 3-2c level and, in addition, at least 8 of 15 additional responsibilities. Our review of the appellant's position found only six of the 3-2 authorities are fully met. This does not meet the level for consideration of 3-3b. Factor 3 is creditable at level 3-2 for 450 points.

#### *Factor 4 - Personal contacts*

This is a two-part factor which assesses the nature and purpose of personal contacts related to supervisory and managerial responsibilities.

##### *Subfactor 4A - Nature of contacts*

This subfactor covers the organizational relationships, authority or influence level, setting, and difficulty of preparation associated with making personal contacts involved in supervisory and managerial work. To be credited, the level of contacts must contribute to the successful performance of the work, be a recurring requirement, have a demonstrable impact on the difficulty and responsibility of the position, and require direct contact.

Level 4A-2 describes frequent contacts with members of the business community or the general public; higher ranking managers, supervisors, and staff of program, administrative, and other work units and activities throughout the field activity, installation, or major organization level of the agency; representatives of local public interest groups; case workers in congressional district offices; technical or operating level employees of State and local governments; reporters for local or other limited media outlets reaching a small, general population. Contacts may be informal; occur in conferences and meetings; or take place through telephone, television, radio, or similar contact; and sometimes require nonroutine or special preparation.

Based on the information available, we find the appellant's contacts are both internal and external. Within the agency, contacts primarily include coordination with deportation staff at [the appellant's duty station] and the [appellant's specific] District and with other I&NS Districts, primarily to arrange transportation. Outside contacts include [the specific state's department of criminal justice] officials in arranging interviews, discussing procedures, and explaining the program; persons attending the warden's biweekly staff meetings; and contacts with law enforcement officials of other agencies. We find these contacts most comparable to the 4A-2 level.

The record indicates the appellant's position has no requirement for frequent contacts with high ranking managers and technical staff of major organizational levels, comparable personnel in other Federal agencies, key staff of public interest groups (usually in formal briefings) with significant

political influence or media coverage, journalists representing influential city or county newspapers or comparable radio or television coverage, or other contacts as described at level 4A-3 that occur under more formalized circumstances and require extensive preparation. Level 4A-2 is credited for 50 points.

*Subfactor 4B - Purpose of contacts*

Level 4B-2 indicates the purpose of contacts is to ensure that information provided is accurate and consistent; to plan and coordinate the work directed with that of others outside the subordinate organization; and/or to resolve differences of opinion among managers, supervisors, employees, contractors, or others.

The appellant's contacts are primarily to share information, coordinate work, resolve operating problems, and resolve differences. This is comparable to the 4B-2 level. The appellant is not charged with responsibility for justifying, defending, or negotiating on behalf of the organization in obtaining or committing resources and gaining compliance with established policies, regulations, or contracts, as typical of level 4B-3. Level 4B-2 is credited for 75 points.

*Factor 5 - Difficulty of work supervised*

This factor measures the difficulty and complexity of the basic work most typical of the organization directed, as well as other line, staff, or contracted work for which the supervisor has technical or oversight responsibility, either directly or through subordinate supervisors, team leaders, or others. This work must characterize the nature of the basic (mission oriented) nonsupervisory work performed and constitute 25 percent or more of the workload (not positions or employees) of the organization. The instructions indicate that trainee level positions be credited at the full performance level.

Of the nonsupervisory employees in the appellant's organization, 14 are determined to be performing the basic-mission oriented work of the unit. We have carefully reviewed the information provided and agree with the agency's determination that the IEA work is properly classified as GS-1801-09 at the full performance level. The majority of the organization's workload is at the GS-09 level. Therefore, this factor is credited at the 5-5 level for 650 points.

*Factor 6 - Other conditions*

This factor measures the extent to which various conditions contribute to the difficulty and complexity of carrying out supervisory duties, authorities, and responsibilities. Conditions affecting work for which the supervisor is responsible may be considered if they increase the difficulty of carrying out assigned supervisory or managerial duties and authorities.

Factor level 6-3 indicates that supervision and oversight requires coordination, integration, or consolidation of administrative, technical, or complex technician or other support work

comparable to GS-09 or 10. Directing work at this level (cases, reports, studies, regulations, advice to clients, etc.) requires consolidation or coordination similar to that described at level 6-2a but over higher level work. This level may also be met when the work directed is analytical, interpretive, judgmental, evaluative, or creative. Such work places significant demands on the supervisor to resolve conflicts and maintain compatibility of interpretation, judgment, logic, and policy application, because the basic facts, information, and circumstances often vary substantially; guidelines are incomplete or do not readily yield identical results; or differences in judgments, recommendations, interpretations, or decisions can have consequences or impact the work of other subordinates.

The appellant is responsible for reviewing and coordinating administrative work at the GS-09 level. Review is to assure consistency in interpretation and recommendations of the IEA's for removal of criminal aliens. The 6-4 level is not met as the appellant is not required to provide the more substantial coordination and integration required for work assignments at the GS-11 grade level, nor does his staff include subordinate supervisors directing GS-09 or GS-10 workloads. Level 6-3 is initially credited for 975 points.

The General Schedule Supervisory Guide (GSSG) provides that when this factor is credited at the 6-1, 6-2, or 6-3 levels, consideration may be given to 8 described special situations that may complicate the supervisory work. If 3 or more of these situations are met by the position, an additional level may be credited. These situations include variety of work, shift operations, fluctuating workload or constantly changing deadlines, physical dispersion, special staffing situations, impact of specialized programs, changing technology, and special hazard and safety conditions. The GSSG defines the situations and the level of difficulty needed to meet those situations.

The work supervised by the appellant is primarily of one kind, does not require at least two fully staffed shifts, and is not subject to the fluctuations in workforce or changing deadlines described in the GSSG. Subordinate staff is assigned to a single duty station. There are none of the special staffing program aspects, no impact of constantly changing technology, and no responsibilities for a significant workload above that credited in Factor 5.

Level 6-3 is credited for 975 points.

There is a total of 2800 points credited. Using the point to grade conversion chart contained in the GSSG, 2800 points fall with the point range for GS-12 (2755 - 3150).

## **Decision**

The position is properly classified to the GS-1801 General Inspection, Investigation, and Compliance Series at the GS-12 grade level. The title is at the agency's discretion but must include the Supervisory designation.