

OFFICE OF PERSONNEL MANAGEMENT
MERIT SYSTEMS OVERSIGHT AND EFFECTIVENESS
DALLAS OVERSIGHT DIVISION
CLASSIFICATION APPEAL DECISION

Under section 5112(b) of title 5, United States Code

Appellant: [appellant's name]

Position: Criminal Investigator, GS-1811-12
Position Number: SA00KS

Organization: U.S. Department of Justice
Immigration & Naturalization Service
[appellant's activity]

Decision: Criminal Investigator, GS-1811-12
(Appeal Denied)

OPM Decision Number: C-1811-12-02

Approved by:

/s/ Judith Frenzel for
Bonnie J. Brandon

10/21/96
Date

Copy of decision sent to:

[appellant's name and address]

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INTRODUCTION

The appealed position is presently assigned to the [the appellant's activity], Immigration and Naturalization Service (INS) and is currently classified as Criminal Investigator, GS-1811-12. The appellant requests that his position be classified as Criminal Investigator, GS-1811-13. He filed an appeal with this office under the provisions of chapter 51 of title 5, United States Code (U.S.C.) This decision is the final administrative decision of the Government, subject to discretionary review only under the conditions and time limits specified in sections 511.605 and 511.613 of title 5, Code of Federal Regulations.

POSITION INFORMATION

The appellant is assigned to a standard region-wide position description for Criminal Investigator, GS-1811-12. He serves as a journeyman investigator with responsibility for initiating, conducting, and coordinating complex investigations that involve violations of laws enforced by the INS. Currently, the appellant is assigned to the Anti-Smuggling/Organized Crime Drug Enforcement Task Force (OCDETF) unit of the Investigations Branch. The majority of his time since being assigned to that unit has involved investigations related to OCDETF cases and cases related to aliens involved in terrorist activity in the United States. He has also been involved in case work related to anti-smuggling and fraud.

The appellant provided summaries including OCDETF, alien smuggling and terrorist cases indicative of additional duties and responsibilities that he believes accurately describes the full range of his position. At management's discretion, these duties can be added. However, the position description of record adequately describes the basic functions of the position and is accurate for classification purposes.

SERIES AND TITLE DETERMINATION

The principal duties of this position are to plan and conduct investigations relating to alleged or suspected violations of criminal law. The position requires knowledge of investigative techniques and a knowledge of the laws of evidence, the rules of criminal procedure, etc. This position is therefore allocated to the GS-1811 series and titled Criminal Investigator. The appellant does not dispute the series or title of his position.

GRADE LEVEL DETERMINATION

Grade determination is by reference to the Grade-Level Guides for Classifying Investigator Positions, dated February 1972. The Guides provide two classification factors. The first factor, *Complexity of Assignments* measures the scope, complexity, and sensitivity of investigative assignments including such elements as: (1) the level of

difficulty involved in resolving conflicting facts or evidence, (2) the difficulty and complexity imposed by the subjects of investigations, (3) the nature of separate investigative matters that grow from the original assignments, (4) the skill required to establish facts and evidence in assigned cases, (5) the sensitivity of assignments, and (6) the jurisdictional problems involved in case assignments. The second factor is *Level of Responsibility* which measures the kind and extent of supervision that is given and the degree of resourcefulness required in finding and verifying information pertinent to cases assigned.

Because of the nature of criminal investigations, work performed over a substantial period of time must be reviewed to determine the proper classification. The appellant provided information on three cases that he believes best represent the nature of his case assignments. Following is a brief description of these investigations.

CASE I. This investigation centered on [person 1], the principal in an organized crime unit that consisted of his five brothers and a business partner involved in legitimate business concerns that served as coverups for illegal activities. They were suspected or charged with a number of criminal activities including money laundering, counterfeiting schemes, theft, alien smuggling, murder and solicitation of murder. This case was initiated as a result of information obtained from a Dallas Police Department (DPD) theft investigation. There appeared to be various schemes of theft, trademark violations and visa fraud. This information was relayed to the Food and Drug Administration (FDA) and a meeting was held with the OCDETF unit. The appellant served as a lead agent for a segment of the overall case that developed over the course of a year. Among [person 1's] more creative and serious violations was a scam involving Similac baby formula where [person 1] and [his partner] were main players. The Similac product had coupons on the inside of each label. The original labels were removed and replaced by counterfeit labels. [Person 1] had 100,000 labels counterfeited at a time for little cost, while his partner helped to acquire, store and distribute the product. This involved purchasing and/or stealing large quantities of Similac, and selling it at a profit. [Person 1] was later charged with capital murder for arranging the murder of a rival Palestinian store owner who possibly refused to participate in the scheme. The appellant's investigation also linked [person 1's] activities to several fraudulent immigration attempts and investigation of serious violations by other members.

As a lead agent for a portion of the case, the appellant used various data banks, records, research, subpoenas, surveillance and informant information to facilitate the investigation. As a member of the OCDETF the appellant's investigation was mainly focused on the immigration status of the subjects. Under the direction of U.S. Attorney, the appellant executed criminal warrants on two subjects who had been indicted and charged with visa fraud and perjury. He was also instrumental in taking handwriting exemplars on both. As a result, the appellant discussed possible pleas with the U.S.

Attorney and defense attorney to render an agreement to insure conviction and deportation of the subjects. The appellant's work helped result in prosecution under the Racketeer Influenced and Corrupt Organizations (RICO) Act. Under the RICO statute, it must be proven that each defendant named in an indictment committed two racketeering offenses.

CASE II - This case originated from immigration officials of the United Kingdom in London, England, and was received by INS from the American Embassy in London. The appellant coordinated the investigation with the Foreign Counter Intelligence Task Force (FCITF). The suspected terrorist, a citizen of Pakistan was intercepted at the airport, interrogated and verified to be a ranking member of the Mohajir Quami Movement (MQM) which has been suspected of carrying out acts of international terrorism. The subject had departed the U.S. en route to Dubai, United Arab Emirates (U.A.E.) when intercepted in London. The subject was in violation of immigration and deportation mandates. There was insufficient evidence to arrest him on criminal charges, however, he was later charged in Arizona for a federal firearms violation. The subject retained counsel, fought deportation, and refiled a political asylum application which was ultimately denied. The appellant then sought administrative action to remove the subject from the U.S. in lieu of criminal prosecutions. The subject was finally accepted in the U.A.E. and was deported from the U.S. He provided sufficient information on the immigration specialist attorney from which he had improperly obtained political asylum and employment authorization. This led to other investigations of fraud conspiracy involving the attorney in New York and crimes in other states.

CASE III - This case involves a wealthy businessman who had previously been identified by INS through his association with a suspected terrorist organization operating in the United States. The businessman was successful in smuggling two of his countrymen into the U.S. who were suspected of being on an assassination mission of a U.S. citizen. The appellant's investigation of this case reveals that the target for assassination was also under investigation by authorities. The target provided confidential information on other suspects that may lead to connecting the original operation with other alien smuggling attempts and narcotics trafficking. The appellant continues to investigate the possibility of a second associated alien smuggling operation that operates independently.

COMPLEXITY OF ASSIGNMENTS

As described in the standard the GS-12 investigator encounters difficulty in working with fragmentary or cold evidence. He or she is challenged because of the prominence or characteristics of the subjects investigated. A substantial number of separate investigative matters grow from the original case assignment, and a high degree of skill is required to establish the interrelationship of fact and evidence. Cases assigned at

GS-12 exhibit a high degree of sensitivity and present substantial jurisdictional problems. The Guides provide these illustrations:

- Several principals are involved in an investigation, but their relationship is suspected only through circumstantial evidence. Improper development and conduct of the investigation could cause significant repercussions, e.g., bring about public embarrassment of principals or the agency head or discredit the agency investigative program.
- The investigative subject is a prominent figure in organized crime or the principal in an organization consisting of separate manufacturers, distributors and transporters of illegal goods, drugs, alcohol, counterfeit money, fraudulent documents, explosives, or weapons. The subject may also be head of an organization involved in legitimate businesses with activities being carried out under the cover of his legitimate organization, and the suspected violation requires assistance from attorneys or accountants who are in positions of public trust.
- Separate investigative matters grow from the original GS-12 assignment with the initial investigation beginning with the pusher or passer of stolen or illegal goods, e.g., drugs, counterfeit money, or fraudulent documents. By piecing together bits of evidence from interviews, surveillances, documentary examinations, informants, etc., the investigator proceeds through the intermediate distributor, and eventually involves the manufacturer, backer, organizer, or importer.
- Establishing the relationships of facts or evidence is complicated by having a subject who is suspected of engaging in major and complex criminal activities and is separated from the overt violation by a middleman or organization. The investigator must use such techniques as surveillance, toll call checks, or scientific matching of hair or paint specimens to link the subject and other violators. Ferreting out legal or administratively defensible testimony requires such techniques as pitting one violator, criminal, or witness against another or extensively checking the word of one against another, which imposes a need to verify and evaluate information with extreme care.
- The subject and his peers are very often the object of major news media interest and, therefore, the investigation is likely to result in publicity that will adversely affect the subject or prejudice the investigator's case in court.
- The subjects are engaged in activities that are the concern of several local, county, State, and Federal agencies, thus the investigator must have an extensive knowledge of the laws, rules, policies, and practices of each of these

jurisdictions to facilitate planning and scheduling raids and surveillances. Such activities are often coordinated through the investigator's superiors.

- The investigator plans and directs surveillance work that involves several investigators in separate places engaged in round-the-clock observation of various groups and subjects, all of whom are thought to be involved in related illegal activities.

The appealed position meets the GS-12 level. The appellant must rely on circumstantial evidence to build his cases. Improper development and conduct of investigations could cause significant repercussions. Consistent with GS-12 case work, investigative subjects are recognized by the OCDETF as prominent figures in organized crime with financial interests in legal business activities (e.g., restaurant, retail stores, and travel agency) as well as criminal activity. Direct relationships between investigative subjects can be difficult to establish. The appellant's assignments meet the complexity described in the Guides at the GS-12 level.

The appellant believes the complexity of his case assignments meets the GS-13 level. GS-13 grade level cases are of extreme complexity and scope. The Guide provides the following examples of work with these characteristics.

- Assignments involve investigations of legal or illegal organizations that are very complex in structure with a large number of primary and secondary activities, e.g., several principals of organized crime or subversive groups that are officially recognized in law enforcement as national threats to the peace and stability of the nation. Investigations are of major interregional dimensions or are nationwide in origin or coverage with occasional international implications. There are typically actual or potential threats or challenges to major segments of the national welfare or security.
- The investigator must piece together evidence that comes from other investigators stationed throughout several States or the nation. The GS-13 investigator must recognize the suspect's pattern of operation in order to anticipate or even influence events by instructing separate investigators or units of investigators working on segments of the case. This complicates the assignment because of the prominence of the suspects and the seriousness of their activities.
- The investigator develops evidence which suggests that his contacts in other governmental jurisdictions are themselves involved in wide-scale conspiracies. The investigator must use a high degree of skill in exchanging information with these individuals.

- The investigations involve several seemingly respectable construction firms that have legal contracts with States, and there is suspicion of bribery or fraud involving State officials. The investigators's efforts eventually involve respected political, business, or professional leaders.
- The assignment leads to large-scale raids and seizures throughout several States. The investigator must lead and coordinate several units of investigators from his own and other agencies. The interrelationship of fact and evidence is extremely difficult to establish.
- The investigative subjects use fictitious names or are otherwise clearly separated from each other and from the illegal activities under investigation. They deal exclusively through subsidiaries and holding companies that engage in diversified mixtures of legal and illegal activities throughout several States.
- The suspects' financial involvements extend to enterprises that have a significant impact on the national economy such as the transportation or banking industries or the suspects are principals in financial or other enterprises that reach into State and Federal affairs, e.g., through attempted bribery, fraud, collusion, or extortion of public officials.
- The investigator serves as a key person or coordinator in undercover or surveillance work involving the penetration of close-knit groups over extended periods of time. Discovery of such a key figure to the case while on undercover assignment could result in great injury or death to the investigator and could cut off information linking the evidence together, thus jeopardizing or destroying a critical case that the Federal Government has been developing for months or years, involving a network of State, local, and other Federal agents and informers.

To meet the GS-13 level, the appealed position should substantially meet the characteristics illustrated by most or all of the preceding illustrations. A careful review of the appellant's casework shows that the appellant's work does not meet the complexity characteristic of GS-13.

The [person 1] case alludes to some characteristics of the GS-13 level but lacks the full complexity expected at that level for most elements. Granted the [person 1] family is an organized crime family which consists of five brothers involved in various types of conspiracy, fraud, and criminal activity with bases in Dallas and the West Bank, and operations in several countries. While the conspiracy does cross international borders, the principal targets of the current investigation were [person 1's family], two of which were arrested. As subjects under investigation, [person 1's family] do not have the prominence of such high ranking and legitimate businesses to the degree described at

the GS-13 level. The suspect's financial involvements do not extend to enterprises that have a significant impact on the economy.

Neither the second or third cases involved complex structures where there were large numbers of primary and subsidiary activities. In the second case, the subject was suspected of being a terrorist and threat to the U.K. national security, however, charges other than immigration fraud and a firearms violation were later dropped. Administrative action was initiated by the appellant to remove the subject from the U.S. in lieu of criminal prosecutions. The third case was reportedly a smuggling operation where the subject was suspected of being associated with a terrorist organization operating in the United States. The case resulted in further investigations and connections with other smuggling operations tied to a legitimate travel agency.

Overall, we find that the appellant's investigative subjects are not as prominent as contemplated at GS-13, so their investigations are not as sensitive. The activities under investigation by the appellant do not have the economic impact characteristic of the GS-13 level.

The organizations are not as complex nor are the principals involved recognized by law enforcement as national threats to peace and stability of the nation as described at the GS-13 level of the Guide. The appellant does not rely on evidence from other investigators stationed throughout several States or the nation. Instead, a vast majority of evidence is developed in the regional area or obtained through administrative record searches.

Leads developed by the appellant have not crossed over to legitimate businesses that have cast suspicion of bribery or fraud involving respected political, business, or professional leaders or government officials. Rather, the investigative subjects of the appellant's cases generally have the prominence or characteristics of known racketeer, gambler, smuggler, etc. who is known through his associates, behavior or background as a prominent figure in organized crime or subversion where activities are carried out under the cover of legitimate organizations where there are several accomplices, for example attorneys, accountants, heads of employment agencies for foreign domestics or travel agencies. This is consistent with the investigative subjects found in GS-12 casework. The appellant's cases have not involved large-scale raids and seizures throughout several States nor the extremely difficult planning and coordination because of extensive jurisdictional problems involving Federal, State, county, and local agencies.

The complexity of assignments for the appealed position does not meet the GS-13 level. This factor is evaluated at the GS-12 level.

LEVEL OF RESPONSIBILITY

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

At the GS-12 level, investigators receive or generate their own case assignments. The investigator receives few instructions on technical aspects of the work, but is given mostly policy guidance. Completed work is reviewed for accomplishment of overall objectives and adherence to policy. The investigator is responsible for independently planning cases and working out arrangements with other Federal, State, and local jurisdictions. For example, in setting up a joint raid involving Federal and local law enforcement, the investigator is responsible for planning and timing, but in coordinating the commitment of resources and manpower they must work through superiors. The appellant may discuss additional manpower needs with his first level supervisor who in turn works through the Division Chief in commitment of money and human resources. This level of responsibility is commensurate with the GS-12 level.

In contrast, the GS-13 investigator receives more generalized instructions than the GS-12. GS-13 investigator receives assignments through program discussions, e.g., conferences, or written directives that outline broad objectives. After making a preliminary study of the assignment, the GS-13 investigator outlines the objectives and boundaries, plans the resources needed, and includes his plans for assuring coordination with other jurisdictions. Review of GS-13 work typically is in the form of discussions at certain critical points, e.g., the GS-13 investigator suggests commitment of resources in other domestic or foreign offices, and such suggestions are normally approved. Cases are typically so important and sensitive that plans must be cleared by the highest officials in the agency. Decisions and actions by the GS-13 investigator often become precedent-setting because of the nature of the cases involved. An extremely high degree of originality and initiative is required of the GS-13 investigator because investigations involve activities occurring in several States and violators typically retain the best legal or accounting advice available.

It is evident that the appellant operates with a high degree of independence and authority. Such supervisory controls are consistent with both the GS-12 and GS-13 descriptions in the Guides. The appellant contends that he is responsible for devising breakthroughs in investigative approaches, techniques and policies, however this is not the inherent nature of the assigned position nor substantiated during the audit or review of the appeal file.

The typical cases assigned to the appellant and the level of responsibility required of the position does not meet the criteria for the GS-13 level. The appellant generates his own cases from leads, tips, or observations that arouse him based on thorough knowledge of criminal laws, regulations and enforcement experience as described at

the GS-12 level. He also receives case assignments from HQ Investigations (HQINV) or referrals from the FBI.

The [person 1] case originated from the DPD when it was discovered that [person 1] had used another person's identification to rent expensive tools and equipment which he failed to return. The evidence of nonimmigration violations (theft and counterfeiting) led to the probability of immigration violation which was investigated by the appellant. The appellant used high-level skill in determining the connection between the legitimate business concerns of the principals and their illegal activities. The appellant was the INS representative assigned to the OCDETF unit responsible for investigating this case where he led segments of the case. There were various schemes involving theft including trademark violations and visa fraud and eventually murder and suspicion of narcotic trafficking where the FBI was the lead agency. The appellant currently works with independence and may utilize other GS-12 investigators to facilitate cases in surveillance activities and issuing warrants. However, these temporary conditions are a normal part of completing investigative assignments and have no particular impact with respect to determining the grade level of an investigator's position. The appellant is expected to use initiative and creativity in conducting his work. However, this does not meet the GS-13 level of having responsibility for devising breakthroughs in investigative approaches, techniques, and policies.

CONCLUSION

In summary, we have evaluated the complexity of assignments and the level of responsibility at the GS-12 grade level. Our analysis has taken into consideration the case examples provided by the appellant which formed the core of the appellant's rationale. Implicit in his rationale, the appellant concludes that because OCDETF work is included in the GS-13 position description, it is by definition GS-13 work. While GS-13 criminal investigators may be assigned to OCDETF cases, it is not appropriate to assume, as discussed in this decision, that all OCDETF work is commensurate to the GS-13 level. Additionally, the counter terrorism work described by the appellant is not sufficient to warrant a higher level.

Therefore it is our decision that the appealed position is properly classified as Criminal Investigator, GS-1811-12.