

U.S. Office of Personnel Management  
Division for Human Capital Leadership & Merit System Accountability  
Classification Appeals Program

San Francisco Field Services Group  
120 Howard Street, Room 760  
San Francisco, CA 94105-0001

**Classification Appeal Decision**  
**Under section 5112 of title 5, United States Code**

**Appellant:** [Appellant's name]

**Agency classification:** Border Patrol Agent  
GS-1896-11

**Organization:** [Appellant's organization/location]  
Bureau of Customs and Border  
Protection  
Directorate of Border and Transportation  
Security  
Department of Homeland Security

**OPM decision:** Border Patrol Agent  
GS-1896-11

**OPM decision number:** C-1896-11-01

/s/ Carlos A. Torrico

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Carlos A. Torrico  
Classification Appeals Officer

July 24, 2003  
Date

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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]

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## **Introduction**

On March 12, 2003, the San Francisco Field Services Group of the U.S. Office of Personnel Management (OPM) accepted a classification appeal from [appellant's name]. On May 8, 2003, we received the agency's administrative report regarding the appeal. The appellant's position is currently classified as a Border Patrol Agent, GS-1896-11. However, he believes his position should be classified as Criminal Investigator, GS-1811, at a grade to be determined by OPM. The appellant works in the [appellant's organization/location] Border Patrol, Bureau of Customs and Border Protection, Directorate of Border and Transportation Security, Department of Homeland Security. We have accepted and decided his appeal under section 5112 of title 5, United States Code (U.S.C.).

This appeal decision is based on a thorough review of all information furnished by the appellant and his agency. In addition, to help decide the appeal a representative of this office conducted separate telephone interviews with the appellant and his supervisor.

## **Background information**

Prior to appealing to OPM, the appellant filed a request for a classification review with the Immigration and Naturalization Service (INS) and subsequently with the Department of Justice (DOJ). In separate decisions both of those agencies found the appellant's position to be properly classified as Border Patrol Agent, GS-1896-11. In March 2003, INS was transferred to the new Department of Homeland Security.

## **General issues**

The appellant mentions the high quality of his work in terms of high performance ratings and awards received. However, quality of work cannot be considered in determining the grade of a position (*The Classifier's Handbook*, chapter 5).

The appellant's supervisor certified to the accuracy of the appellant's standard position description (PD) [number]. However, the appellant contends that the PD does not adequately describe his duties and responsibilities. A PD is the official record of the major duties and responsibilities assigned to a position or job by an official with the authority to assign work. A position is the duties and responsibilities that make up the work performed by the employee. Classification appeal regulations permit OPM to investigate or audit a position and decide an appeal on the basis of the actual duties and responsibilities currently assigned by management and performed by the employee. An OPM appeal decision classifies a real operating position, and not simply the PD. This decision is based on the work currently assigned to and performed by the appellant and sets aside any previous agency decision.

The appellant compares the duties of his position to criminal investigator positions in his agency. Therefore, he believes his position warrants classification to the GS-1811 series. He also commented on the classification review process conducted by his agency. By law, we must classify positions solely by comparing their current duties and responsibilities to OPM position classification standards and guidelines (5 U.S.C. 5106, 5107, and 5112). In adjudicating this

appeal, our only concern is to make our own independent decision on the proper classification of his position. Since comparison to standards is the exclusive method for classifying positions, we cannot compare the appellant's position to others as a basis for deciding his appeal. Because our decision sets aside any previous agency decision, the classification practices used by the appellant's agency in classifying his position are not germane to the classification appeal process.

The appellant believes that classifying his position as a criminal investigator is the most efficient and effective use of the workforce, and such a decision is in concert with the agency's policies and strategies. However, it is the agency management's right and responsibility to define the work at the appellant's duty station (5 U.S.C. 7106). We cannot decide for the agency what is the most effective and efficient use of its workforce. We may consider the issues raised by the appellant only insofar as they are relevant to classifying the duties and responsibilities of the appealed position.

### **Position information**

The appellant is one of three border patrol agents on the [names of Peninsulas] Peninsulas, which encompasses about 7,000 square miles. The Peninsulas are divided into three zones. The appellant and the two other border patrol agents are each assigned to a separate zone on a six-month rotational basis. The appellant's office is located at the [appellant's duty location]. [Names of cities and geographic area] a distance of about 20 miles. The [appellant's duty location] port-of-entry is manned by immigration inspectors. The marine border, which encompasses most of the Peninsulas, is patrolled by the U.S. Coast Guard rather than the [duty location] border patrol agents.

The appellant's position is designated as a Senior Border Patrol Agent, GS-1896-11, at [his duty location]. The purpose of the position is to enforce the Immigration and Nationality Act and related statutes. The appellant collects, refines, and analyzes strategic and tactical intelligence and disseminates reports within the agency and to other law enforcement officials for an assigned geographic area. Intelligence information may come from a variety of sources including informants, State and local law enforcement agencies, social services agencies, social and political organizations, and private citizens. The appellant develops and uses information on smugglers, informants, and vendors of counterfeit documents. He prepares forecasts and identifies trends and patterns. He uses this information to plan and carry out operations and to apprehend illegal aliens and smugglers. The appellant is responsible for initiating, coordinating, or conducting investigations, inspections, and other activities which result in the apprehension of aliens in violation of immigration laws and administrative or criminal prosecution of the aliens.

The appellant receives requests for investigative support or tips on potential alien violators from Federal and State governmental agencies and local law enforcement agencies. He is responsible for identifying violators of immigration and nationality statutes in local law enforcement custody, who are subject to deportation or criminal prosecution. Some of this work is resolved within a few days to weeks. For example, the work may involve identifying a deported alien who has returned using a false identity and taking the appropriate administrative or criminal action. However, from tips and leads he develops, the appellant may develop more complex investigations of criminal aliens and their activities. The appellant checks business licenses,

property records, criminal records, etc. using a variety of information systems and databases to conduct information searches or by reviewing various documents, files, and records. He interviews suspected criminal aliens and their families, friends, and associates. The appellant participates on local law enforcement task forces whose targets include criminal aliens. He has done limited undercover and surveillance work. For example, he posed as a customer at an illicit massage parlor which resulted in the arrest of an alien for prostitution, and conducted surveillance of a massage parlor, recording the vehicle license plate numbers of the vehicle owners frequenting the massage parlor to develop further leads. Following are examples representative of the appellant's most complex cases:

- **Operation Cigarselite.com:** This is an ongoing case. The case was initiated by a local customs inspector who operates a postal outlet. The customs inspector became suspicious of a person using different names who frequently mailed packages from the outlet. The customs inspector opened a package and discovered Cuban cigars. The case targets smugglers with legal charter sailboat businesses, including illegal and legal aliens from South Africa and Canada, and United States citizens, engaged in smuggling Cuban cigars and aliens into the United States. Some were smuggling from Cuba to Miami, Florida, and others from Canada to [name of state]. The suspects sold the cigars over the internet. Three of the violators were arrested. One of the violators was not arrested as he agreed to provide information on other smuggling operations and how he circumvented border and seaport security. The appellant has uncovered multiple individuals engaged in smuggling and tax evasion and violations of immigration law. He is coordinating with the Internal Revenue Service who is pursuing the tax evasion portion of the case. Two aliens are prominent, local business persons who gained support from the county sheriff and city council members to petition Congress to pass legislation barring their deportation after the appellant charged them with immigration violations. Within the past year, two criminal investigators from U.S. Customs Service [now part of the Department of Homeland Security, Bureau of Immigration and Customs Enforcement (ICE)] have been assigned to [appellant's duty location]. The ICE criminal investigators have taken an interest in this case due to the cross-border smuggling of goods.
- **Operation Traveler's Nexus:** This is an ongoing case targeting a naturalized U.S. citizen Korean business owner whose sister was married to a Mexican criminal alien. The brother-in-law's Mexican criminal organization was involved in smuggling aliens and narcotics from Mexico and document and identity fraud. During a jail inspection, the appellant encountered a Mexican criminal alien using a false identity to hide his criminal record and prior deportations. The criminal alien identified two Mexican criminal alien drug dealers using false identities wanted by two local law enforcement agencies. The dealers were selling drugs from a motel owned by the naturalized Korean. The motel owner supplied a vehicle to the drug dealers to smuggle illegal aliens, and possibly narcotics, from Mexico to the [geographic area] Peninsula. The appellant has identified two criminal aliens engaged in smuggling aliens and narcotics supplied by the Mexican organization. He coordinated the arrest of two Korean nationals for immigration violations, and arrested two Mexican nationals for criminal possession of fraudulent documents and immigration violations.

- **Operation Continental Connection:** This is an ongoing case targeting a business (floral greens business) involved with smuggling and harboring criminal aliens, possibly smuggling narcotics, and document fraud and identity theft. This case was developed from a request from local law enforcement for help in identifying someone they were investigating for rape. The appellant has made three arrests for immigration violations and charged one with re-entry after deportation as an aggravated felon and with possession of false identification. The arrests led to the business where all were employed. The business employed the criminal aliens with the knowledge that the aliens had been deported and had returned using false identities. The ICE criminal investigators have taken an interest in this case due to the cross-border smuggling of narcotics.
- **Operation Special Massage:** This is an ongoing case targeting a criminal organization that brings Korean females to the United States through marriage fraud to engage in prostitution at massage parlors and health spas. The owners of the two local massage businesses targeted are resident aliens from Korea with multiple arrests in many States for prostitution and operating without a license. All of the Korean employees immigrated to the United States by marrying military personnel. The military personnel receive \$20,000 for marrying the Korean females. The employees were all Korean immigrants or naturalized U.S. citizens and nearly all had records of arrest for prostitution. If arrested, the business pays the prostitute's bond and she is moved to another location in another State. The city or county prosecutor typically drops the charges. The appellant continues to conduct surveillance of the business intermittently.
- **Operation Two for One:** Based on a tip from the Social Security Administration, the appellant found, through extensive records reviews and interviews, that a nephew had served 30 years in the Navy using his uncle's identity. Both the nephew and uncle had immigrated to the United States using the uncle's identity. Records revealed that the nephew had been questioned in the past about his identity by both the Navy and the Internal Revenue Service, but he had convinced them that it was a case of mistaken identity. The nephew and uncle also sponsored the immigration of many family members. The appellant has initiated denaturalization procedures for the nephew and uncle.
- **Operation China Sun:** Through an informant, the appellant learned that the manager of a restaurant business, convicted of fraud in Oregon and deported two years ago, was engaged in marriage fraud. The informant, a U.S. citizen, was offered \$30,000 to travel to China to marry a female and return with her. The case is ongoing.

The official PD, interviews with the appellant and his supervisor, and information furnished by the appellant and the agency provide additional details about the appellant's work, how he carries it out, and supervisory and organizational controls.

### **Series determination**

The agency classified the appellant's position to the Border Patrol Agent Series, GS-1896. The appellant believes his position should be classified to the Criminal Investigating Series, GS-

1811. The appellant bases his appeal, in part, on his belief that the only true work that his position can perform is interior enforcement work, which he believes is criminal investigative work, because he works in a geographic area with no land borders, the coastal area is guarded by the U.S. Coast Guard, and he does not perform typical border patrol work such as sign cutting and traffic checks.

The Border Patrol Agent Series, GS-1896, includes positions involved in enforcement work concerned with (1) detecting and preventing the smuggling or illegal entry of aliens into the United States; (2) detecting and apprehending aliens in violation of the conditions under which they were admitted; (3) detecting and apprehending aliens at interior points in the United States who entered illegally; (4) detecting and apprehending aliens falsely claiming United States citizenship or legal status; (5) detecting and apprehending producers, vendors and users of counterfeit, altered and genuine documents used to circumvent the immigration and nationality laws of the United States; and (6) enforcing criminal provisions of the immigration and nationality laws and regulations of the United States. Such work requires knowledge and understanding of the statutes, regulations, instructions and precedent decisions pertaining to the enforcement of the immigration and nationality laws, ability to evaluate information rapidly, make timely decisions and take prompt and appropriate actions, and the ability to use effectively basic investigative and law enforcement procedures to enforce the immigration and nationality laws and other laws which the Border Patrol Agent may be called upon to enforce or assist in enforcing.

The Criminal Investigating Series, GS-1811, includes positions that involve planning and conducting investigations relating to alleged or suspected violations of criminal laws. GS-1811 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 related issues; the ability to recognize, develop and present evidence that reconstructs events, sequences, and time elements, and established relationships, responsibilities, legal liabilities, 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 appellant's position is clearly covered by the Border Patrol Agent Series, GS-1896, as his position performs work covered by all six functions described in the GS-1896 series definition noted above. However, the appellant also conducts investigations and we must determine if the investigative work materially alters the series determination. Guidance on determining the proper series is found in both the GS-1896 standard and the Grade-Level Guides for Classifying Investigator Positions (GLGCIP). The GS-1896 standard provides that Border Patrol Agents share with employees in other occupations a requirement for the application of investigative techniques such as interrogation, document review, selection and use of informants, development and exploitation of leads, etc. While the use of these techniques is integrated into many, perhaps most, Border Patrol Agent positions, the agent is primarily responsible for the enforcement of immigration and nationality laws and related rules and regulations, not the performance of protracted investigative work. It is this distinction coupled with the purpose of the work as determined by responsible management that forms the basis for classification in the GS-1896

series rather than the GS-1811 series. The GS-1896 standard recognizes that some GS-1896 positions perform a combination of investigative work that may be classifiable at a higher level than their GS-1896 work. However, the positions remain classified to the GS-1896 series on the basis of the knowledges, skills, and abilities required for full performance of the assigned duties.

The organization and assignment of work affects the classification of the position. The appellant believes that the agency criminal investigators do not pursue investigations in the Peninsulas because of their isolation. However, for a four week period in July to August 2002, all [appellant's duty station] cases that could not be resolved within 24-hours were referred to the Supervisory Criminal Investigator at Sector Headquarters. The cases referred involved requests for support from local law enforcement agencies in identifying and detaining criminal aliens for crimes committed locally such as child molestation, rape, prostitution, drug dealing, etc. None of the cases referred were investigated by Sector Headquarters as the record reflects that the cases did not meet the scope or level of criminal investigations carried out at the Sector level. Other information provided by the agency reflects that agency management has determined that the mission of [appellant's duty station] Station is to: prevent and deter aliens from illegally entering the United States; patrol the international border within the station area; apprehend, prosecute, and remove criminal aliens; and continue to respond to the needs of local law enforcement and the communities they support. To that end, the [duty station] supervisor has been instructed by Border Patrol management through memorandums issued after the appellant appealed in June 2002 to ensure that [duty station] is carrying out the border patrol functions reflected in the mission statement. Border Patrol management is controlling the work in other ways as well. For instance, Border Patrol management must approve operations such as surveillance outside of regular working hours or monitoring consensual conversations between an informant and a target, which are typical of GS-1811 criminal investigative work. The appellant requested the use of an informant recently, but Border Patrol management declined to approve the request.

The GLGCIP provides that to be assigned to the GS-1811 series the purpose and context of the position must meet the elements contained in the series definition (previously referenced), occupational information, and grade-level criteria described in the GLGCIP. The GS-1811 series covers positions that plan and conduct investigations relating to alleged or suspected violations of criminal laws, which requires primarily a knowledge of the laws of evidence, the rules of criminal procedure, precedent court decisions and the like, and the application of investigative techniques. Although some of appellant's cases may involve violations of criminal laws (e.g., illegal aliens involved in the sale and distribution of narcotics), enforcement of criminal laws is not the primary purpose of his position. The primary purpose of the appellant's position is to enforce immigration and nationality laws through the detection and apprehension of illegal aliens and other violators of immigration laws which requires primarily a knowledge of the statutes, regulations, instructions, and precedent decisions pertaining to the enforcement of the immigration and nationality laws. In contrast, GS-1811 work requires primarily a knowledge of the laws of evidence, the rules of criminal procedure, precedent court decisions and the like, and the application of such investigative techniques, e.g., maintaining surveillance, performing undercover work, as those investigations require.



Investigator positions are those that require application of the full range of investigative knowledge, skills, and abilities. Although there is no doubt that the appellant's duties and responsibilities incorporate the application of a variety of basic investigative techniques (e.g., interrogation, surveillance, undercover work, document review, and developing and exploiting case leads), such basic investigative techniques are also used by positions covered by the Border Patrol Agent Series, GS-1896. The techniques are used in support of the primary purpose of his position, i.e., to enforce the Immigration and Nationality Act and related statutes, including criminal statutes, by investigating, identifying, and apprehending illegal aliens in an assigned geographic zone. The aliens are identified primarily through requests from local law enforcement agencies for assistance in identifying an alien. The appellant developed most of the cases described above from leads developed through contacts with the aliens. Working with local law enforcement agencies and identifying the aliens is comparable to the liaison activities and city patrol performed by border patrol agents where they establish productive working relationship with Federal, State, and local law enforcement agencies and check jails and other public institutions to locate deportable aliens.

The complex cases described by the appellant have been pursued over several months, which is one potential indication of GS-1811 criminal investigative cases. However, we did not find that the full range of investigative knowledge, skills, and abilities as outlined in the GS-1811 series definition were applied, including laws of evidence, rules of criminal procedure, and admissibility of evidence. In the context of GS-1811 criminal investigations work, the appellant's cases do not involve the availability and use of modern detection devices and laboratory services or require awareness of continuing advances in investigative technology. The appellant's cases involve the use of routine electronic recording devices, if approved. The cases also do not involve complex surveillance activities or dangerous or risky undercover assignments. Surveillance activities are routine, e.g., watching a suspect business location and recording the vehicle license plate numbers of customers who frequent the business. Such surveillance is unlike GS-1811 work where the criminal investigator observes a subject and his associates over time in order to link all the persons involved in suspected illegal activities or the criminal investigator plans and directs surveillance work that involves several investigators in separate places engaged in round-the-clock observation of various groups of suspects, all of whom are thought to be involved in related activities. In working undercover, criminal investigators have cover stories, ranging from posing as a truck driver to penetrate a loosely knit group to posing as a member of a skilled trade with a false name, complete identification papers, and a carefully worked personal history that will withstand investigation of the closely-knit, highly suspicious group penetrated. Discovery could result in expulsion from the group to serious injury or death. In comparison, the appellant worked undercover in only one case described to arrest an illegal alien working as a prostitute, which did not require a cover story comparable to those described above.

In summary, we find that the appellant's position does not meet the GS-1811 series definition. Our analysis of the appellant's work indicates that the primary purpose of the appellant's position is to enforce immigration and nationality laws through the detection and apprehension of illegal aliens and other violators of immigration laws which requires primarily a knowledge of the statutes, regulations, instructions, and precedent decisions pertaining to the enforcement of the immigration and nationality laws. Further, the agency's management has determined that the

appellant's position should be performing work that falls within the GS-1896 series and it has taken action to control the work performed by the appellant so that his assignments do not allow for the application of the full range of investigative knowledge, skills, techniques, and methods. Therefore, we find that the appellant's position is covered by the Border Patrol Agent Series, GS-1896.

### **Title determination**

The appellant's position is titled Border Patrol Agent as that is the basic title authorized for nonsupervisory position classified to the GS-1896 series.

### **Standard determination**

The appellant's duties and responsibilities are evaluated by reference to the grading criteria in the standard for the Border Patrol Agent Series, GS-1896. Although the position does not require application of the full range of investigative knowledge, skills, and abilities, the appellant's position does have significant investigative duties. The GS-1896 does not specifically address investigative case work so we are also evaluating the investigative work by cross-reference to the GLGCIP, GS-1810/1811 as provided for in the GS-1896 standard.

### **Grade determination**

#### *Evaluation using the GS-1896 standard*

The GS-1896 standard uses the Factor Evaluation System (FES), which employs nine factors. Under the FES, each factor level description in a standard describes the minimum characteristics needed to receive credit for the described level. Therefore, if a position fails to meet the criteria in a factor level description in any significant aspect, it must be credited at a lower level. Conversely, the position may exceed those criteria in some aspects and still not be credited at a higher level. Our evaluation with respect to the nine FES factors follows.

#### *Factor 1, Knowledge required by the position*

This factor measures the nature and extent of information or facts which the employee must understand 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.

The appellant's position meets but does not exceed Level 1-7, which is the highest level for this factor described in the standard. Similar to Level 1-7, the appellant applies extensive knowledge of the immigration and nationality laws, regulations, precedents, court decisions, and current instructions concerning nationality and citizenship, admission, exclusion, deportation, inspection, rights and requirements of aliens, smuggling, illegal entry, etc. In performing his duties, the appellant must have a thorough knowledge of law enforcement methods and techniques applicable to immigration and nationality cases; skill in developing continuing sources of information particularly relating to sources of fraudulent documents, and analyzing disparate

facts and events in detecting, apprehending, and prosecuting persons violating immigration and nationality laws.

This factor is evaluated at Level 1-7 and 1250 points are credited.

### *Factor 2, Supervisory controls*

This factor covers the nature and extent of direct or indirect controls exercised by the supervisor, the employee's responsibility, and the review of completed work.

The first two aspects of this factor, the controls exercised by the appellant's supervisor and the appellant's responsibility, are comparable to Level 2-4. The appellant's supervisor assigns the appellant to one of three large geographic areas on a six month rotation. The large geographic area covered and the nature of his work does not lend itself to supervisory oversight. The appellant plans and carries out his work independently, establishing priorities and developing cases within the limitations imposed by statute and precedent, time constraints, etc. He is also responsible for coordinating with Federal, State, and local law enforcement agencies. Decisions concerning the actual performance of the work are based largely on the appellant's individual judgment and expertise. However, the third aspect of this factor, review of the work, falls short of Level 2-4. Like the supervisor at Level 2-3, the appellant's supervisor indicated that he reviews the appellant's work through weekly meetings and by reviewing completed reports. The supervisor indicated that unusual or controversial issues are brought to the supervisor's attention immediately so that he can inform the chain-of-command and ensure that the issues are handled appropriately. In contrast, at Level 2-4 the work is accepted as technically sound and unusual or controversial findings are reviewed primarily to ascertain if they are a potential basis for modifications of operating instructions, procedures, or program emphases. For a factor level to be assigned, all aspects of the factor must be fully met. Since the appellant's position does not fully meet Level 2-4, the next lower level must be credited.

This factor is evaluated at Level 2-3 and 275 points credited.

### *Factor 3, Guidelines*

This factor covers the nature of guidelines and the judgment needed to apply them.

The appellant's position meets but does not exceed Level 3-3, which is the highest level for this factor described in the standard. Similar to Level 3-3, basic and general information is provided in various laws, regulations, and interpretations pertaining to the work performed, handbooks, agency manuals, instructions and orders, precedent court decisions, appeals board rulings, rules of evidence and court procedures. Like the employee at Level 3-3, the appellant must use considerable ingenuity in making judgments, applying various techniques and procedures and using discretion in the application of available guidelines to the wide variety of individual cases and situations encountered.

This factor is evaluated at Level 3-3 and 275 points are credited.

#### *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.

The appellant's position meets but does not exceed Level 4-4, which is the highest level for this factor described in the standard. Similar to Level 4-4, the appellant plans, organizes, and carries out a variety of complex assignments (including anti-smuggling) that involve incomplete or inconclusive information, the need for variation in approaches and the resolution of unacceptable, inconsistent, or unforeseen results. Like the agent at Level 4-4, the appellant makes unreviewed decisions and draws conclusions about matters of citizenship, criminal activities, right of entry, fraud, conspiracy and other similar matters relating to the immigration and nationality laws after evaluating and interpreting information from many sources.

This factor is evaluated at Level 4-4 and 225 points are credited.

#### *Factor 5, Scope and effect*

Scope and effect covers the relationship between the nature of the work, i.e., the purpose, breadth, and depth of the assignment, and the effect of the grading and/or inspection services provided both within and outside the organization.

Similar to Level 5-3, the appellant's work involves the detection, apprehension, and expulsion of aliens who are in illegal status and/or who are engaged in criminal activities such as drug dealing and prostitution, and the detection and apprehension of other violators of immigration and nationality laws (e.g., employers who knowingly employ illegal aliens or producers or vendors of fraudulent documents). His work deters the smuggling of aliens, narcotics, and other contraband goods and its effective accomplishment impacts on the reduction of unlawful drains on economic, social, and political services and institutions.

The scope and effect of the appellant's work does not meet Level 5-4 where the work of the agent involves uncovering suspected conspiracies and attempted violations of law before they actually occur, and developing appropriate responses which eliminate or minimize these activities. Unlike the appellant's position, information developed by the agent at Level 5-4 is used by responsible management to affect a wide range of agency activities such as revising operations and methods. These are not functions assigned to the appellant's organization.

This factor is evaluated at Level 5-3 and 150 points are credited.

#### *Factor 6, Personal contacts*

This factor includes face-to-face contacts and telephone and radio contacts 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.

Similar to Level 6-3, the appellant's contacts are with officials of Federal and State governmental agencies, local law enforcement agencies, legal and illegal aliens, attorneys, and the general public. The contacts are not routine and may take place in a wide variety of settings.

The appellant's contacts do not meet Level 6-4 where the employee's contacts are with high ranking officials from outside the bureau, representatives of foreign governments, congresspersons, and top officials and leaders from the law enforcement, criminal justice, and legal communities.

This factor is evaluated at Level 6-3 and 60 points are credited.

#### *Factor 7, Purpose of contacts*

This factor covers the purpose of personal contacts which 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 under Factor 6.

The appellant's position meets but does not exceed Level 7-3, which is the highest level for this factor described in the standard. Similar to Level 7-3, the purpose of the appellant's contacts is to interrogate apparent violators of the immigration laws who are frequently uncooperative, uncommunicative, hostile, afraid, evasive, or dangerous. These conditions require the appellant to be extremely skillful in how he approaches the contacts and very selective in the methods and techniques used to collect and evaluate information and interrogate suspects.

This factor is evaluated at Level 7-3 and 120 points are credited.

#### *Factor 8, Physical demands*

This factor covers the requirements and physical demands placed on the employee by the work assignment.

The appellant's position meets but does not exceed Level 8-3, which is the highest level for this factor described in the standard. Similar to Level 8-3, the appellant's work requires protracted periods of strenuous physical exertion such as long periods of standing, walking, and running over rough, uneven or rocky terrain; operating vehicles over rough surfaces in cold climates, and working in mountainous country. He must be able to defend himself and others as required against physical attacks.

This factor is evaluated at Level 8-3 and 50 points are credited.

#### *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.

The appellant's position meets but does not exceed Level 9-3, which is the highest level for this factor described in the standard. Similar to Level 9-3, the appellant's 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 vessels, and possible gunfire or physical attack. He frequently works long and irregular hours on changing shifts, including weekends and nights.

This factor is evaluated at Level 9-3 and 50 points are credited.

### *Summary of FES factors*

The chart below reflects our evaluation by application of the nine factors in the GS-1896 standard:

<i>Factor</i>	<i>Level</i>	<i>Points</i>
1. Knowledge required by the position	1-7	1250
2. Supervisory controls	2-3	275
3. Guidelines	3-3	275
4. Complexity	4-4	225
5. Scope and effect	5-3	150
6. Personal contacts and	6-3	60
7. Purpose of contacts	7-3	120
8. Physical demands	8-3	50
9. Work environment	9-3	<u>50</u>
<i>Total</i>		2455

A total of 2455 points falls into the GS-11 range (2355-2750) by reference to the grade conversion table in the GS-1896 standard.

### *Evaluation by cross-comparison to the GLGCIP*

The GLGCIP is written in the narrative style and considers two evaluation factors: Complexity of assignments and Level of responsibility.

#### *Complexity of assignments*

Grade GS-12 is distinguished from grade GS-11 primarily in: (1) the difficulty of working with fragmentary or cold evidence; (2) the difficulty or complexity imposed by the prominence or characteristics of the subjects investigated; (3) the substantial number of separate investigative matters that grow from original assignments; (4) the high degree of skill required to establish the interrelationships of fact and evidence; (5) the high degree of sensitivity that assigned cases involve; (6) the significant jurisdictional problems characteristic of assigned cases.

1. The difficulty of working with fragmentary or cold evidence.

We compared the examples of the appellant's representative cases to the GS-11 and GS-12 grade evaluation criteria. There are some limited similarities to the GS-12 level, but the cases did not meet the complexity required of the GS-12 level. Many of the appellant's cases began from tips similar to the GS-12 level. However, GS-12 cases require a high level of discretion, e.g., improper development and conduct of the investigation would cause significant repercussions, e.g., bring about public embarrassment of the several principals, or the agency head, or discredit the agency's investigative program. None of the appellant's representative cases would have such significant repercussions.

The difficulty in resolving conflicts in facts or evidence is comparable to the GS-11 level where the cases typically involve conflicting testimony or evidence. Many of the aliens investigated by the appellant use fraudulent identities to facilitate their return to the United States after deportation or to hide their previous criminal records. The appellant must employ resourcefulness and initiative to develop information to support a legal or administrative decision.

2. The difficulty or complexity imposed by the prominence or characteristics of the subjects investigated.

The subjects of the appellant's representative cases do not share the characteristics or prominence of the illustrations at the GS-12 level. None of the subjects is a prominent figure in organized crime. None of the investigations uncovered an intricate criminal organization consisting of separate manufacturers, distributors, and transporters of illegal goods, drugs, etc., where the principal or financial backer and separate parties did not know each other. None of the investigations uncovered a legitimate business used to cover illegitimate activities that required the use of several accomplices who are in positions of public trust such as attorneys and accountants.

The subjects of the appellant's investigations have characteristics more typical of the GS-11 level where the subject owns and operates alone or with a few helpers or the subject operates in a partnership or closed corporation, or an enterprise of similar scope and complexity with a record-keeping system that facilitates concealing the illicit activities. For example, these characteristics are evident in Operation Traveler's Nexus and Operation Special Massage. The investigation of the subject in Operation Two for One uncovered two individuals using one identify to fraudulently claim benefits for themselves and family members.

3. The substantial number of separate investigative matters that grow from original assignments.

At the GS-12 level, the investigations are of organizations that involve at least three levels, e.g., the investigation begins with the pusher or passer of drugs or fraudulent documents to the intermediate distributor, and eventually to the manufacturer. To establish the connection, the GS-12 investigator pieces together bits of evidence from interviews, surveillance, documentary

examinations, informants, etc. None of the appellant's investigations uncovered organizations of such complexity.

The organizations investigated by the appellant consist of one or two levels, which is typical of the GS-11 level. For example, in Operations Traveler's Nexus two related families were involved in smuggling aliens and possibly drugs into the United States and dealing drugs. In Operation Cigarselite.com, the subjects were family members engaged in charter sail boat businesses that were used to smuggle Cuban cigars. Operation Continental Connection began when an illegal alien arrested for rape tipped the appellant that the floral green business employing his wife was smuggling and harboring aliens and possibly drugs and had involvement in document fraud and identity theft. In Operation Special Massage, the appellant was tipped that the Korean females were brought from South Korea to the United States through fraudulent marriages to work as prostitutes in massage parlors. The alien prostitute arrested did not provide any evidence against her employer, but did provide information on other local massage parlors. The appellant's informant in Operation China Sun indicated that the marriage fraud ring has not reached the nationwide level, but the appellant has been unable to pursue this case while the informant serves a jail term of several months.

4. The high degree of skill required to establish the interrelationships of fact and evidence.

At the GS-12 level, the subject, who is suspected of engaging in major and complex criminal activities, is separated from the overt violation by a middleman or organization. To establish a direct link between the suspect and other violators, the investigator uses such techniques as surveillance, radio communication, telephone checks, foot and tire imprints, trade or mold marks, and scientific matching of soil, hair, and paint specimens. The GS-11 assignment involves the use of similar techniques in less complex situations, e.g., the principal under investigation at grade GS-11 is more clearly and directly involved in criminal activities, e.g., he is observed at the scene of a crime or is seen associating with those against whom direct evidence is available. At the GS-12 level, ferreting out legal or administratively defensible testimony requires pitting one violator, criminal, 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 GS-12 level calls for more careful judgment and expert skill than the GS-11 about such aspects of investigative work as civil rights, invasion of privacy, entrapment, etc., in establishing facts and evidence because of the prominence of the subject or the importance of the case.

None of the cases presented by the appellant involved the high level of skill illustrative of the GS-12 level. The appellant relied primarily on tips and record checks to establish a subject's criminal activities. He did conduct surveillance in Operation Special Massage, but was not able to establish any links beyond what was established through record checks. The alien prostitute arrested in this case did not provide information that could be used against her employer. The appellant did extensive record reviews and interviews to establish fraudulent use of identity in Operation Two for One, but the subject's prominence did not exceed that of the GS-11 level, and the records shows that the case was of GS-11 importance. Establishing the interrelationship of facts or evidence in the appellant's cases is similar to the GS-11 level where the principal under investigation is more clearly and directly involved in criminal activities, e.g., the principal



associates with those against whom direct evidence is available. The appellant employs skills comparable to the GS-11 level investigator who requires considerable skill in establishing the interrelationship of facts or evidence when, for example, the subject of the investigation denies his association with an illegal activity and witnesses who have information on the matter are unavailable or remain silent.

5. The high degree of sensitivity that assigned cases involve.

At the GS-12 level, the subject and his peers are very often the subject of major new media and, therefore, any investigation is likely to result in publicity that would to some degree cast suspicion on the reputation of the subject, or prejudice the investigator's case in court, or complicate subsequent administrative decisions. In other GS-12 cases, the subject is so prominent that after the first witness is interviewed, word precedes the investigator with the result that subsequent witnesses are evasive because of reluctance to or fear of becoming involved in giving information which witnesses view as having possibilities of exploding into an important Federal case. At the GS-11 level, the subject of an investigation is sufficiently prominent to create the potential for local publicity that could cause embarrassment to the agency and consternation in the community by casting suspicion on an otherwise respected individual. In another GS-11 illustration, the success of a GS-11 investigation of illegal activities depends on not disclosing the fact of the investigation. Such disclosure would shut off the possibility of getting leads that are essential to establishing the violation.

Information in the record shows that the subjects were not characterized by the level of prominence described at the GS-12 level, or that the appellant's cases were likely to turn into important Federal cases. In Operation Cigarselite.com, two of the subjects were prominent locally which is comparable to the GS-11 level. The degree of sensitivity in most of the appellant's cases is similar to the GS-11 illustration where the success of the investigation relies on getting leads that are essential to establishing the violation and not disclosing the fact of the investigation.

6. The significant jurisdictional problems characteristic of assigned cases.

At the GS-12 level, the subjects are engaged in activities that are the concern of several local, county, State, and Federal agencies, e.g., drug use, traffic and smuggling, forgery, alleged subversion, etc. This involves a web of relationships that requires a more extensive knowledge of the laws, rules, policies, and practices of each of these jurisdictions than GS-11 cases typically involve because, for example, the GS-12 investigator often plans and times raids and surveillance that involve local law enforcement agencies. At the GS-11 level, when an investigation finds that a subject is involved in activities that are the concern of another agency, the GS-11 investigator must closely coordinate with the other agency. The GS-11 investigator applies a good knowledge of how his agency's investigations program ties in with that of other programs, to exchange information effectively or otherwise cooperate in advancing investigations under Federal, State, and local jurisdictions.

None of the appellant's cases involved criminal activities that were of such concern to several local, county, State, and Federal agencies that the appellant planned and timed surveillances and

raids of the magnitude described at the GS-12 level. The appellant's cases working with various jurisdictions (e.g., working with local law enforcement on Operation Special Massage) involve the level of coordination and cooperation illustrative of the GS-11 level. GS-12 and GS-11 investigators regularly perform surveillance and undercover assignments. The appellant's cases did not regularly involve these assignments as discussed above in the series determination section.

The complexity of assignments factor is evaluated at the GS-11 level.

#### *Level of responsibility*

The GS-12 investigator, like the GS-11 investigator, receives or generates his own case assignments. The GS-12 investigator receives few instructions on technical aspect of the work but is given mostly policy guidance, e.g., information on understandings of jurisdictional problems being worked out among agencies, or the fact that this is one of the first of a particular type of case since a new court decision, or authorization to follow a case into another district or region, if necessary. The GS-12 plans his case independently, working out arrangements with other jurisdictions; however, in setting up a joint raid, the GS-12 investigator is responsible for the planning and timing, but he must coordinate the commitment of resources and manpower through his supervisors.

The GS-11 investigator receives or initiates his own cases. He is expected to develop and follow leads; he uses initiative and resourcefulness to develop more information and resolve conflicts, e.g., because of conflicts in statements from witnesses or witnesses that are reluctant to talk; records are harder to find so the investigator uses initiative and resourcefulness to reconstruct information from other sources, e.g., interviews with family members, employment agencies, etc. despite lack of cooperation from such individuals and organizations. Completed work is reviewed for overall adequacy, accuracy, completeness, and accomplishment of objectives.

The appellant initiates his own cases. However, the appellant's cases are not as complex as at the GS-12 level where, for example, the GS-12 may receive policy guidance because his is the first investigation of a particular type of case since a new court decision. The appellant operates fairly independently in developing leads and information comparable to the GS-11 criteria. His work is also reviewed consistent with the GS-11 level as the appellant's supervisor reviews the appellant's work through weekly meetings and by reviewing completed reports. The supervisor also indicated that unusual or controversial issues are brought to the supervisor's attention immediately so that he can inform the chain-of-command and ensure that the issues are handled appropriately. The appellant's level of responsibility is consistent with the GS-11 level.

By cross-comparison to the GLGCIP, both classification factors are evaluated at GS-11.

#### *Summary*

The appellant's position is evaluated at the GS-11 level by comparison to the standard for the Border Patrol Agent Series, GS-1896, and by cross-comparison to the Grade Level Guide for

Classifying Investigator Positions, GS-1810/GS-1811. Therefore the final grade of the position is GS-11.

**Decision**

The appellant's position is properly classified as Border Patrol Agent, GS-1896-11.