



# Immigration Monthly

**August 2005**

- **Premiere Issue**
- **Keepin' Em Down On The Farm: The Visa Trading Bank And Rural Depopulation by Gary Endelman**

## **Premiere Issue**

ILW.COM is pleased to announce the premiere issue of Immigration Monthly, a monthly periodical devoted to immigration law and policy. Subscription to Immigration Monthly is free and with its first issue, Immigration Monthly already boasts a circulation of over 11,500 copies.

Over the coming months and years, we hope to bring you thought-provoking articles on immigration, one of the most important issues of our time. This month's Article is by Gary Endelman. His latest article presents innovative simple solutions to reform today's broken immigration system without increasing the overall level of migration.

## **Keepin' Em Down On The Farm: The Visa Trading Bank and Rural Depopulation**

by *Gary Endelman*

At the start of the last century, almost 4 out of every 10 Americans lived and worked on farms; by its end, only 1 out of 100 did so. During this same time, the overall national population increased by over 200 million souls. (See Statistical Abstract of the United States: 2002 The National Data Book, United States Department of Commerce, The Census Bureau. 2002 Washington, D.C.) As America roars into the information age, it is easy to overlook the fact that a demographic revolution is taking place right in front of our eyes: "The United States is currently in the midst of a major demographic event: the depopulation of a significant portion of its rural counties." (John Anderlik & Jeffrey Walser, Rural Depopulation: What Does It Mean for the Future Economic Health of Rural Areas and the Community Banks that Support Them at 1 Federal Deposit Insurance Corporation 2004, hereinafter cited as "FDIC Study"). The loss of population in many rural counties directly threatens the cultural vitality and economic survival of the affected communities. While immigration is hardly the silver bullet to reverse such a trend by itself, and while many existing federal initiatives have already been launched, it remains the case that a simple reform of our immigration system may serve to produce dramatic and highly beneficial results, without increasing the overall level of migration. Congress can abolish the diversity visa lottery and create a Visa Trading Bank to parcel out 55,000 visas to the states who can use

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# **The WHOLE Act**

by  
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Many provisions in the INA make references to other INA sections or to various other statutory provisions or USC titles. These references often cause inconveniences on the one hand and aggravation or frustration on the other, for the reader will frequently find it impossible to derive some intended meaning of the INA text without reading any referenced provision and tying it to the INA text. This task is facilitated by including annotations throughout the text. The annotation material is intended to provide a succinct summary of the referenced provision.

### **Digests of U.S. Supreme Court Decisions**

Frequently busy immigration lawyers find it useful, occasionally even necessary, to have a relevant U.S. Supreme Court decision on a topic of immediate interest. To make the professional life of members of the immigration bar relatively easy and smooth, brief digests or holdings of all relevant U.S. Supreme Court decisions since 1952 have been incorporated and placed under the appropriate INA provisions, in the new edition. Some rulings that could not be properly placed under any particular INA provision have been added as a separate segment. Finally, for further ease of use, a separate Index to all Supreme Court Decisions is added at the end.

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them as they see fit, subject to federal oversight, to attract and retain desperately needed human capital for those small towns and rural areas that are hemorrhaging population and hope. That's the big picture; now the messy details.

The FDIC study tells us that 779 of the nation's 3,141 counties shrank between 1970 and 2000; significantly, the rate of depopulation actually accelerated during the boom years of the 1990's in 232 of these areas. See FDIC Study at 3. Nowhere was the decline more dramatic than in the Great Plains where an astounding 72% of rural counties have fewer residents now than they did three decades ago. (Id.) The low population density and relative geographic isolation of such communities only serve to intensify the impact of such outflows. The FDIC report reminds us that "the states with the greatest share of farmland- North Dakota, South Dakota, Nebraska, Kansas and Iowa- are those that have experienced the most extensive depopulation in the past 30 years." (Id at 7.) More than 85% of those Great Plains counties that are shrinking had fewer than 10,000 residents in 2000, the minimum population level for long-term viability. (Id at 10.) As more people leave, there is an increased threat of also losing business infrastructure, a sustainable tax base, and critical government services. An aging population is left behind with a corresponding erosion of productive capacity. (Id at 19.) The elderly need more specialized medical care, the very care that is concentrated in urban areas. The resources of local and state agencies to deal with such needs are placed under enormous strain, thus increasing the pressure to raise taxes, thereby making it incrementally more difficult to attract new business investment. (Id at 21.) Those who can go elsewhere often do, particularly the young and the better educated. We learn, for example, from the FDIC study that " North Dakota's problem with out-migrating educated people is becoming critical. According to Robert Johnson, North Dakota's commissioner of agriculture, who lead task force that examined this issue, 60% of those earning bachelor's degrees or higher leave North Dakota within one year of graduation." (Id at 22.) Those who depart are likely to be the best and the brightest: " A 1995 survey of North Dakota's graduating high school students that took college entrance examinations

found that high scorers were the most likely to leave the state; five years after graduating from high school, only one in four remained in the state." (Id at 23.) These are the future leaders of their communities. They will be sorely missed.

When people leave, the ability of businesses who remain to survive is greatly compromised. Not only are there fewer merchants, but those who stay offer fewer services and fewer choices to a diminished customer base. When, for example, farmers go, hardware, grocery and agricultural supply stores inevitably follow. (Id at 24.) This means a more circumscribed tax base to fund governmental services, modernize roads and bridges, upgrade health care and promote wider educational opportunities. It becomes increasingly difficult to break out of what demographers call a "vicious circle of decline." (Id at 28.) Precisely because there are fewer taxpayers to pay ever higher bills, the per capita cost of keeping the community alive goes up, thereby discouraging new business from relocating and thus making the problem even worse. (Id at 29.) As towns shrivel, so do the resources of the rural banks that serve them and the resulting financial decline deprives those who need it most of the capital infusion to serve as the seed money of revival.

Enter the Visa Trading Bank, not the whole answer certainly but perhaps part of the road back to rural health. The immigration law already has what has been known as the Conrad 30 program after its chief sponsor, North Dakota Senator Kent Conrad. The idea is to exempt foreign doctors from having to go home for two years if they agree to practice for several years in small towns and rural areas that cannot entice American physicians to relocate there. We also recognize that such foreign doctors serve the national interest and award green cards on that basis. These are sensible baby steps. Why not take some bigger ones? Even its advocates are hard pressed to articulate a coherent justification for continuing the diversity visa lottery, other than a commendable desire to allow several thousand fortunate applicants to realize their dream of living in America. Helping rural America survive is more important. One way to do that would be to condition the diversity lottery on a willingness to live in depopulating rural areas for a specified number of years and

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- Organizes explanations of potentially applicable visa options according to the attributes of the alien (and the employer), so that practitioners can make sense of options in light of the client in the office.
- Compares and charts attributes and procedures of such topics as nonimmigrant visa classifications, procedures to permanent residence, and standards of "extreme" hardship. - Cites the most useful Internet site URLs with explanation of the increasingly helpful free databases and tools available through each one.

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treating moving elsewhere before that condition is fulfilled as a violation of status. After all, we make foreign doctors do that; why not DV lottery winners?

Another way would be to abolish the Diversity Visa Lottery entirely, recognizing it to be the flawed experiment in social engineering that it is. Take the precious 55,000 visas and deposit them in a Visa Trading Bank with each of the 50 states receiving 1,000 such visas and 5,000 being kept by Congress in ready reserve for national emergencies. There will be no labor market test attached such visas since it is up to each of the states to decide how best to use them. The only stipulation will be that all such visas must be attached to residence in a depopulating rural county for a specified time; it is not designed to staff big business in large cities but to bring rural and small town America back from the brink of despair. They can be used for any type of job that the states feel their people need done; after all, America is not just a national economy but a series of local and regional economies. No one knows better what these economies need than the people who live there.

It is possible that Kansas will need more folks than Hawaii. It is also possible that some states might want to defer immediate action. No problem. Simply allow the states so inclined to trade the visa credits to any sister state willing to pay for it or to bank the visa credit and use it at a future time. The visa would not expire in any fiscal year but remain valid until exercised. The cost of participating in the Visa Trading Bank would be paid out of a registration fee to be levied on each participating entity or business by the respective state so that there would be no increased tax burden on citizens or companies that opted out of the program. If the states wanted to create a list of favored occupations out of a belief that they needed certain talents, that could be done and the communities in that state could bid for auto mechanics or electricians, as the case might be. This would also make it possible, say, for North Dakota to exchange a visa credit for welders to California in exchange for auto mechanics, nurses or carpenters. Once again, the idea would be to let market forces in each state shape the manner in which their 1,000 visa credits could be utilized.

The Visa Trading Bank would be run by a Board of Governors consisting of representatives appointed by the respective state governors. If this concept of a state-based system of visa credit allocation worked after beta testing with the 55,000 visas released by abolition of the Diversity Visa Lottery, its application could be expanded to cover the visas previously used by the Family Preferences, with the singular exception of Family Second Preferences that would have no numerical limits so that spouse and unmarried minor children of legal permanent residents would come in quota free, precisely as the families of American citizens do now. That is the only family preference worthy of survival.

While the idea of visa exchange may seem an oddly radical notion, it is remarkably similar to emissions trading that has been used in the United States since the mid-1970's. Most observers trace the origins of emissions trading to the 1990 Clean Air Act that authorized the Environmental Protection Agency to cap how much sulfur dioxide, the prime cause of acid rain, a fossil-fuel plant could emit into the atmosphere. Under Title IV of the Clean Air Act, if a plant used a lower-sulfur fuel, or relied on a renewable clean energy source like solar or hydroelectric power, it could then see its unused allowances to another utility as a pollution credit. Correspondingly, a less efficient facility could purchase pollution credits from a less polluting one. Even before the Clean Air Act, the EPA experimented with a more rudimentary system of emission trading dating back to 1974. In the late 1980's, the free market environmental movement arose out of an unlikely alliance between major companies conservative think tanks like the American Enterprise Institute, the newly-formed centrist Democratic Leadership Council chaired by Governor Bill Clinton of Arkansas and environmental activists such as the Environmental Defense Fund. Acting together, these disparate forces advocated a market-oriented environmentalism that soon found legislative expression in the Clean Air Act based on the bedrock mechanism of tradable pollution allowances.

What has now become settled doctrine in environmental policy can work equally well in immigration policy. If a state does not need its

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visa allowance, as noted above, it can sell it to another state with a greater need, save it for the future or engage in a visa exchange if the visa credit is tied to a particular occupational classification or job category. In time, radical experimentation becomes standard operating procedure. So commonplace is this system in the environmental world that pollution or clean air credits are now traded on the Chicago Board of Trade! Given a chance, free market forces can use the allure of the American dream to bring in people, talent and energy from other countries into dying rural communities here at home and help bring them back to life. The Visa Trading Bank is a small but necessary first step on the road to recovery for rural America. Now is the time for us to take it.

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## About The Author

**Gary Endelman** practices immigration law at BP America Inc. The opinions expressed in this column are purely personal and do not represent the views or beliefs of BP America Inc. in any way.

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