

# Forced Migration

Class 10: exclusion; cessation

John Palmer

Brooklyn Law School

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## Exclusion

Future Risks: National Security Bars

## Cessation

Ending Refugee Status

Refugee Convention

US Law

# Exclusion

## National Security Bars

**Refugee Convention Art. 33:** Prohibition against non-refoulement does not apply to a refugee:

- (1) “whom there are reasonable grounds for regarding as a danger to the security of the country in which he is,” or
- (2) having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.”

# Exclusion

## National Security Bars

**INA § 208(b)(2)(A):** Not eligible for asylum if:

. . . .

**(iv)** there are reasonable grounds for regarding the alien as a danger to the security of the US;

**(v)** the alien is described in subclause (I), (II), (III), (IV), or (VI) of INA § 212(a)(3)(B)(i) or § 237(a)(4)(B).

# Exclusion

## National Security Bars

**INA § 241(b)(3)(B):** Not eligible for withholding if:

. . . .

**(iv)** there are reasonable grounds for regarding the alien as a danger to the security of the US.

“For purposes of clause (iv), an alien who is described in [INA § 237(a)(4)(B)] shall be considered to be an alien with respect to whom there are reasonable grounds for regarding as a danger to the security of the United States.”

# Exclusion

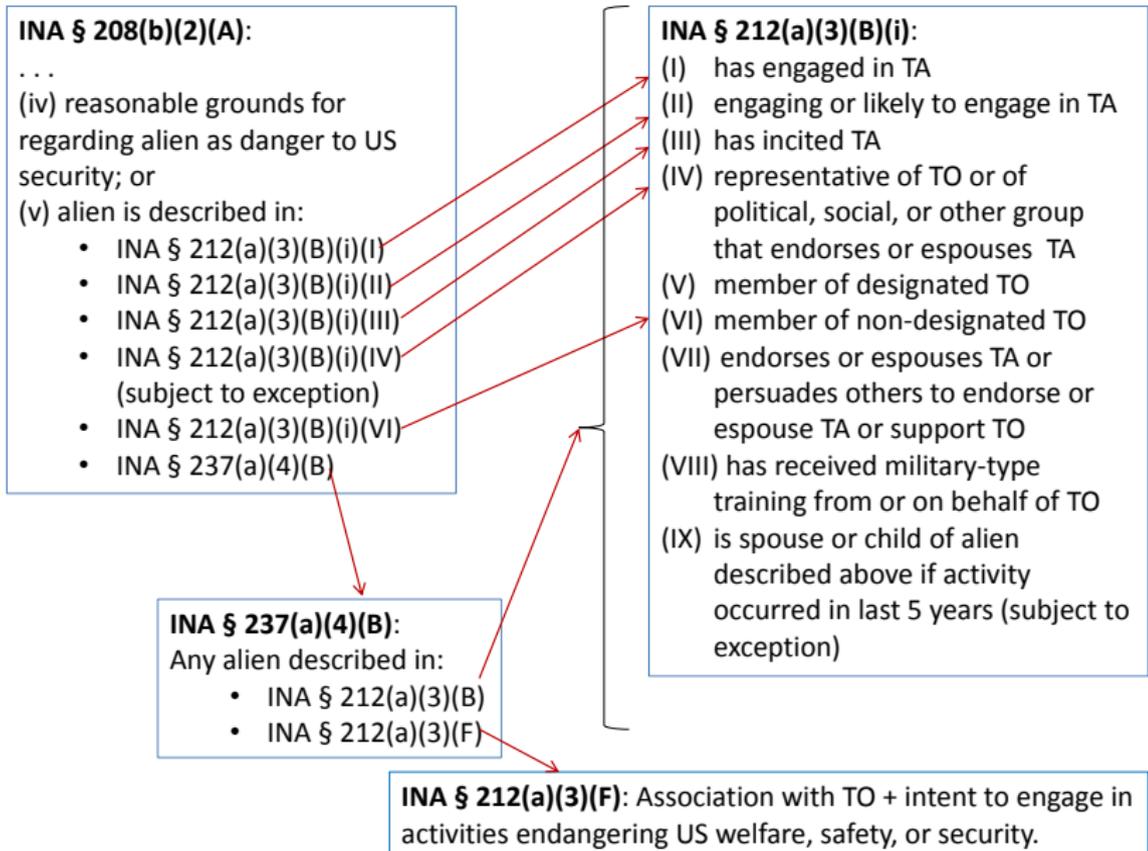
## National Security Bars

Sandor Dempsky is a member of TSFD, a political party espousing reunification of Transylvania with Hungary. TSFD is reportedly allied with TLA, an armed group that has attacked Romanian government outposts, killing two Romanian border control officers. There is no evidence that Dempsky has harmed anyone or has ever been member of TLA.

Is Dempsky barred from asylum and/or withholding of removal on grounds of national security?

# Exclusion

## National Security Bars: Asylum



# Exclusion

## National Security Bars: Withholding

### INA § 241(b)(3) (B):

...

(iv) reasonable grounds for to believe alien is danger to US security;

standard met for alien described in INA § 237(a)(4)(B)

### INA § 237(a)(4)(B):

Any alien described in:

- INA § 212(a)(3)(B)
- INA § 212(a)(3)(F)

### INA § 212(a)(3)(B)(i):

- (I) has engaged in TA
- (II) engaging or likely to engage in TA
- (III) has incited TA
- (IV) representative of TO or of political, social, or other group that endorses or espouses TA
- (V) member of designated TO
- (VI) member of non-designated TO
- (VII) endorses or espouses TA or persuades others to endorse or espouse TA or support TO
- (VIII) has received military-type training from or on behalf of TO
- (IX) is spouse or child of alien described above if activity occurred in last 5 years (subject to exception)

**INA § 212(a)(3)(F):** Association with TO + intent to engage in activities endangering US welfare, safety, or security.

# Exclusion

## National Security Bars: Definitions

### **INA § 212(a)(3)(B)(iii) – Terrorist Activity (TA):**

Any activity that:

- is unlawful where committed or would have been unlawful if committed in US, and
- involves: hijacking, sabotage, hostage taking, attacks on internationally protect persons, assassination, using a weapon (other than for mere personal monetary gain) to endanger a person's safety or cause substantial property damage, or threats, attempts, or conspiracies to do any of the above.

### **INA § 212(a)(3)(B)(iv) – Engage in TA:**

Commit, incite, prepare, plan, or gather targeting information for TA; solicit funds for TA or TO, solicit people to engage in TO or join TO; provide material support for TA, for individual who has committed or plans to commit TA, or for a TO.

### **INA § 212(a)(3)(B)(vi) – Terrorist Organization (TO) :**

- (I) Organization designated under INA 219 (“Tier I”);
- (II) Organization designated by publication in Federal Register (“Tier II”);
- (III) A group of two or more individuals, whether organized or not, that engages in TA or has a subgroup that engages in TA (“Tier III”).

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# Cessation

## Ending Refugee Status

**Cancellation:** Status should not have been granted to begin with.

**Revocation:** Post-status acts make status-holder excludable under Articles 1F(a) or 1F(c).

**Cessation:** Post-status acts or changed circumstances eliminate need for international protection.

# Cessation

## Refugee Convention

**Art. 1C:** Convention shall cease to apply if:

**(1)-(4)** voluntarily re-availement of protection in country of nationality; re-acquisition of nationality; acquisition of new nationality and enjoyment of protection; voluntary re-establishment in country of origin;

**(5)** “[The person] can no longer, because circumstances in connexion with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality.”

But this “shall not apply to a refugee falling under Section A(1) of this Article who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality.”

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# Cessation

## US Law

**INA § 208(c)(2)** Asylum may be terminated if:

**(A)** the alien no longer meets eligibility criteria owing to a “fundamental change in circumstances”;

**(B)** the alien falls within one of the exclusion categories;

**(C)** the alien may be removed pursuant to a bilateral or multilateral agreement;

**(D)** the alien has voluntarily availed himself or herself of the country or origin’s protection; or

**(E)** the alien has acquired a new nationality and enjoys the protection of the new country of nationality.

**8 C.F.R. § 208.24(a)** Asylum can also be terminated based on fraud in application such that alien was not eligible at time granted.

# Cessation

## US Law

**8 C.F.R. § 208.24(b)** Withholding may be terminated if:

- (1)** the alien is no longer entitled to withholding owing to a “fundamental change in circumstances”;
- (2)** there is a showing of fraud such that alien was not eligible at time granted; or
- (3)-(4)** the alien has committed any act that would have been grounds for exclusion from withholding.