

Inadmissibility and Deportability By Secretary of State Determination

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Under section 237(b)(4)(C)(i) of the Immigration and Nationality Act, “an alien whose presence or activities in the United States the Secretary of State has reasonable ground to believe would have serious adverse foreign policy consequences for the United States is deportable.” There exists a parallel inadmissibility provision in section 212(a)(3)(C)(i) of the Act providing “an alien whose entry or proposed activities in the United States the Secretary of

State has reasonable ground to believe would have potentially serious foreign policy consequences for the United States is inadmissible.” (We discussed both provisions in brief in our article on [deportability for security and related grounds](#).) These provisions provide for inadmissibility and deportability by Secretary of State determination.

Section 237(b)(4)(C)(i) has been in the news in 2025 because Secretary of State Marco Rubio has made numerous findings under the statute regarding specific lawful permanent residents and student visa holders, including in the [high profile case of Mahmoud Khalil](#), leading to the State Department revoking their visas and to the Department of Homeland Security initiating removal proceedings.

Under section 212(a)(3)(C)(iv) of the INA, the Secretary of State is required to notify relevant committees of the United States House of Representatives and the United States Senate whenever he or she invokes section 212(a)(3)(C)(iii) to declare that an alien is inadmissible or deportable because his or her admission or being allowed to remain in the United States would compromise a compelling United States foreign policy interest. While this provision does not change the disposition of any specific case, it is designed to ensure that Congress is aware of how the Secretary of State is exercising his or her authority under section 212(a)(3)(C)(iv).

Both section 237(b)(4)(C)(i) and 212(a)(3)(C)(i) depend on factual determinations made by the United States Secretary of State.

The Secretary of State, in his or her capacity as the top diplomat of the United States, may determine that a specific alien’s presence or activities in the United States (or proposed activities in the case of an alien who is not

already present in the United States) would have serious adverse foreign policy consequences for the United States. Under section 237(b)(4)(C)(i) and 212(a)(3)(C)(i), this determination renders the alien deportable or inadmissible respectively. In the case of an alien who is already present in the United States, the Department of Homeland Security may issue a Notice to Appear to an alien for deportability under section 237(b)(4)(C)(i) pursuant to the Secretary of State's determination that the alien's presence or activities in the United States would have serious adverse foreign policy consequences.

Under section 237(b)(4)(C)(i) of the INA, (also codified at 8 C.F.R. 1227(b)(4)(C)(i)) "[a]n alien whose presence or activities in the United States the Secretary of State has reasonable ground to believe would have potentially serious adverse foreign policy consequences for the United States is deportable." There is a similar inadmissibility provision codified at section 212(a)(3)(C)(i) of the Act (also codified at 8 C.F.R. 1182(a)(3)(C)(i)): "An alien whose entry or proposed activities in the United States the Secretary of State has reasonable ground to believe would have potentially serious adverse foreign policy consequences for the United States is inadmissible."

There are two exceptions to both 237(b)(4)(C)(i) and 212(a)(3)(C)(i) that are set forth in sections 212(a)(3)(C)(ii) and (iii). Although the exceptions are found within the inadmissibility provision, they are incorporated into the deportability provision by section 237(b)(4)(C)(ii) ("The exceptions described in clauses (ii) and (iii) of section 212(a)(3)(C) ... shall apply to deportability ... in the same manner as they apply to inadmissibility).

Exceptions

The first exception is relatively narrow. Section 212(a)(3)(C)(ii) provides that: “An alien who is an official of a foreign government or a purported government, or who is a candidate for election to a foreign government office during the period immediately preceding the election for that office, shall not be excludable or subject to restrictions or conditions on entry into the United States under clause (i) solely because of the alien’s past, current, or expected beliefs, statements, or associations, if such beliefs, statements, or associations would be lawful within the United States.” This exception only applies to (1) an alien who is an official of a foreign government or a purported government; or (2) who is a candidate for election in a foreign government office during the period immediately preceding the election for that office. The terms “purported government” and “immediately preceding” are not clearly defined by the statute. The Department of State’s Foreign Affairs Manual summarizes the limitation on the applicability of sections 212(a)(3)(C)(i) and 237(b)(4)(C)(i) by explaining that “exclusion must be based on factors related to the applicant’s entry or proposed activities which go beyond the applicant’s beliefs, statements, and associations, and which may have the requisite potential for serious adverse foreign policy consequences.” 9 FAM 302.14-2(B)(1).

The second exception applies to aliens who are not government officials or qualifying candidates for foreign office. Found in section 212(a)(3)(C)(iii), it reads as follows: “An alien, not described in clause (ii), shall not be excludable or subject to restrictions or conditions on entry into the United States under clause (i) because of the alien’s past, current, or expected beliefs, statements, or associations, if such beliefs, statements, or associations would be lawful within the United States, unless the Secretary

of State personally determines that the alien's admission would compromise a compelling United States foreign policy interest." In short, neither section 212(a)(3)(C)(i) nor 237(b)(4)(C)(i) ordinarily apply in cases where the alien's past, current, or expected beliefs, statements, or associations are or would be lawful in the United States. However, while that exception is the end of the matter for foreign government officials and candidates for foreign office, other aliens may nevertheless be found inadmissible or deportable for "beliefs, statements, or associations" that would otherwise be lawful in the United States, provided that "the Secretary of State personally determines that the alien's admission [or being allowed to remain in the United States, in the case of section 237(b)(4)(C)(i)] would compromise a compelling United States foreign policy interest." The State Department's Foreign Policy Manual instructs consular officers regarding the exception: "'Compromise a compelling United States foreign policy interest' is a significantly higher standard than the 'have potentially serious adverse foreign policy consequences' standard generally required for finding of ineligibility under INA 212(a)(3)(C)." 9 FAM 302.14-2(B)(2). However, it is worth noting that the different standards may have a greater effect where consular officers are making an initial recommendation or finding regarding admissibility than when the Secretary of State exercises his or her own authority to make a determination about an alien already present in the United States based on the Secretary's position regarding the foreign policy interests of the United States.

Matter of Ruiz-Massieu

[*Matter of Ruiz-Massieu*](#), 22 I&N Dec. 833 (BIA 1999) (en banc). This decision dealt with former section 241(a)(4)(C)(i) which was subsequently re-codified as 237(b)(4)(C)(i). *Matter of Ruiz-Masseiu* involved a nonimmigrant visitor for

pleasure who was placed in formal deportation proceedings pursuant to the issuance of an Order to Show Cause (today removal proceedings are initiated with the issuance of a Notice to Appear), charging him with deportability under former section 241(a)(4)(C)(i) of the Act.

In *Matter of Ruiz-Masseiu* the Secretary of State at the time, Warren Christopher, had personally determined that the presence of the alien in the United States would have serious adverse foreign policy consequences regarding relations between the governments of the United States and Mexico. The Immigration Judge below had then ruled in favor of the alien, finding that the written determination by the Secretary of State did not establish deportability. The Immigration Judge sought to examine the Secretary's reasoning and found that the Government had failed to explain what about the alien's presence in the United States would adversely affect the foreign policy interests of the United States. *Id.* at 835-36.

The Board disagreed with the Immigration Judge and sustained the government's appeal. The key passage in its decision reads as follows: "Congress' decision to require a specific determination by the Secretary of State, based on foreign policy interests, to establish deportability under section 241(a)(4)(C)(i) of the Act, coupled with the division of authority in section 103 of the Act between the Attorney General and the Secretary of State, make it clear that the Secretary of State's reasonable determination in this case should be treated as conclusive evidence of the respondent's deportability." *Id.* at 842. In short, the Board's position is that the Secretary of State's written determination that the alien's presence in the United States would have serious adverse foreign policy consequences for the United States is sufficient to trigger deportability under section 237(b)(4)(C)(i) of the Act.

The Board read the Immigration Judge’s decision as inviting adjudicators acting under the auspices of the United States Attorney General to determine whether a foreign policy determination by the Secretary of State is reasonable based on the facts relied upon by the Secretary of State, which the Board concluded is not in accord with the statute. “There is no indication that Congress contemplated the Immigration Judge, or even the Attorney General, overruling the Secretary of State on a question of foreign policy.” *Id.* at 845. Citing to the Supreme Court decision in [Kleindienst v. Mandel](#), 408 U.S. 753, 770 (1972) (which we [discussed tangentially](#) in our review of *Trump v. Hawaii* 585 U.S. 687 (2018)), the Board concluded that deportability under the current 237(b)(4)(C)(i) is triggered when the Secretary of State provides a “facially legitimate and bona fide” reason for determining that an alien’s continued presence in the United States would have serious adverse foreign policy consequences. *Id.* at 846. The Board declined to consider a hypothetical scenario where the Secretary of State provides no reasoning whatsoever. *Id.*

In short, the *Matter of Ruiz-Masseiu* provides that the determination of the Secretary of State that an alien’s presence in the United States is detrimental to a foreign policy interest thereof is decisive evidence of deportability. The decision effectively forecloses any assessment by immigration judge’s or the Board of the Secretary of State’s foreign policy determination.

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