NOT FOR PUBLICATION

FILED

MAR 14 2019

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SAUL ALVAREZ RUIZ, Plaintiff-Appellant, v. KIRSTJEN NIELSEN, Secretary of Homeland Security; WILLIAM P. BARR, Attorney General; AL GALLMAN, Defendants-Appellees.	No. 17-16521 D.C. No. 2:16-cv-01073-JCM-PAL MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
James C. Mahan, District Judge, Presiding

Submitted March 11, 2019**
San Francisco, California

Before: WALLACE, SILER,*** and McKEOWN, Circuit Judges.

Saul Alvarez Ruiz filed an action seeking approval of his naturalization

---

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

*** The Honorable Eugene E. Siler, United States Circuit Judge for the U.S. Court of Appeals for the Sixth Circuit, sitting by designation.

application. The district court dismissed the action under Fed. R. Civ. P. 12(b)(6), holding that Ruiz failed to comply with the requirements for naturalization. We review de novo the district court's dismissal under Rule 12(b)(6). *Bain v. California Teachers Ass'n*, 891 F.3d 1206, 1211 (9th Cir. 2018). We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Courts require "strict compliance with the statutory conditions precedent to naturalization." *Fedorenko v. United States*, 449 U.S. 490, 506 (1981). "[T]he burden is on the alien applicant to show his eligibility for citizenship in every respect." *Berenyi v. Dist. Dir., INS*, 385 U.S. 630, 637 (1967). One of those required conditions for eligibility is that the applicant be "lawfully admitted to the United States for permanent residence in accordance" with the immigration laws. 8 U.S.C. § 1429. In turn, to be "lawfully admitted for permanent residence," the applicant must be "admissible" to the United States at the time of adjustment of status. 8 U.S.C. § 1255(a)(2). Ruiz concedes several facts establishing that he was inadmissible.

"Any alien who, by fraud or willfully misrepresenting a material fact . . . has sought to procure or has procured . . . a visa, other documentation, or admission into the United States . . . is inadmissible." 8 U.S.C. § 1182(a)(6)(C)(i). A willful misrepresentation is one that is "deliberate and voluntary." *Forbes v. INS*, 48 F.3d 439, 442 (9th Cir. 1995) (citing *Espinoza-Espinoza v. INS*, 554 F.2d 921, 925 (9th

Cir. 1977)). Proof of an intent to deceive is not required; rather, "knowledge of the falsity of a representation is sufficient." *Id.* (citing *Espinoza-Espinoza*, 554 F.2d at 925). A misrepresented fact is material if it has "a natural tendency to influence the decisions of the [INS]." *Id.* (quoting *Kungys v. United States*, 485 U.S. 759, 772 (1988)); *see also Fedorenko*, 449 U.S. at 509 ("At the very least, a misrepresentation must be considered material if disclosure of the true facts would have made the applicant ineligible for a visa."). Ruiz admits that he entered the country illegally in 1999 under the alias of his cousin and resided here until his visa interview in Mexico. Ruiz admits that he made misrepresentations during his interview with the consular officer. During the interview, Ruiz falsely claimed that he resided in Mexico and worked there as a farmer. There is no dispute that Ruiz knew of the falsity of his statements; he was advised, by a non-lawyer before attending the consular interview, that "it was better to just not disclose his unlawful presence in the United States." Accordingly, his misrepresentations were willful.

Ruiz's misrepresentations were also material because they establish grounds for inadmissibility. Any alien who had been "unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible." 8 U.S.C. § 1182(a)(9)(B)(i)(II). Ruiz was illegally present in the United States from 1999 until 2007. On October 26, 2007, Ruiz left the United States for

Mexico and, in Mexico, applied for an immigration visa and sought admission to the United States. This would be grounds for inadmissibility, which would have certainly influenced the decision to issue Ruiz the immigration visa. Accordingly, Ruiz was not lawfully admitted and is not eligible for naturalization.

In response, Ruiz requests "a declaration ordering that [his] 2006 *misrepresentation was not material*, as he would have easily qualified for a waiver . . . of inadmissibility." "The Attorney General has sole discretion to waive [section 1182(a)(9)(B)(i)(II)] in the case of an immigrant who is the . . . son . . . of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident . . . parent of such alien." 8 U.S.C. § 1182(a)(9)(B)(v). Ruiz's conclusion that he would have received a waiver is speculative, and he fails to make a showing that discretion would have been exercised in his favor.

AFFIRMED.