IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 92-4841

RAJPAL SINGH TANWAR,

Petitioner,

VERSUS

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

No. 92-4846

MOHAN SINGH TANWAR,

Petitioner,

VERSUS

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

No. 92-4847

RAJPAL SINGH TANWAR,

Petitioner,

VERSUS

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

Petitions for Review of Orders of the
Immigration and Naturalization Service
A41 805 279 A41 805 280

April 8, 1993

Before JOHNSON, SMITH, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:[*]

Ragpal Singh Tanwar and Mohan Singh Tanwar challenge their deportation, claiming that the Board of Immigration Appeals should have granted them a waiver under 8 U.S.C. § 1182(k) (1988).[1] The immigration judge held that petitioners failed to prove that they could not have discovered the effect of marriage on their visa through reasonable diligence. We review the Board's decision for abuse of discretion. Osuchukwu v. INS, 744 F.2d 1136, 1142 (5th Cir. 1984). "It is our duty to allow decision to be made by the Attorney General's delegate, even a decision that we deem in error, so long as it is not capricious, racially invidious, utterly without foundation in the evidence, or otherwise so aberrational that it is arbitrary rather than the result of any perceptible rational approach." Id.

We find ample evidence in the record supporting the Board's conclusion. Both Mohan and Rajpal signed the "Statement of

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[*] Local Rule 47.5.1 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that rule, the court has determined that this opinion should not be published.

[1] Petitioners raise two additional points of error that were waived because they were raised neither at the original hearing nor before the board on appeal. Carnejo-Molina v. INS, 649 F.2d 1145, 1150-51 (5th Cir. Unit A July 1981); see also Magubat v. INS, 937 F.2d 426, 430 (9th Cir. 1991) (failure to raise issues before the Board deprives court of jurisdiction to consider them).

Marriageable Age Applicant," which warned petitioners that marriage would invalidate their visas. Petitioners claim that they did not read and could not understand the form as it was printed in English. On another form, however, Mohan indicated he could speak, read and write in Hindi, Punjabi, and English, while Rajpal indicated that he could speak, read, and write in English and Hindi.[2] Immigration officials can reasonably rely upon the immigrant's representation that he speaks English.[3] Sachdev v. INS, 788 F.2d 912, 914 (2d Cir. 1986). Similarly, the officials may assume that petitioners' signatures indicate that they have read the form.

In addition, the record indicates that Rajpal and Mohan studied English for two and three years, respectively, while in high school. Without assistance, Mohan filled out a three-page form printed in English; Rajpal also filled out that form in English. Petitioners had three additional occasions to speak in Hindi to American Embassy employees, yet they made no effort to ascertain the meaning of the documents they had signed or to inquire about how their upcoming marriages would affect their immigration status. The failure to inquire is even more significant, as petitioners both admitted that their father had warned them that marriage would have some effect upon their immigration status.

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[2] Rajpal indicated that he could not speak English fluently but added no such qualification as to his ability to read and write the language.

[3] The signing of the "Statement of Marriageable Age Applicant" distinguishes this case from Corniel-Rodriguez v. INS, 532 F.2d 301 (2d Cir. 1976). There, the court held that the INS could not deport an alien who had received no warning that marriage before entering the country would nullify her visa. Here, petitioners have received a warning.

Based upon this evidence, we hold that the Board had a rational basis for its decision and did not abuse its discretion in failing to grant petitioners a waiver pursuant to 8 U.S.C. § 1182(k) (1988). AFFIRMED.