

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 08-1961

Palwinder Ghotra, also known as
Harsaran Kochhar,

Petitioner,

v.

Eric H. Holder, Jr., Attorney General
of the United States,

Respondent.

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* Petition for Review of an
* Order of the Board of
* Immigration Appeals.

* [UNPUBLISHED]

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Submitted: August 6, 2009
Filed: August 19, 2009

Before WOLLMAN, RILEY, and SMITH, Circuit Judges.

PER CURIAM.

Palwinder Ghotra petitions for review of an order of the Board of Immigration Appeals (BIA) that denied his motion to reopen. After careful review, we conclude the BIA acted within its discretion in denying Ghotra's motion to reopen under 8 C.F.R. § 1003.2(c), because the motion was filed more than ten months after the BIA's January 2007 final order. See 8 U.S.C. § 1229a(c)(7)(C)(i) (motion to reopen must be filed within 90 days of final removal order); Ghasemimehr v. Gonzales, 427 F.3d 1160, 1162-63 (8th Cir. 2005) (per curiam) (BIA did not abuse its discretion in denying untimely motion to reopen). We also conclude the BIA did not abuse its

discretion in refusing to waive the time limitation based on alleged ineffective assistance of counsel because Ghotra failed to comply with the Lozada¹ requirements. See Habchy v. Gonzales, 471 F.3d 858, 863-64 (8th Cir. 2006). We lack jurisdiction to review either the BIA's refusal to sua sponte reopen under 8 C.F.R. § 1003.2(a), see Tamenut v. Mukasey, 521 F.3d 1000, 1001, 1004-05 (8th Cir. 2008) (en banc) (per curiam), or Ghotra's assertions not first presented to the BIA, see Afolayan v. INS, 219 F.3d 784, 788 (8th Cir. 2000).

Accordingly, we deny the petition.

¹Matter of Lozada, 19 I. & N. Dec. 637, 639 (BIA 1988) (petitioner must submit affidavit attesting to relevant facts; must inform counsel of allegations and allow response; and must state whether complaint has been filed with appropriate disciplinary authorities, and if not, why not).