

**United States Court of Appeals
FOR THE EIGHTH CIRCUIT**

No. 09-2054

Ibrahima Mamadou Balde,

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[UNPUBLISHED]

Submitted: March 8, 2010
Filed: May 27, 2010

Before BYE, ARNOLD, and COLLOTON, Circuit Judges.

PER CURIAM.

Ibrahima Mamadou Balde petitions for review of a decision of the Board of Immigration Appeals (“BIA”) that refused to reopen Balde’s removal proceedings in response to an untimely motion to reopen filed by Balde. Balde argues that the BIA should have exercised its *sua sponte* power to reopen the proceedings, pursuant to 8 C.F.R. § 1003.2(a). The BIA’s decision whether to exercise that power, however, is committed to agency discretion by law, and therefore unreviewable. *Tamenut v. Mukasey*, 521 F.3d 1000, 1005 (8th Cir. 2008) (en banc); *see* 5 U.S.C. § 701(a)(2). To the extent that Balde contends separately that the BIA “abused its discretion” by

denying his untimely motion to reopen, the argument is simply another way of challenging the agency's refusal to act *sua sponte*. See *Barrie v. Holder*, 353 F. App'x 523, 524 (2d Cir. 2009). Accordingly, we deny the petition for review.
