

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

NOV 09 2009

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

RANJIT SINGH DHILLON,

Petitioner,

v.

ERIC H. HOLDER Jr., Attorney General,

Respondent.

No. 06-70152

Agency No. A077-374-693

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted November 5, 2009**
San Francisco, California

Before: HUG, RYMER and McKEOWN, Circuit Judges.

Ranjit Singh Dhillon, a native and citizen of India, petitions for review of the Board of Immigration Appeals' ("BIA") order denying his motion to reopen proceedings due to ineffective assistance of counsel. We have jurisdiction under 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen,

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

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

and review *de novo* ineffective assistance of counsel claims. *See Mohammed v. Gonzales*, 400 F.3d 785, 791-92 (9th Cir. 2005). We deny the petition for review.

The BIA did not abuse its discretion in denying Dhillon's motion to reopen. The motion was filed out of time, and the BIA determined that even if the deadline were tolled, the motion should be denied because Dhillon was not prejudiced by his former counsel's failure to present corroborating medical evidence. *See Iturribarria v. INS*, 321 F.3d 889, 899-900 (9th Cir. 2003) (to prevail on an ineffective assistance of counsel claim, a petitioner must demonstrate that counsel's performance was so inadequate that it may have affected the proceeding's outcome). In certain circumstances an immigration judge's (IJ) credibility determination could be impacted by the addition of corroborating evidence. Here, however, the IJ denied Dhillon's application largely because he did not find Dhillon's testimony that he was a member of a persecuted political group, or that he was targeted by the police based on his association with that group, credible. We affirmed the IJ's decision on this basis. *Dhillon v. Ashcroft*, 121 F. App'x 255, 256 (9th Cir. 2005). The proffered medical evidence might corroborate torture, but does not enhance Dhillon's credibility on the issue of whether he was persecuted on account of his political opinion.

Dhillon fails to show a due process violation based on ineffective assistance of counsel because he has failed to demonstrate prejudice. Therefore, the BIA did not abuse its discretion in denying Dhillon's petition to reopen.

PETITION FOR REVIEW DENIED.