

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA

3 GBEKE MICHAEL AWALA,

No. C 10-0470 SBA (PR)

4 Petitioner,

**ORDER DENYING REQUEST FOR  
CERTIFICATE OF APPEALABILITY**

5 v.

6 U. S. ATTORNEY GENERAL,

7 Respondent.  
8 \_\_\_\_\_/

9 Petitioner Gbeke Michael Awala filed the instant pro se petition for a writ of habeas corpus.  
10 On March 25, 2010, the Court dismissed the petition based on Petitioner's failure to pay the filing  
11 fee or to submit a completed prisoner's in forma pauperis (IFP) application. Specifically, Petitioner  
12 was sent two notifications from the Clerk of the Court advising him that his failure to pay the filing  
13 fee or to file the requisite IFP application and supporting documentation within thirty days would  
14 result in dismissal of this action. The second notification was sent to Petitioner on February 18,  
15 2010. After the thirty-day deadline had passed, Petitioner had filled out the IFP application form but  
16 he still had not submitted the proper documentation in support of his IFP application, including his  
17 certificate of funds and six month prisoner statement. Therefore, as mentioned above, this action  
18 was dismissed for IFP deficiency.

19 On April 12, 2010, Petitioner filed a notice of appeal. The Court construes Petitioner's notice  
20 of appeal as an application for a certificate of appealability (COA). See United States v. Asrar, 116  
21 F.3d 1268, 1270 (9th Cir. 1997); 28 U.S.C. § 2253(c)(3).

22 In an Order dated June 28, 2010, the Ninth Circuit remanded the case to the district court "for  
23 the limited purpose of granting or denying a [COA] at the court's earliest convenience." (Ninth  
24 Circuit June 28, 2010 Order at 1.)

25 **DISCUSSION**

26 An appeal may not be taken to the court of appeals from the final order in a habeas corpus  
27 proceeding unless the petitioner first obtains a COA. See 28 U.S.C. § 2253(c); Fed. R. App. P.  
28

1 22(b). Section 2253(c)(1) applies to an appeal of a final order entered on a procedural question  
2 antecedent to the merits, as here. See Slack v. McDaniel, 529 U.S. 473, 483 (2000).

3 "Determining whether a COA should issue where the petition was dismissed on procedural  
4 grounds has two components, one directed at the underlying constitutional claims and one directed  
5 at the district court's procedural holding." Id. at 484-85. "When the district court denies a habeas  
6 petition on procedural grounds without reaching the prisoner's underlying constitutional claim, a  
7 COA should issue when the prisoner shows, at least, that jurists of reason would find it debatable  
8 whether the petition states a valid claim of the denial of a constitutional right and that jurists of  
9 reason would find it debatable whether the district court was correct in its procedural ruling." Id. at  
10 484. As each of these components is a "threshold inquiry," the federal court "may find that it can  
11 dispose of the application in a fair and prompt manner if it proceeds first to resolve the issue whose  
12 answer is more apparent from the record and arguments." Id. at 485. Supreme Court jurisprudence  
13 "allows and encourages" federal courts to first resolve the procedural issue, as was done here. See  
14 id.

15 The petition was dismissed because Petitioner had not paid the filing fee or provided the  
16 proper documentation in support of his IFP application, even after being warned twice that dismissal  
17 would result from his failure to do so. Because jurists of reason would not find the Court's  
18 conclusion debatable or wrong, the motion for a COA is DENIED.

19 The Clerk shall process the notice of appeal.

20 IT IS SO ORDERED.

21 DATED: 10/21/10

  
SAUNDRA BROWN ARMSTRONG  
United States District Judge

22

23

24

25

26

27

28

1 UNITED STATES DISTRICT COURT  
2 FOR THE  
3 NORTHERN DISTRICT OF CALIFORNIA

4  
5  
6 GBEKE MICHAEL AWALA,  
7 Plaintiff,

Case Number: CV10-00470 SBA  
**CERTIFICATE OF SERVICE**

8 v.  
9 US ATTORNEY GENERAL et al,  
10 Defendant.

11  
12 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District  
Court, Northern District of California.

13 That on October 21, 2010, I SERVED a true and correct copy(ies) of the attached, by placing said  
14 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said  
15 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle  
located in the Clerk's office.

16  
17 Gbeke M. Awala 133892  
18 York County Prison  
19 3400 Concord Road  
York, PA 17402

20 Dated: October 21, 2010

21 Richard W. Wieking, Clerk  
By: LISA R CLARK, Deputy Clerk