UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JAE KANG,

Petitioner,

- against -

UNITED STATES OF AMERICA,

Respondent.

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10 Civ. 3684 (JGK)

MEMORANDUM OPINION AND ORDER

JOHN G. KOELTL, District Judge:

The Court has received the attached application for the appointment of counsel. The Court of Appeals for the Second Circuit has articulated factors that should guide the Court's discretion to appoint counsel to represent an indigent litigant under 28 U.S.C. § 1915. See Hodge v. Police Officers, 802 F.2d 58, 61-62 (2d Cir. 1986); Jackson v. Moscicki, No. 99 Civ. 2427 (JGK), 2000 WL 511642, at *4 (S.D.N.Y. Apr. 27, 2000). For the Court to order the appointment of counsel, the petitioner must, as a threshold matter, demonstrate that his claim has substance or a likelihood of success on the merits. See Hodge, 802 F.2d at 61-62. Only then can the Court consider the other factors appropriate to determination of whether counsel should be appointed: "[petitioner's] ability to obtain representation independently, and his ability to handle the case without assistance in the light of the required factual investigation,

the complexity of the legal issues, and the need for expertly conducted cross-examination to test veracity." Cooper v. A. Sargenti Co., Inc., 877 F.2d 170, 172 (2d Cir. 1989). The petitioner has failed to show that his claims are likely to have merit, and the application for the appointment of counsel is therefore **denied without prejudice**.

SO ORDERED.

Dated: New York, New York
September 17, 2010

John G. Koeltl
United States District Judge