

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 19-5241

September Term, 2019

1:14-cv-01568-KBJ

Filed On: May 15, 2020

John E. Horsey,

Appellant

v.

United States Department of State and
Michael R. Pompeo, Secretary of State,

Appellees

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

BEFORE: Griffith, Pillard, and Wilkins, Circuit Judges

J U D G M E N T

This appeal was considered on the record from the United States District Court for the District of Columbia and on the briefs filed by the parties. See Fed. R. App. P. 34(a)(2); D.C. Cir. Rule 34(j). Upon consideration of the foregoing and the motion to appoint counsel, it is

ORDERED that the motion to appoint counsel be denied. In civil cases, appellants are not entitled to appointment of counsel when they have not demonstrated sufficient likelihood of success on the merits. It is

FURTHER ORDERED AND ADJUDGED that the district court's order, dated July 18, 2019, be affirmed. The district court correctly dismissed appellant's racial discrimination claim, based on the requirement to undergo a mental health examination, for failure to timely exhaust his administrative remedies. See Steele v. Schafer, 535 F.3d 689, 693 (D.C. Cir. 2008) (quoting 29 C.F.R. § 1614.105(a)(1)). Additionally, the district court correctly determined that appellant's racial discrimination claim, based on the suspension and revocation of his security clearance, is not subject to judicial review. See Dep't of Navy v. Egan, 484 U.S. 518 (1988); Rattigan v. Holder, 689 F.3d 764, 771 (D.C. Cir. 2012) ("Title VII claim may proceed only if he can show that agency

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employees acted with a retaliatory or discriminatory motive in reporting or referring [security concerns] that they knew to be false.”); Rattigan v. Holder, 780 F.3d 413, 416 (D.C. Cir. 2015). Lastly, appellant has forfeited any challenge to the remainder of the district court’s decision. See United States ex rel. Totten v. Bombardier Corp., 380 F.3d 488, 497 (D.C. Cir. 2004) (“Ordinarily, arguments that parties do not make on appeal are deemed to have been waived.”).

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Daniel J. Reidy
Deputy Clerk