

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DAVID NAKHID,)
)
 Plaintiff,)
)
 v.) Case No. 19-cv-3268 (APM)
)
 AMERICAN UNIVERSITY,)
)
 Defendant.)

MEMORANDUM OPINION

I. INTRODUCTION

In the fall of 2018, Defendant American University’s Athletic Department undertook a search for a new men’s soccer coach. Plaintiff David Nakhid—who identifies as a Black man and is not a U.S. citizen—submitted his application from Lebanon, where he lived at the time, but he did not receive an interview. Defendant instead selected Zach Samol, a white man, to fill the role. Plaintiff alleges that the university failed to hire him because of his race, ethnicity, and national origin in violation of Title VII of the Civil Rights Act of 1964 and 42 U.S.C. § 1981. Defendant has moved for summary judgment, arguing that (1) Plaintiff’s Title VII and section 1981 claims fail as a matter of law because these statutes do not reach him as a noncitizen applicant who was not present in the United States at the time of the relevant events, and (2) Plaintiff has not established evidence from which a reasonable jury could conclude that Defendant discriminated against him on the basis of race, ethnicity, or national origin in deciding not to hire him for the head coach position. For the reasons that follow, Defendant’s motion for summary judgment is granted in full as to both claims.

II. BACKGROUND

A. Factual Background

1. *The Coaching Search*

Defendant American University is a private university located in Washington, D.C. Def.'s Mot. for Summ. J., ECF No. 29 [hereinafter Def.'s Mot.], Statement of Undisputed Facts, ECF No. 29-2 [hereinafter Def.'s SOF], ¶ 1. Its men's soccer team competes at the National Collegiate Athletic Association ("NCAA") Division 1 level. *Id.* ¶¶ 2–3. In the fall of 2018, the Athletic Department, which oversees the men's soccer team, decided not to renew the employment contract of the team's then-head coach. *Id.* ¶ 8. Shortly after Thanksgiving, the Department made that decision public and initiated its search for a replacement, with the goal of filling the position by January 2019, just a few months later. *Id.* ¶¶ 9–10. At the helm of the hiring process was Andrew Smith, the Associate Athletic Director for Compliance and Internal Operations, who supervised the men's soccer team. *Id.* ¶¶ 6–7, 10. The remaining members of the committee to select the new hire were Dr. William Walker, the Athletic Director; Josephine Harrington, the Deputy Director of Athletics; and David Bierwirth, the Associate Director of Athletics for External Affairs. *Id.* ¶¶ 4, 20.

The process went as follows: Smith and the University's human resources department prepared to post, and eventually posted, the position on both internal and external websites. *Id.* ¶ 11. Amidst those preparations, members of the Athletic Department reached out to several potential candidates about the position, though they did not offer any of them the role before the official interviewing process began. *Id.* ¶¶ 14–17. Around 100 people applied to the position. *Id.* ¶ 18. Smith conducted an initial review of the applications. *Id.* ¶ 19. The members of the selection committee met to discuss which of the applicants would be selected for preliminary screening

interviews in early December, and they chose eight applicants. *Id.* ¶¶ 20–21. After conducting the eight initial screening interviews, members of the committee conducted follow-up interviews with five candidates via Skype. *Id.* ¶ 23. Next, the committee invited two of those five applicants, along with the then–assistant coach for the soccer team, to participate in an on-campus final-round interview involving various stakeholders in mid-December. *Id.* ¶¶ 25, 32–33. Finally, the committee met to discuss the finalists and ultimately decided to hire Zach Samol. *Id.* ¶¶ 34–35.

Each of the applicants selected for the various interview stages—phone, Skype, and on campus—had previous collegiate coaching experience. *Id.* ¶ 22. Defendant asserts that this was not by coincidence: members of the selection committee uniformly testified that the “relevant experience” they sought in their job postings was collegiate coaching experience. Def.’s Mot., Ex. 2, ECF No. 29-6 [hereinafter Smith Decl.], ¶¶ 9, 39; Def.’s Mot., Ex. 6, ECF No. 29-10 [hereinafter Smith Dep.], at 24–25; Def.’s Mot., Ex. 1, ECF No. 29-5 [hereinafter Walker Decl.], ¶ 14; Def.’s Mot., Ex. 8, ECF No. 29-12 [hereinafter Harrington Decl.], ¶ 7; Def.’s Mot., Ex. 9, ECF No. 29-13 [hereinafter Bierwirth Decl.], ¶ 6. More specifically, they state that they sought collegiate coaching experience with a proven track record of success at a school like American: a private postsecondary institution “with a good academic program.” Smith Decl. ¶ 11.

2. *Plaintiff Applies but Is Not Selected*

Plaintiff is one of the nearly 99 unsuccessful applicants for the coaching position. He identifies as “Black or of the African diaspora.” Compl., ECF No. 1 [hereinafter Compl.], ¶ 7. He learned of the open position and, on December 4, 2018, wrote to Dr. Walker and Smith to express his interest. Def.’s SOF ¶ 37. He was directed to the online application and completed it around December 12, 2018. *Id.* He was not selected for an initial screening interview or any subsequent interview. *Id.* ¶ 41.

Plaintiff's career in and around soccer is extensive. In the 1980s, he played on the American University men's soccer team and was, by all accounts, a standout player. Pl.'s Mem. of Law in Opp'n to Def.'s Mot. for Summ. J., ECF No. 31 [hereinafter Pl.'s Opp'n], Pl.'s Statement of Material Facts [hereinafter Pl.'s SOMF], ¶ 2; Def.'s Reply in Supp. of Def.'s Mot. for Summ. J., ECF No. 32 [hereinafter Def.'s Reply], Def.'s Reply Statement of Undisputed Facts & Resp. to Pl.'s Statement of Material Facts, ECF No. 32-1 [hereinafter Def.'s Reply SOF], 19 ¶ 2. After that, he played professionally, both in the United States and internationally, including on teams in Switzerland, Belgium, and Lebanon. Pl.'s SOMF ¶ 3. He also played on the national team for Trinidad and Tobago. *Id.* After retiring from professional play, he transitioned to coaching. *Id.* ¶¶ 4–5. He coached professional teams in Lebanon, was an assistant coach to a Trinidadian national team in the World Cup, and eventually established his own soccer academy, where he developed young players for professional and collegiate play. *Id.* But he has never worked as a coach for a collegiate soccer team in the United States. Def.'s SOF ¶ 38. When he applied for the head coach position at American, Plaintiff, a citizen of Trinidad and Tobago, was living and working in Lebanon. *Id.*; Def.'s SOF ¶¶ 45–46 (citing Def.'s Mot., Ex. 16, ECF No. 29-20 [hereinafter Nakhid Dep.], at 8:18–9:5, 9:9–10:17).

B. Procedural Background

Plaintiff filed a charge of discrimination with the Equal Employment Opportunity Commission (“EEOC”) on April 26, 2019. Compl. ¶ 5. The EEOC issued a Notice of Rights to Plaintiff on August 2, 2019, after which he timely filed this action, bringing claims under Title VII of the Civil Rights Act of 1964 and 42 U.S.C. § 1981. *Id.* ¶¶ 6, 22, 26. Defendant moved to dismiss, arguing that Plaintiff had not alleged any facts rendering it plausible that discrimination motivated Defendant's failure to hire him. Def.'s Mot. to Dismiss, ECF No. 7, at 1. This court

denied that motion, holding that Plaintiff had “readily satisfie[d] the [Federal Rule of Civil Procedure] 8(a) standard.” *Nakhid v. Am. Univ.*, No. 19-cv-03268 (APM), 2020 WL 1332000, at *1 (D.D.C. Mar. 23, 2020). After that, Defendant answered the Complaint. Answer to Compl., ECF No. 11. Following discovery, Defendant filed this motion for summary judgment.

III. LEGAL STANDARD

Summary judgment is appropriate “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). A “genuine dispute” of a “material fact” exists when the fact is “capable of affecting the substantive outcome of the litigation” and “the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Elzeneiny v. District of Columbia*, 125 F. Supp. 3d 18, 28 (D.D.C. 2015).

In assessing a motion for summary judgment, the court looks at the facts in the light most favorable to the nonmoving party and draws all justifiable inferences in that party’s favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). To defeat a motion for summary judgment, the nonmoving party must put forward “more than mere unsupported allegations or denials”; its opposition must be “supported by affidavits, declarations, or other competent evidence, setting forth specific facts showing that there is a genuine issue for trial” and that a reasonable jury could find in its favor. *Elzeneiny*, 125 F. Supp. 3d at 28 (citing Fed. R. Civ. P. 56(e)); *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986).

IV. DISCUSSION

A. Section 1981 Claim

The court begins with Plaintiff’s claim under 42 U.S.C. § 1981. Plaintiff alleges that Defendant failed to hire him based on his race, ethnicity, and national origin, thwarting his contract

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