

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

No. 94-40656

(Summary Calendar)

THOMAS KARL KEENAN,

Plaintiff-Appellant,

versus

IMMIGRATION & NATURALIZATION SERVICE,

Defendant-Appellee.

Appeal from the United States District Court
for the Western District of Louisiana
(94-CV-546)

(January 30, 1995)

Before SMITH, EMILIO M. GARZA, and PARKER, Circuit Judges.

PER CURIAM:*

Thomas Karl Keenan sued the Immigration and Naturalization Service ("INS"), alleging that the INS had failed to respond to his request for information under the Freedom of Information Act, 5 U.S.C. § 552 (1988) ("FOIA"), and that an INS record contained incorrect information about him, in violation of the Privacy Act, 5 U.S.C. § 552a (1988). The district court dismissed Keenan's suit for failure to exhaust administrative remedies. We affirm.

* Local Rule 47.5.1 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

Keenan received a "Detainer))Notice of Action" from the Oakdale, Louisiana, office of the INS. Keenan responded by mailing a letter to the Oakdale office, asking why the INS' records))that is, the notice))contained inaccurate information.¹ Keenan also sent another letter requesting copies of all records concerning him that the INS had compiled.² The Oakdale office transmitted his request to the Office of Information and Privacy in New Orleans; that office responded to Keenan, acknowledging receipt of his request.³ A week later, the New Orleans office informed Keenan that the INS office in Arlington, Virginia, had custody of the records covered by his request. The New Orleans office also informed Keenan that it had forwarded his request to the Arlington office and that he should direct all further inquiries to that office. Nonetheless, Keenan mailed a "Request for Identification and Clarification and Memorandum of Law" to the Oakdale office, requesting "the name of the official(s) who conducted the search . . . and the name of the official to whom I may address my appeal if I am not satisfied."

After Keenan sent a similar request to the INS office in Washington, D.C., the Arlington INS office sent Keenan eighty-seven pages of records and a letter explaining the appropriate exemptions

¹ The notice listed his nationality as "Unknown."

² FOIA requires that "each agency, upon any request for records which (A) reasonably describes such records and (B) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, shall make the records promptly available to any person." 5 U.S.C. § 552(a)(3).

³ The New Orleans office assigned number NOL93000533 to Keenan's request.

for any records withheld. Keenan asserts that he filed an administrative appeal of the Arlington office's decision to withhold certain records.⁴

Keenan filed suit against the INS, alleging that the Oakdale office had failed to respond to his request, that the INS is maintaining inaccurate records, and that the Oakdale office improperly forwarded his request to the New Orleans office. Keenan asked the court to order the INS to provide the requested information, correct the records, and award him attorney's fees and costs.⁵ A magistrate judge determined that Keenan had not exhausted the administrative remedies required by FOIA as a prerequisite to judicial relief. The district court adopted the magistrate judge's report and recommendation and dismissed the suit. Keenan appeals.

A district court may dismiss an in forma pauperis proceeding prior to service of process "if the action is frivolous or malicious." 28 U.S.C. § 1915(d) (1988). A suit is frivolous under § 1915(d) if it lacks an arguable basis in law or fact. *Denton v. Hernandez*, ___ U.S. ___, 112 S. Ct. 1728, 1733, 118 L. Ed. 2d 340 (1992). We review § 1915(d) dismissals for abuse of discretion. *Ancar v. Sara Plasma, Inc.*, 964 F.2d 465, 468 (5th Cir. 1992).

⁴ That appeal is not at issue in this case.

⁵ Keenan also alleges a conspiracy to suppress information and to violate his constitutional rights, but he did not raise this claim in the district court. We do not review issues raised for the first time on appeal. See *Varnado v. Lynaugh*, 920 F.2d 320, 321 (5th Cir. 1991) (refusing to review issues not presented to district court unless they were purely legal questions or failing to review them would result in manifest injustice).

The district court dismissed Keenan's suit because he had failed to exhaust his administrative remedies. FOIA requires a complainant to exhaust administrative remedies prior to seeking judicial relief. *Voinche v. United States Dep't of Air Force*, 983 F.2d 667, 669 (5th Cir.), *cert. denied*, ___ U.S. ___, 114 S. Ct. 70, 126 L. Ed. 2d 39 (1993). Courts may excuse failure to exhaust administrative remedies only if the agency does not comply with the statutory time limits governing FOIA requests.⁶

In this case, the New Orleans office responded to Keenan's request for records in a timely fashion, informed him that the Arlington office had custody of the records he desired, and that he should correspond with the Arlington office. Keenan, however, did not follow these instructions and continued to send his correspondence to the Oakdale office, apparently believing that the letter from the New Orleans office was a denial of his request. None of Keenan's subsequent letters, however, complied with the procedures for appealing a denied request.⁷ Therefore, even if the letter from New Orleans had been a denial, Keenan failed to appeal

⁶ FOIA requires an agency to respond to a request for information within ten days. See 5 U.S.C. § 552(a)(6) ("Each agency, upon any request for records . . . shall . . . determine within ten days . . . after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of such determination and the reasons therefor, and of the right of such person to appeal to the head of the agency any adverse determination"); 8 C.F.R. § 103.10(c) (1994) ("Within 10 days . . . of the receipt of a request by the Service . . . , the authorized Service official shall either comply with or deny the request"). "If no substantive reply is made at the end of the 10 working day period, . . . requesters may deem their request to be denied and exercise their right to appeal"). *Id.* § 103.10(c)(2).

⁷ See 8 C.F.R. § 103.10(d)(3) (1994) ("When a request for records has been denied in whole or in part, the requester may, within 30 days of its receipt, appeal the denial to the Assistant Attorney General, Office of Legal Policy").

in accordance with FOIA administrative remedies and cannot pursue judicial relief.

Keenan also complains that the INS violated FOIA and the Privacy Act by failing to correct his records.⁸ INS regulations require that "[a] request for amendment or correction is made by the individual concerned, either in person or by mail, by addressing the written request to the FOIA/PA Officer at the location where the record is maintained." 8 C.F.R. § 103.28(a) (1994). Keenan does not argue that he complied with this requirement, and the record reflects that he did not. Consequently, Keenan has similarly failed to exhaust his administrative remedies with respect to the correction of the records.

Although the Arlington office properly responded to Keenan's request, Keenan argues that the Oakdale office improperly forwarded his request to New Orleans, which then forwarded his request to Arlington.⁹ As required by INS regulations,

⁸ FOIA and the Privacy Act require an agency upon request to correct inaccurate records.

Each agency that maintains a system of records shall)(2) permit [an] individual to request amendment of a record pertaining to him and)(A) not later than 10 days . . . after the date of receipt of such request, acknowledge in writing such receipt; and (B) promptly, either))(i) make any correction of any portion thereof which the individual believes is not accurate, relevant, timely, or complete; or (ii) inform the individual of its refusal to amend the record in accordance with his request, the reason for the refusal, the procedures established by the agency for the individual to request a review of that refusal by the head of the agency or an officer designated by the head of the agency, and the name and business address of that official.

5 U.S.C. § 552a(d).

⁹ Keenan cites *McGehee v. C.I.A.*, 697 F.2d 1095 (D.C. Cir. 1983), apparently for the proposition that one INS office cannot transfer requests for information to other INS offices. *McGehee*, however, dealt with the transfer of

[a]ny person desiring information relative to a matter handled by the [INS], or any person desiring to make a submittal or request in connection with such a matter should communicate either orally or in writing with a district headquarters office or suboffice of the Service. *If the office receiving the communication does not have jurisdiction to handle the matter, the communication, if written, will be forwarded to the proper office.*

8 C.F.R. § 100.3 (1994) (emphasis added).¹⁰ Consequently, the INS offices acted in compliance with the applicable regulations, and Keenan's contention has no merit.

For the foregoing reasons, we AFFIRM the district court's dismissal of Keenan's suit without prejudice.

records from one agency to another in an apparent attempt to avoid disclosing the documents to the requester. Nothing in that case suggests that a request for records can be handled only by the office to which the original request was sent, irrespective of the fact that those records are in the custody of another office.

¹⁰ See also 8 C.F.R. § 103.10(a)(2) (1994) ("All Freedom of Information Act requests must be in writing. Requests may be submitted in person or by mail. If a request is made by mail, both the envelope and its contents must be clearly marked: "FREEDOM OF INFORMATION REQUEST" or "INFORMATION REQUEST." Any request for information not marked will be so marked by Service personnel as soon as it is properly identified and *shall be forwarded immediately to the appropriate office designated to control Freedom of Information Act requests.*") (emphasis added). The Oakdale, Louisiana, office is in District 28 and its district headquarters, at which the district FOIA office is located, is in New Orleans. See 8 C.F.R. § 100.4 (1994) (allocating Louisiana to District 28 and naming New Orleans as district headquarters).