

FLIGHT-WATCH

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By: Alan Armstrong, Esq.

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HOW CAN A FOREIGN CITIZEN OWN AN AMERICAN CORPORATION AND FLY AN AIRPLANE IN THE UNITED STATES WITH AMERICAN REGISTRATION?

I. HOW THIS SUBJECT CAME TO MY ATTENTION

In this edition of Flightwatch, we will discuss how foreign citizens could have avoided pending legal proceedings that could result in forfeiting ownership in their aircraft.

At the time this edition of Flightwatch is being dictated, the author is representing foreign citizens in forfeiture proceedings initiated by the Drug Enforcement Administration and/or U.S. Customs and Border Protection against four aircraft registered with American registration to a limited liability company owned by foreign citizens. Because the registration does not comply with United States law, agencies of the United States government have seized the aircraft, and the forfeiture proceedings are pending. Complaints to Contest Forfeiture and Petitions for Remission of Forfeiture have been filed with the Drug Enforcement Agency and U.S. Customs and Border Protection.

II. THE GENERAL RULE

Generally, aircraft in the United States must be owned by a citizen of the United States.¹ For purposes of our discussion and analysis, a United States citizen includes an individual who is a United States citizen,² a partnership whose partners are individually United States citizens³ or “a corporation or association organized under the laws of the United States or a state, the District of Columbia, or a territory for possession of the United States, of which the President and at least two-thirds of the Board of Directors and other managing officers are citizens of the United States, which is under the actual control of citizens of the United States and in which at least seventy-five percent of the voting interest is owned or controlled by persons that are citizens of the United States.”⁴

Recognizing that the president and two-thirds of the board of directors or managing officers must be American citizens and that seventy-five percent of the voting interest in the corporation must be owned by American citizens, then how can a corporation organized in the United States but owned by foreign citizens own and operate an airplane in America with United States registration?

III. THE FOREIGN CORPORATION EXCEPTION

While aircraft owned and operated in America are generally owned by American citizens, if the aircraft is not registered under the laws of a foreign country, it may be registered in the United States by “a corporation, not a citizen of the United States when the corporation is organized and doing business under the laws of the United States or a state, and the aircraft is based and is primarily used in the United States.”⁵ It is noteworthy that the foreign corporation exception does not appear to embrace limited liability companies. The seasoned aviation practitioner will recall that when filing an application to register an aircraft under the name of a limited liability company, proof of American ownership is required attendant to the filing.

While there is statutory authority for a foreign corporation to own and operate an aircraft in the United States, some consideration should be given to the regulatory requirements promulgated by the Federal Aviation Administration to implement this statutory authority.

IV. THE REGULATORY REQUIREMENTS TO FOLLOW BY A FOREIGN CORPORATION IN REGISTERING AN AIRCRAFT IN AMERICA

Unlike an American corporation, a foreign corporation must, attendant to submitting to its application for registration, submit a certified copy of its certificate of incorporation.⁶ The foreign corporation must certify that it is lawfully qualified to do business in one or more states.⁷ The foreign corporation must certify that the aircraft will be based primarily and used in the United States.⁸

While the statutory authority for a foreign corporation owning and operating an aircraft in the United States declares that the aircraft will primarily be based and used in the United States, the regulation promulgated by the FAA in the furtherance of this statutory authority requires that at least sixty percent of the total flight hours of the aircraft during each six month reporting period shall be in the United States.⁹

While one might imagine that a flight commencing in the United States and terminating in Canada might satisfy the sixty percent rule discussed previously, that is not the case. The requirement that sixty percent of the total flight hours flown in the United States requires that the flight be between two points in the United States.¹⁰

A foreign corporation operating an aircraft in the United States based upon American registry, must maintain and make available for inspection by the FAA upon the request, records containing the total flight hours in the United States of aircraft for three calendar years after the year in which the flight hours were accumulated.¹¹

Finally, as indicated above, the foreign corporation must send to the FAA Aircraft Registry every six months a signed report stating the total time in service of the airframe,¹² the total flight hours of the aircraft in the United States during that reporting period,¹³ or a signed statement must be submitted to the FAA that during the registration period in question, the aircraft was flown exclusively in the United States.¹⁴

V. CONCLUSION

Citizens of foreign countries who live in the United States and desire to own and operate an aircraft in America should carefully follow the statutory authority and regulations promulgated by the FAA to ensure that they do not run afoul of proceedings initiated by the Drug Enforcement Administration or the U.S. Customs and Border Protection to confiscate aircraft illegally registered. Hopefully, this article will reveal the importance of properly registering aircraft in America that are flown by citizens of foreign countries.

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- 1 49 U.S.C. § 40102(a)(15).
 - 2 49 U.S.C. § 40102(a)(15)(A).
 - 3 49 U.S.C. § 40102(a)(15)(B).
 - 4 49 U.S.C. § 40102(a)(15)(C).
 - 5 49 U.S.C. § 44102(a)(1)(C).
 - 6 14 C.F.R. § 47.9(a)(1).
 - 7 14 C.F.R. § 47.9(a)(2).
 - 8 14 C.F.R. § 47.9(a)(3).
 - 9 14 C.F.R. § 47.9(b)(1)(2).
 - 10 14 C.F.R. § 47.9(c).
 - 11 14 C.F.R. § 47.9(e).
 - 12 14 C.F.R. § 47.9(f)(1)(i).
 - 13 14 C.F.R. § 47.9(1)(ii).
 - 14 14 C.F.R. § 47.9(f)(2).



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