

**Date: 20071105**

**Docket: A-467-06**

**Citation: 2007 FCA 358**

**CORAM: LINDEN J.A.  
EVANS J.A.  
SHARLOW J.A.**

**BETWEEN:**

**NEILA ROSA VELASQUEZ GUZMAN**

**Appellant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

Heard at Vancouver, British Columbia, on November 5, 2007.

Judgment delivered from the Bench at Vancouver, British Columbia, on November 5, 2007.

**REASONS FOR JUDGMENT OF THE COURT BY:**

**SHARLOW J.A.**

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**REASONS FOR JUDGMENT OF THE COURT**

**(Delivered from the Bench at Vancouver, British Columbia, on November 5, 2007)**

**SHARLOW J.A.**

[1] This is an appeal from the decision of the Federal Court (2006 FC 1134) dismissing the application of the appellant for a declaration that paragraph 133(1)(k) of the *Immigration and Refugee Protection Regulations*, S.O.R./2002-227, is unconstitutional. Regulation 133(1)(k) bars the sponsorship of a spouse if the sponsor is in receipt of social assistance.

[2] The respondent has moved to dismiss the appeal on the ground that it is moot. The appellant argues that the appeal is not moot, and in the alternative that it should be heard despite being moot.

[3] We agree with the respondent that the appeal is moot. The sponsorship application that is the subject of the appeal was submitted on the basis that the appellant's spouse is resident in Canada. He left Canada in June of 2006 and has not returned. Nor can he return unless he obtains a visa and, because of the circumstances of his departure, the consent of the Minister. The appellant's current sponsorship application cannot succeed, whatever this Court may decide on the constitutionality of Regulation 133(1)(k). For that reason, we find the appeal to be moot.

[4] We also agree with the respondent that this Court should not exercise its discretion to hear the appeal although it is moot (*Borowski v. Canada (Attorney General)*, [1989] 1 S.C.R. 342). While it is possible that a successful constitutional challenge to Regulation 133(1)(k) might be an advantage to the appellant if she submits a new sponsorship application, that possibility is too speculative to justify the determination of the constitutional issue raised in this case.

[5] The appeal will be dismissed.

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"K. Sharlow"

J.A.

**FEDERAL COURT OF APPEAL**

**SOLICITORS OF RECORD**

**DOCKET:** A-467-06

**STYLE OF CAUSE:** Neila Rosa Velasquez Guzman v. MCI

**PLACE OF HEARING:** Vancouver, British Columbia

**DATE OF HEARING:** November 5, 2007

**REASONS FOR JUDGMENT BY:** LINDEN J.A.  
EVANS J.A.  
SHARLOW J.A.

**DELIVERED FROM THE BENCH BY:** SHARLOW J.A.

**DATED:** November 5, 2007

**APPEARANCES:**

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Banafsheh Sokhansanj FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

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